

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.