

By: Senator(s) Chaney, Flowers, Michel, Hyde-Smith, Lee (35th), Pickering, Kirby, Carmichael, Wilemon, Doxey, White, Davis, Morgan, Brown, Burton, Nunnelee, Jackson (15th), Ross, King

To: Judiciary, Division A

SENATE BILL NO. 2463

1 AN ACT TO AMEND SECTION 7-7-211, MISSISSIPPI CODE OF 1972, TO
2 REQUIRE NONPROFIT ASSOCIATIONS RECEIVING DUES PAYMENTS FROM PUBLIC
3 FUNDS TO ANNUALLY SUBMIT AN INDEPENDENT AUDIT TO THE STATE
4 DEPARTMENT OF AUDIT, THE GOVERNOR AND THE LEGISLATURE; TO AMEND
5 SECTION 5-8-13, MISSISSIPPI CODE OF 1972, TO PROHIBIT ANY
6 NONPROFIT ASSOCIATION RECEIVING DUES PAYMENTS FROM PUBLIC FUNDS
7 FROM LOBBYING THE LEGISLATURE WITHOUT FILING THE PROPER
8 INDEPENDENT AUDIT; AND FOR RELATED PURPOSES.

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

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

12 7-7-211. The department shall have the power and it shall be
13 its duty:

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

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

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

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

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

63 (f) To postaudit and, when deemed necessary, preaudit
64 and investigate the financial affairs of the levee boards;
65 agencies created by the Legislature or by executive order of the
66 Governor; profit or nonprofit business entities administering
67 programs financed by funds flowing through the State Treasury or
68 through any of the agencies of the state, or its subdivisions; and
69 all other public bodies supported by funds derived in part or
70 wholly from public funds, except municipalities which annually
71 submit an audit prepared by a qualified certified public
72 accountant using methods and procedures prescribed by the
73 department; any nonprofit association receiving dues or membership
74 payments from funds flowing through the State Treasury or any
75 agency of the state, or any political subdivision of the state or
76 any school district, shall annually have prepared an independent
77 audit prepared by a qualified certified public accountant using
78 methods and procedures prescribed by the department, such audit to
79 be submitted to the department, the Governor and the Legislature;

80 (g) To make written demand, when necessary, for the
81 recovery of any amounts representing public funds improperly
82 withheld, misappropriated and/or otherwise illegally expended by
83 an officer, employee or administrative body of any state, county
84 or other public office, and/or for the recovery of the value of
85 any public property disposed of in an unlawful manner by a public
86 officer, employee or administrative body, such demands to be made
87 (i) upon the person or persons liable for such amounts and upon
88 the surety on official bond thereof, and/or (ii) upon any
89 individual, partnership, corporation or association to whom the
90 illegal expenditure was made or with whom the unlawful disposition
91 of public property was made, if such individual, partnership,
92 corporation or association knew or had reason to know through the
93 exercising of reasonable diligence that the expenditure was
94 illegal or the disposition unlawful. Such demand shall be
95 premised on competent evidence, which shall include at least one

96 (1) of the following: (i) sworn statements, (ii) written
97 documentation, (iii) physical evidence, or (iv) reports and
98 findings of government or other law enforcement agencies. Other
99 provisions notwithstanding, a demand letter issued pursuant to
100 this subsection shall remain confidential by the State Auditor
101 until the individual against whom the demand letter is being filed
102 has been served with a copy of such demand letter. If, however,
103 such individual cannot be notified within fifteen (15) days using
104 reasonable means and due diligence, such notification shall be
105 made to the individual's bonding company, if he or she is bonded.
106 Each such demand shall be paid into the proper treasury of the
107 state, county or other public body through the office of the
108 department in the amount demanded within thirty (30) days from the
109 date thereof, together with interest thereon in the sum of one
110 percent (1%) per month from the date such amount or amounts were
111 improperly withheld, misappropriated and/or otherwise illegally
112 expended. In the event, however, such person or persons or such
113 surety shall refuse, neglect or otherwise fail to pay the amount
114 demanded and the interest due thereon within the allotted thirty
115 (30) days, the State Auditor shall have the authority and it shall
116 be his duty to institute suit, and the Attorney General shall
117 prosecute the same in any court of the state to the end that there
118 shall be recovered the total of such amounts from the person or
119 persons and surety on official bond named therein; and the amounts
120 so recovered shall be paid into the proper treasury of the state,
121 county or other public body through the State Auditor. In any
122 case where written demand is issued to a surety on the official
123 bond of such person or persons and the surety refuses, neglects or
124 otherwise fails within one hundred twenty (120) days to either pay
125 the amount demanded and the interest due thereon or to give the
126 State Auditor a written response with specific reasons for
127 nonpayment, then the surety shall be subject to a civil penalty in
128 an amount of twelve percent (12%) of the bond, not to exceed Ten

129 Thousand Dollars (\$10,000.00), to be deposited into the State
130 General Fund;

131 (h) To investigate any alleged or suspected violation
132 of the laws of the state by any officer or employee of the state,
133 county or other public office in the purchase, sale or the use of
134 any supplies, services, equipment or other property belonging
135 thereto; and in such investigation to do any and all things
136 necessary to procure evidence sufficient either to prove or
137 disprove the existence of such alleged or suspected violations.
138 The Department of Investigation of the State Department of Audit
139 may investigate, for the purpose of prosecution, any suspected
140 criminal violation of the provisions of this chapter. For the
141 purpose of administration and enforcement of this chapter, the
142 enforcement employees of the Department of Investigation of the
143 State Department of Audit have the powers of a law enforcement
144 officer of this state, and shall be empowered to make arrests and
145 to serve and execute search warrants and other valid legal process
146 anywhere within the State of Mississippi. All enforcement
147 employees of the Department of Investigation of the State
148 Department of Audit hired on or after July 1, 1993, shall be
149 required to complete the Law Enforcement Officers Training Program
150 and shall meet the standards of the program;

