

By: Senator(s) Kirby

To: Judiciary, Division A

SENATE BILL NO. 2236  
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 7-7-211, MISSISSIPPI CODE OF 1972, TO  
2 PROVIDE A CIVIL PENALTY UPON SURETIES WHICH FAIL WITHIN A CERTAIN  
3 PERIOD OF TIME TO PAY, OR TO GIVE THE STATE AUDITOR REASONS FOR  
4 NONPAYMENT, ON THE BOND OF PUBLIC OFFICIALS; AND FOR RELATED  
5 PURPOSES.

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

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

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

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

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

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

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

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

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

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

93 has been served with a copy of such demand letter. If, however,  
94 such individual cannot be notified within fifteen (15) days using  
95 reasonable means and due diligence, such notification shall be  
96 made to the individual's bonding company, if he or she is bonded.  
97 Each such demand shall be paid into the proper treasury of the  
98 state, county or other public body through the office of the  
99 department in the amount demanded within thirty (30) days from the  
100 date thereof, together with interest thereon in the sum of one  
101 percent (1%) per month from the date such amount or amounts were  
102 improperly withheld, misappropriated and/or otherwise illegally  
103 expended. In the event, however, such person or persons or such  
104 surety shall refuse, neglect or otherwise fail to pay the amount  
105 demanded and the interest due thereon within the allotted thirty  
106 (30) days, the State Auditor shall have the authority and it shall  
107 be his duty to institute suit, and the Attorney General shall  
108 prosecute the same in any court of the state to the end that there  
109 shall be recovered the total of such amounts from the person or  
110 persons and surety on official bond named therein; and the amounts  
111 so recovered shall be paid into the proper treasury of the state,  
112 county or other public body through the State Auditor. In any  
113 case where written demand is issued to a surety on the official  
114 bond of such person or persons and the surety refuses, neglects or  
115 otherwise fails within one hundred twenty (120) days to either pay  
116 the amount demanded and the interest due thereon or to give the  
117 State Auditor a written response with specific reasons for  
118 nonpayment, then the surety shall be subject to a civil penalty in  
119 an amount of twelve percent (12%) of the bond, not to exceed Ten  
120 Thousand Dollars (\$10,000.00), to be deposited into the State  
121 General Fund;

122 (h) To investigate any alleged or suspected violation  
123 of the laws of the state by any officer or employee of the state,  
124 county or other public office in the purchase, sale or the use of  
125 any supplies, services, equipment or other property belonging

126 thereto; and in such investigation to do any and all things  
127 necessary to procure evidence sufficient either to prove or  
128 disprove the existence of such alleged or suspected violations.  
129 The Department of Investigation of the State Department of Audit  
130 may investigate, for the purpose of prosecution, any suspected  
131 criminal violation of the provisions of this chapter. For the  
132 purpose of administration and enforcement of this chapter, the  
133 enforcement employees of the Department of Investigation of the  
134 State Department of Audit have the powers of a law enforcement  
135 officer of this state, and shall be empowered to make arrests and  
136 to serve and execute search warrants and other valid legal process  
137 anywhere within the State of Mississippi. All enforcement  
138 employees of the Department of Investigation of the State  
139 Department of Audit hired on or after July 1, 1993, shall be  
140 required to complete the Law Enforcement Officers Training Program  
141 and shall meet the standards of the program;

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

152 (j) In any instances in which the State Auditor is or  
153 shall be authorized or required to examine or audit, whether  
154 preaudit or postaudit, any books, ledgers, accounts or other  
155 records of the affairs of any public hospital owned or owned and  
156 operated by one or more political subdivisions or parts thereof or  
157 any combination thereof, or any school district, including  
158 activity funds thereof, it shall be sufficient compliance

159 therewith, in the discretion of the State Auditor, that such  
160 examination or audit be made from the report of any audit or other  
161 examination certified by a certified public accountant and  
162 prepared by or under the supervision of such certified public  
163 accountant. Such audits shall be made in accordance with  
164 generally accepted standards of auditing, with the use of an audit  
165 program prepared by the State Auditor, and final reports of such  
166 audits shall conform to the format prescribed by the State  
167 Auditor. All files, working papers, notes, correspondence and all  
168 other data compiled during the course of the audit shall be  
169 available, without cost, to the State Auditor for examination and  
170 abstracting during the normal business hours of any business day.  
171 The expense of such certified reports shall be borne by the  
172 respective hospital, or any available school district funds other  
173 than minimum program funds, subject to examination or audit. The  
174 State Auditor shall not be bound by such certified reports and  
175 may, in his or their discretion, conduct such examination or audit  
176 from the books, ledgers, accounts or other records involved as may  
177 be appropriate and authorized by law;

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

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

206           (m) Upon written request by the Governor or any member  
207 of the State Legislature, the State Auditor may audit any state  
208 funds and/or state and federal funds received by any nonprofit  
209 corporation incorporated under the laws of this state;

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

214           **SECTION 2.** This act shall take effect and be in force from  
215 and after July 1, 2004.