

By: Senator(s) Dawkins

To: Business and Financial
Institutions

SENATE BILL NO. 2699

1 AN ACT TO AMEND SECTIONS 73-33-11 AND 73-33-15, MISSISSIPPI
2 CODE OF 1972, TO REVISE THE SUBPOENA POWER OF THE MISSISSIPPI
3 PUBLIC ACCOUNTANCY BOARD AND TO AUTHORIZE THE BOARD TO IMPOSE A
4 CIVIL PENALTY AGAINST PERSONS ADJUDGED TO HAVE VIOLATED CERTAIN
5 PUBLIC ACCOUNTING REGULATORY LAWS; TO AMEND SECTIONS 27-104-13,
6 27-104-27 AND 31-17-123, MISSISSIPPI CODE OF 1972, TO EXEMPT
7 SPECIAL FUNDS GENERATED BY THE MISSISSIPPI PUBLIC ACCOUNTANCY
8 BOARD FROM PROVISIONS ALLOWING SUCH FUNDS TO BE BORROWED DURING A
9 REVENUE SHORTFALL; AND FOR RELATED PURPOSES.

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

11 **SECTION 1.** Section 73-33-11, Mississippi Code of 1972, is
12 amended as follows:

13 73-33-11. The Mississippi State Board of Public Accountancy
14 may revoke, suspend, impose a civil penalty or take other
15 appropriate action with respect to any license or permit issued
16 pursuant to this chapter for any unprofessional conduct by the
17 licensee or permit holder, or for other sufficient cause, provided
18 written notice shall have been sent by registered mail (with the
19 addressee's receipt required) to the holder thereof, twenty (20)
20 days before any hearing thereon, stating the cause for such
21 contemplated action and appointing a day and a place for a full
22 hearing thereon by the board, provided further, no certificate or
23 license be cancelled or revoked until a hearing shall have been
24 given to the holder thereof according to law. But, after such
25 hearing, the board may, in its discretion, suspend the certified
26 public accountant from practice as a certified public accountant
27 in this state. When payment of a civil penalty is assessed and
28 levied by the board in accordance with this section, such civil
29 penalty shall not exceed Five Thousand Dollars (\$5,000.00) for
30 each violation.



31 The members of the board are hereby empowered to sit as a
32 trial board; to administer oaths (or affirmations); to summon any
33 witness and to compel his attendance and/or his testimony, under
34 oath (or affirmation) before the board or for purposes of
35 deposition during any board authorized investigation; to compel
36 the production * * * of any book, paper or document by the owner
37 or custodian thereof to a hearing or for purposes of
38 investigation; and/or to compel any officer to produce, during
39 investigation or at * * * hearing a copy of any public record (not
40 privileged from public inspection by law) in his official custody,
41 certified to, by him. The board shall elect one (1) of its
42 members to serve as clerk, to issue summons and other processes,
43 and to certify copies of its records or, the board may delegate
44 such duties to the executive director.

45 The accused may be represented by counsel at his own expense
46 during investigation or hearing or, in the instance of a firm
47 permit holder through its manager and/or counsel to defend such
48 charges. If the accused does not appear or answer, judgment may
49 be entered by default, provided the board finds that proper
50 service was made on the accused.

51 The minutes of the board shall be recorded in an appropriate
52 minute book permanently maintained by the board at its office.

53 In a proceeding conducted under this section by the board for
54 disciplinary action against a licensee or permit holder, those
55 reasonable costs that are expended by the board in the
56 investigation and conduct of a proceeding for discipline
57 including, but not limited to, the cost of service of process,
58 court reporters, expert witnesses, investigators and legal fees
59 may be imposed by the board on the accused, the charging party or
60 both.

61 Such costs shall be paid to the board upon the expiration of
62 the period allowed for appeal of such penalties under this
63 section, or may be paid sooner if the guilty party elects. Money



64 collected by the board under this section shall be deposited to
65 the credit of the board's special fund in the State Treasury.
66 When payment of a monetary penalty assessed by the board under
67 this section is not paid when due, the board shall have the power
68 to institute and maintain proceedings in its name for enforcement
69 of payment in the Chancery Court of the First Judicial District of
70 Hinds County, Mississippi, or in the Chancery Court of the county
71 where the respondent resides.