151 (i) To issue subpoenas, with the approval of, and
152 returnable to, a judge of a chancery or circuit court, in termtime
153 or in vacation, to examine the records, documents or other
154 evidence of persons, firms, corporations or any other entities
155 insofar as such records, documents or other evidence relate to
156 dealings with any state, county or other public entity. The
157 circuit or chancery judge must serve the county in which the
158 records, documents or other evidence is located; or where all or
159 part of the transaction or transactions occurred which are the
160 subject of the subpoena;

161 (j) In any instances in which the State Auditor is or
162 shall be authorized or required to examine or audit, whether
163 preaudit or postaudit, any books, ledgers, accounts or other
164 records of the affairs of any public hospital owned or owned and
165 operated by one or more political subdivisions or parts thereof or
166 any combination thereof, or any school district, including
167 activity funds thereof, it shall be sufficient compliance
168 therewith, in the discretion of the State Auditor, that such
169 examination or audit be made from the report of any audit or other
170 examination certified by a certified public accountant and
171 prepared by or under the supervision of such certified public
172 accountant. Such audits shall be made in accordance with
173 generally accepted standards of auditing, with the use of an audit
174 program prepared by the State Auditor, and final reports of such
175 audits shall conform to the format prescribed by the State
176 Auditor. All files, working papers, notes, correspondence and all
177 other data compiled during the course of the audit shall be
178 available, without cost, to the State Auditor for examination and
179 abstracting during the normal business hours of any business day.
180 The expense of such certified reports shall be borne by the
181 respective hospital, or any available school district funds other
182 than minimum program funds, subject to examination or audit. The
183 State Auditor shall not be bound by such certified reports and
184 may, in his or their discretion, conduct such examination or audit
185 from the books, ledgers, accounts or other records involved as may
186 be appropriate and authorized by law;

187 (k) The State Auditor shall have the authority to
188 contract with qualified public accounting firms to perform
189 selected audits required in subsections (d), (e) and (f) of this
190 section, if funds are made available for such contracts by the
191 Legislature, or if funds are available from the governmental
192 entity covered by subsections (d), (e) and (f). Such audits shall
193 be made in accordance with generally accepted standards of

194 auditing, with the use of an audit program prepared by the State
195 Auditor, and final reports of such audits shall conform to the
196 format prescribed by the State Auditor. All files, working
197 papers, notes, correspondence and all other data compiled during
198 the course of the audit shall be available, without cost, to the
199 State Auditor for examination and abstracting during the normal
200 business hours of any business day;

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

215 (m) Upon written request by the Governor or any member
216 of the State Legislature, the State Auditor may audit any state
217 funds and/or state and federal funds received by any nonprofit
218 corporation incorporated under the laws of this state; this
219 paragraph (m) is in addition to the requirement for an annual
220 independent audit submitted to the department, the Governor and
221 the Legislature by any nonprofit association receiving dues
222 payments from public funds as provided in paragraph (f);

223 (n) To conduct performance audits of personal or
224 professional service contracts by state agencies on a random
225 sampling basis, or upon request of the State Personal Service
226 Contract Review Board under Section 25-9-120(3);

227 (o) To annually postaudit the Chickasawhay Natural Gas
228 District. The Department of Audit shall charge the Chickasawhay
229 Natural Gas District, audited by the authority of this paragraph,
230 the sum of Thirty Dollars (\$30.00) per hour for each hour of staff
231 time devoted to the auditing of the district. The Chickasawhay
232 Natural Gas District shall pay for the audit fees from any sums
233 available to the district for its general operations.

234 **SECTION 2.** Section 5-8-13, Mississippi Code of 1972, is
235 amended as follows:

236 5-8-13. (1) A lobbyist shall not contract to receive or
237 accept compensation dependent upon the success or failure of a
238 legislative or executive action.

239 (2) A lobbyist or lobbyist's client shall not knowingly or
240 willfully make or cause to be made a false statement or
241 misrepresentation of facts to an executive, legislative or public
242 official or public employee, or to the public in general with the
243 intent to affect the outcome of a legislative or executive action.

244 (3) A lobbyist or lobbyist's client shall not cause a
245 legislative or executive action for the purpose of obtaining
246 employment to lobby in support of or in opposition to the
247 legislative or executive action.

248 (4) An executive, legislative or public official or public
249 employee shall not be a lobbyist, except that he may act as a
250 lobbyist when acting in his official capacity.

251 (5) A lobbyist must disclose anything of value given in
252 whole or in part to any executive, legislative or public official
253 or public employee.

254 (6) Any nonprofit association receiving dues or membership
255 payments from funds flowing through the State Treasury or any
256 agency of the state, or any political subdivision of the state or
257 any school district, shall not lobby the Legislature unless it has
258 filed the proper annual independent audit as required under
259 Section 7-7-211(f).

260 **SECTION 3.** This act shall take effect and be in force from
261 and after its passage.