

By: Representative Brown

To: Appropriations

HOUSE BILL NO. 966

1 AN ACT TO AMEND SECTION 7-7-211, MISSISSIPPI CODE OF 1972, TO
2 REQUIRE NOTICE TO BE GIVEN TO THE STATE AUDITOR WHENEVER A PRIVATE
3 AUDITOR WITH WHICH A GOVERNMENTAL ENTITY HAS CONTRACTED FINDS
4 EVIDENCE OF FRAUD OR ILLEGAL ACTS; AND FOR RELATED PURPOSES.

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

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

8 7-7-211. The department shall have the power and it shall be
9 its duty:

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

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

27 (c) To study and analyze existing managerial policies,
28 methods, procedures, duties and services of the various state



29 departments and institutions upon written request of the Governor,
30 the Legislature or any committee or other body empowered by the
31 Legislature to make such request to determine whether and where
32 operations can be eliminated, combined, simplified and improved;

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

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

59 (f) To postaudit and, when deemed necessary, preaudit
60 and investigate the financial affairs of the levee boards;
61 agencies created by the Legislature or by executive order of the



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

70 (g) To make written demand, when necessary, for the
71 recovery of any amounts representing public funds improperly
72 withheld, misappropriated and/or otherwise illegally expended by
73 an officer, employee or administrative body of any state, county
74 or other public office, and/or for the recovery of the value of
75 any public property disposed of in an unlawful manner by a public
76 officer, employee or administrative body, such demands to be made
77 (i) upon the person or persons liable for such amounts and upon
78 the surety on official bond thereof, and/or (ii) upon any
79 individual, partnership, corporation or association to whom the
80 illegal expenditure was made or with whom the unlawful disposition
81 of public property was made, if such individual, partnership,
82 corporation or association knew or had reason to know through the
83 exercising of reasonable diligence that the expenditure was
84 illegal or the disposition unlawful. Such demand shall be
85 premised on competent evidence, which shall include at least one
86 (1) of the following: (i) sworn statements, (ii) written
87 documentation, (iii) physical evidence, or (iv) reports and
88 findings of government or other law enforcement agencies. Other
89 provisions notwithstanding, a demand letter issued pursuant to
90 this subsection shall remain confidential by the State Auditor
91 until the individual against whom the demand letter is being filed
92 has been served with a copy of such demand letter. If, however,
93 such individual cannot be notified within fifteen (15) days using
94 reasonable means and due diligence, such notification shall be



95 made to the individual's bonding company, if he or she is bonded.
96 Each such demand shall be paid into the proper treasury of the
97 state, county or other public body through the office of the
98 department in the amount demanded within thirty (30) days from the
99 date thereof, together with interest thereon in the sum of one
100 percent (1%) per month from the date such amount or amounts were
101 improperly withheld, misappropriated and/or otherwise illegally
102 expended. In the event, however, such person or persons shall
103 refuse, neglect or otherwise fail to pay the amount demanded and
104 the interest due thereon within the allotted thirty (30) days, the
105 State Auditor shall have the authority and it shall be his duty to
106 institute suit, and the Attorney General shall prosecute the same
107 in any court of the state to the end that there shall be recovered
108 the total of such amounts from the person or persons and surety on
109 official bond named therein; and the amounts so recovered shall be
110 paid into the proper treasury of the state, county or other public
111 body through the State Auditor;

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



128 Department of Investigation of the State Department of Audit hired
129 on or after July 1, 1993, shall be required to complete the Law
130 Enforcement Officers Training Program and shall meet the standards
131 of the program;

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

142 (j) In any instances in which the State Auditor is or
143 shall be authorized or required to examine or audit, whether
144 preaudit or postaudit, any books, ledgers, accounts or other
145 records of the affairs of any public hospital owned or owned and
146 operated by one or more political subdivisions or parts thereof or
147 any combination thereof, or any school district, including
148 activity funds thereof, it shall be sufficient compliance
149 therewith, in the discretion of the State Auditor, that such
150 examination or audit be made from the report of any audit or other
151 examination certified by a certified public accountant and
152 prepared by or under the supervision of such certified public
153 accountant. Such audits shall be made in accordance with
154 generally accepted standards of auditing, with the use of an audit
155 program prepared by the State Auditor, and final reports of such
156 audits shall conform to the format prescribed by the State
157 Auditor. All files, working papers, notes, correspondence and all
158 other data compiled during the course of the audit shall be
159 available, without cost, to the State Auditor for examination and
160 abstracting during the normal business hours of any business day.



161 The expense of such certified reports shall be borne by the
162 respective hospital, or any available school district funds other
163 than minimum program funds, subject to examination or audit. The
164 State Auditor shall not be bound by such certified reports and
165 may, in his or their discretion, conduct such examination or audit
166 from the books, ledgers, accounts or other records involved as may
167 be appropriate and authorized by law;

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

182 (l) Whenever a governmental entity contracts with a
183 private auditor and such auditor finds reasonable assurance of
184 evidence of fraud or illegal acts during the audit, such
185 contracted auditor immediately shall give notice of such evidence
186 to the governing authority or chief executive officer of the
187 governmental entity. The governing authority or chief executive
188 officer of the governmental entity then immediately shall provide
189 notice of such suspected fraud or illegal acts to the State
190 Auditor. If the evidence of fraud or illegal act concerns a
191 member of the governmental authority, or, if the there is no
192 governing authority and the evidence of fraud or illegal act
193 concerns the chief executive officer of the governmental entity,



194 then the contracted auditor immediately shall provide notice of
195 such suspected fraud or illegal act to the State Auditor. A
196 contracted auditor shall cooperate with the State Auditor in any
197 resulting investigation;

198 (m) The State Auditor shall have the authority to
199 establish training courses and programs for the personnel of the
200 various state and local governmental entities under the
201 jurisdiction of the Office of the State Auditor. The training
202 courses and programs shall include, but not be limited to, topics
203 on internal control of funds, property and equipment control and
204 inventory, governmental accounting and financial reporting, and
205 internal auditing. The State Auditor is authorized to charge a
206 fee from the participants of these courses and programs, which fee
207 shall be deposited into the Department of Audit Special Fund.
208 State and local governmental entities are authorized to pay such
209 fee and any travel expenses out of their general funds or any
210 other available funds from which such payment is not prohibited by
211 law;

212 (n) Upon written request by the Governor or any member
213 of the State Legislature, the State Auditor may audit any state
214 funds and/or state and federal funds received by any nonprofit
215 corporation incorporated under the laws of this state;

216 (o) To conduct performance audits of personal or
217 professional service contracts by state agencies on a random
218 sampling basis, or upon request of the State Personal Service
219 Contract Review Board under Section 25-9-120(3).

220 SECTION 2. This act shall take effect and be in force from
221 and after July 1, 2001.