72 In case of a decision adverse to the accused, appeal shall be
73 made within thirty (30) days from the day on which decision is
74 made to the circuit court of the First Judicial District of Hinds
75 County, Mississippi, or in the circuit court of the county in
76 which the accused resides. In the case of a nonresident licensee,
77 the appeal shall be made to the First Judicial District of Hinds
78 County, Mississippi. The order of the board shall not take effect
79 until the expiration of said thirty (30) days.

80 In case of an appeal, bond for costs in the circuit court
81 shall be given as in other cases; and the order of the board shall
82 not take effect until such appeal has been finally disposed of by
83 the court or courts.

84 The board may, at any time, reinstate a license or permit if
85 it finds that such reinstatement is justified.

86 In addition to the reasons specified in the first paragraph
87 of this section, the board shall be authorized to suspend the
88 license of any licensee for being out of compliance with an order
89 for support, as defined in Section 93-11-153. The procedure for
90 suspension of a license for being out of compliance with an order
91 for support, and the procedure for the reissuance or reinstatement
92 of a license suspended for that purpose, and the payment of any
93 fees for the reissuance or reinstatement of a license suspended
94 for that purpose, shall be governed by Section 93-11-157 or
95 93-11-163, as the case may be. Actions taken by the board in
96 suspending a license when required by Section 93-11-157 or



97 93-11-163 are not actions from which an appeal may be taken under
98 this section. Any appeal of a license suspension that is required
99 by Section 93-11-157 or 93-11-163 shall be taken in accordance
100 with the appeal procedure specified in Section 93-11-157 or
101 93-11-163, as the case may be, rather than the procedure specified
102 in this section. If there is any conflict between any provision
103 of Section 93-11-157 or 93-11-163 and any provision of this
104 chapter, the provisions of Section 93-11-157 or 93-11-163, as the
105 case may be, shall control.

106 **SECTION 2.** Section 73-33-15, Mississippi Code of 1972, is
107 amended as follows:

108 73-33-15. (1) It shall be unlawful for any person, except a
109 registered public accountant, who is associated and registered
110 with a firm permit holder and/or for any firm, except for a
111 certified public accountant firm that holds a valid CPA firm
112 permit to practice public accounting issued pursuant to this
113 chapter to:

114 (a) Issue, sign or permit his name or firm name to be
115 associated with any report, transmittal letter or other written
116 communication issued as a result of an examination of financial
117 statements or financial information which contains either an
118 expression of opinion or other attestation as to the fairness,
119 accuracy or reliability of such financial statements;

120 (b) Offer to perform, or perform, for the public,
121 public accounting, tax consulting or other accounting-related
122 services while holding himself out as a certified public
123 accountant or as a firm of certified public accountants or
124 certified public accountant firm; or

125 (c) Maintain an office or other facility for the
126 transaction of business as a certified public accountant or
127 certified public accountant firm.

128 (2) Any person or firm violating subsection (1) of this
129 section shall be guilty of a misdemeanor, and may, upon conviction



130 therefor, be punished by a criminal fine of not less than Five
131 Hundred Dollars (\$500.00) nor more than Five Thousand Dollars
132 (\$5,000.00), or by imprisonment in the county jail for not less
133 than ten (10) days nor more than six (6) months, or by both such
134 fine and imprisonment in the discretion of the court.

135 (3) In addition to any other penalty which may be
136 applicable, the board may impose a civil penalty against any
137 person adjudged by the board to be in violation of subsection (1)
138 of this section. The civil penalty shall not exceed Five Thousand
139 Dollars (\$5,000.00) per violation and shall be deposited into the
140 special fund to the credit of the board.

141 (4) The provisions of paragraph (a) of subsection (1) of
142 this section shall not be construed to apply to an attorney
143 licensed to practice law in this state; to a person for making
144 statements as to his own business; to an officer or salaried
145 employee of a firm, partnership or corporation for making an
146 internal audit, statement or tax return for the same; to a
147 bookkeeper for making an internal audit, statement or tax return
148 for his employer, whose books he regularly keeps for a salary; to
149 a receiver, a trustee or fiduciary as to any statement or tax
150 return with reference to the business or property entrusted to him
151 as such; to any federal, state, county, district or municipal
152 officer as to any audit, statement, or tax return made by him in
153 the discharge of the duties of such office.

154 (5) Nothing in this section shall require a sole proprietor
155 not acting as a practice unit to associate and register with a
156 certified public accounting firm before engaging in the practice
157 of public accounting.

158 **SECTION 3.** Section 27-104-13, Mississippi Code of 1972, is
159 amended as follows:

160 27-104-13. The State Fiscal Officer shall have the right to
161 disapprove or reduce and revise such estimates of general funds
162 and state-source special funds for any general-fund or



163 special-fund agency, and for the "administration and other
164 expenses" budget of the Department of Transportation, in an amount
165 not to exceed five percent (5%) if he finds that funds will not be
166 available within the period for which the budget is drawn, or if
167 he finds that the requested expenditures, or any part thereof, are
168 not authorized by law, and such action shall be reported to the
169 Legislative Budget Office. The State Fiscal Officer may, upon his
170 determination of need based upon a finding that funds will not be
171 available within the period for which the budget is drawn,
172 transfer funds as provided in Section 27-103-203, from the Working
173 Cash-Stabilization Reserve Fund to the General Fund to supplement
174 the general-fund revenue. In the event that the estimates of
175 general funds and state-source special funds of all general-fund
176 and special-fund agencies, and of the "administration and other
177 expenses" budget of the Department of Transportation, have been
178 reduced by five percent (5%), additional reductions may be made
179 but shall consist of a uniform percentage reduction of general
180 funds and state-source special funds to all general-fund and
181 special-fund agencies, and to the "administration and other
182 expenses" budget of the Department of Transportation. Any
183 state-source special funds reduced under the provisions of this
184 section shall be transferred to the State General Fund upon
185 requisitions for warrants signed by the respective agency head and
186 said transfer shall be made within a reasonable period to be
187 determined by the State Fiscal Officer.

188 For the purpose of this section, "state-source special funds"
189 shall be construed to mean any special funds in any agency derived
190 from any source, but shall not include the following special
191 funds: special funds derived from federal sources, from local or
192 regional political subdivisions, or from donations; special funds
193 held in a fiduciary capacity for the benefit of specific persons
194 or classes of persons; self-generated special funds of the state
195 institutions of higher learning or the state junior colleges;



196 special funds of Mississippi Industries for the Blind, the State
197 Port at Gulfport, Yellow Creek Inland Port, Pat Harrison Waterway
198 District, Pearl River Basin Development District, Pearl River
199 Valley Water Management District, Tombigbee River Valley Water
200 Management District, Yellow Creek Watershed Authority, or Coast
201 Coliseum Commission, the Mississippi Board of Public Accountancy;
202 special funds of the Department of Wildlife, Fisheries and Parks
203 derived from the issuance of hunting or fishing licenses; and
204 special funds generated by agencies whose primary function
205 includes the establishment of standards and the issuance of
206 licenses for the practice of a profession within the State of
207 Mississippi.

208 **SECTION 4.** Section 27-104-27, Mississippi Code of 1972, is
209 amended as follows:

210 27-104-27. Notwithstanding anything in Sections 27-103-101
211 through 27-103-139 and 27-104-1 through 27-104-29 contained, the
212 same shall not be construed to apply to any agency supported
213 wholly by funds granted or allotted under any act of Congress.
214 The State Auditor of Public Accounts and after July 1, 1986, the
215 State Fiscal Officer shall determine which special fund accounts
216 in the State Treasury require an appropriation act and request an
217 appropriation for such special fund accounts. For all other
218 special fund accounts, the State Auditor of Public Accounts, or
219 the State Fiscal Officer after July 1, 1986, shall certify that
220 such accounts do not require an appropriation. The Legislative
221 Budget Office shall recommend an appropriation for each special
222 fund account existing in the State Treasury so certified as
223 requiring an appropriation, unless exempted as hereinafter
224 provided. In the event the Legislative Budget Committee and the
225 State Fiscal Officer find that any state agency should not be
226 included under the provisions of Sections 27-103-101 through
227 27-103-139 and 27-104-1 through 27-104-29, then the said committee
228 and officer may, in their discretion, exempt said state agency



229 from the provisions thereof. Sections 27-103-101 through
230 27-103-139 and 27-104-1 through 27-104-29 shall not apply to funds
231 collected and disbursed by a state agency created and existing
232 under the provisions of Sections 73-3-101 through 73-3-169.
233 Sections 27-103-101 through 27-103-139 and 27-104-1 through
234 27-104-29 shall not apply to funds deposited into the special fund
235 created pursuant to Section 45-9-101, the special fund created
236 pursuant to Section 69-37-39, the special fund created pursuant to
237 Section 1 of Chapter 521, Laws of 1999, the special fund created
238 pursuant to Section 31-17-127 or the special fund created pursuant
239 to Section 65-1-110, the special fund created pursuant to Section
240 73-33-8.

241 The State Fiscal Officer shall not promulgate or attempt to
242 enforce any rule, order or regulation which is not in accordance
243 with the provisions of a legally executed trust indenture
244 agreement, nor shall Sections 27-103-101 through 27-103-139 and
245 27-104-1 through 27-104-29 be construed to apply to funds
246 collected and disbursed by a state agency under Sections 65-33-45
247 and 65-33-47.

248 **SECTION 5.** Section 31-17-123, Mississippi Code of 1972, is
249 amended as follows:

250 31-17-123. The intent of the Legislature is to authorize
251 borrowing funds under the provisions of Sections 31-17-101 through
252 31-17-123 to offset any temporary cash flow deficiencies and
253 should not be construed to authorize the borrowing of any funds in
254 an amount which cannot be repaid during the fiscal year in which
255 such funds are borrowed. The State Tax Commission and University
256 Research Center, utilizing all available revenue forecast data,
257 shall annually develop a general fund revenue estimate to be
258 adopted by the Legislative Budget Office as of the date of sine
259 die adjournment. If, at the end of October, or at the end of any
260 month thereafter of any fiscal year, the revenues received for the
261 fiscal year shall fall below ninety-eight percent (98%) of the



262 Legislative Budget Office general fund revenue estimate at the
263 date of sine die adjournment, the State Fiscal Officer shall
264 reduce allocations of general funds and state-source special funds
265 to general fund and special fund agencies and to the
266 "administration and other expenses" budget of the Department of
267 Transportation in an amount necessary to keep expenditures within
268 the sum of actual general fund receipts including any transfers to
269 the General Fund from the Working Cash-Stabilization Reserve Fund
270 for the fiscal year. The State Fiscal Officer may, upon his
271 determination of need based on the revenue shortfall, transfer
272 funds as provided in Section 27-103-203, from the Working
273 Cash-Stabilization Reserve Fund to the General Fund to supplement
274 the general fund revenue. State-source special funds in an amount
275 equal to any reduction made under the provisions of this section
276 shall be transferred to the State General Fund upon requisitions
277 for warrants signed by the respective agency head and such
278 transfer shall be made within a reasonable period to be determined
279 by the State Fiscal Officer. No agency's allocation shall be
280 reduced in an amount to exceed five percent (5%); however, in the
281 event that the allocations of general funds and state-source
282 special funds to all general fund and special fund agencies and to
283 the "administration and other expenses" budget of the Department
284 of Transportation have been reduced by five percent (5%), any
285 additional reductions required to be made hereunder shall consist
286 of a uniform percentage reduction of general funds and
287 state-source special funds to all general fund and special fund
288 agencies, and to the "administration and other expenses" budget of
289 the Department of Transportation. Any receipt from loans
290 authorized by Sections 31-17-101 through 31-17-123 shall not be
291 included as revenue receipts. The State Fiscal Officer shall
292 immediately send notice of any action taken under authority of
293 this section to the Legislative Budget Office.



294 For the purpose of this section, "state-source special funds"
295 shall be construed to mean any special funds in any agency derived
296 from any source, but shall not include the following special
297 funds: special funds derived from federal sources, from local or
298 regional political subdivisions, or from donations; special funds
299 held in a fiduciary capacity for the benefit of specific persons
300 or classes of persons; self-generated special funds of the state
301 institutions of higher learning or the state junior colleges;
302 special funds of Mississippi Industries for the Blind, the State
303 Port at Gulfport, Yellow Creek Inland Port, Pat Harrison Waterway
304 District, Pearl River Basin Development District, Pearl River
305 Valley Water Management District, Tombigbee River Valley Water
306 Management District, Yellow Creek Watershed Authority, or Coast
307 Coliseum Commission; special funds of the Department of Wildlife,
308 Fisheries and Parks derived from the issuance of hunting or
309 fishing licenses, the Mississippi Board of Public Accountancy; and
310 special funds generated by agencies whose primary function
311 includes the establishment of standards and the issuance of
312 licenses for the practice of a profession within the State of
313 Mississippi.

314 **SECTION 6.** This act shall take effect and be in force from
315 and after July 1, 2003.

