

By: Senator(s) Pickering

To: Judiciary, Division A;
Appropriations

SENATE BILL NO. 2908

1 AN ACT TO AMEND SECTION 7-7-203, MISSISSIPPI CODE OF 1972, TO
2 AUTHORIZE DIRECT EMPLOYMENT BY THE STATE AUDITOR'S OFFICE OF A
3 DULY LICENSED ATTORNEY; TO AMEND SECTION 7-7-211, MISSISSIPPI CODE
4 OF 1972, TO PROVIDE THAT THE ATTORNEY GENERAL, OR THE DISTRICT
5 ATTORNEY OF THE DISTRICT IN WHICH THE VIOLATION OCCURRED, SHALL
6 PROSECUTE FOR THE RECOVERY OF MISSPENT PUBLIC FUNDS; AND FOR
7 RELATED PURPOSES.

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

9 **SECTION 1.** Section 7-7-203, Mississippi Code of 1972, is
10 amended as follows:

11 7-7-203. The State Auditor shall appoint a director for the
12 department who shall be responsible for its management and the
13 execution of his policies, provided that such director shall be a
14 certified public accountant of recognized executive ability and
15 thoroughly familiar with the laws of the state in relation to the
16 financial administration of the public offices thereof.

17 The director shall have authority and it shall be his duty to
18 select, with the concurrence of the State Auditor, all
19 administrative, technical, and professional assistants, including
20 an assistant director and a duly licensed attorney, necessary to
21 carry out the provisions of this article, provided, however, that
22 all such assistants shall be employed only after they have
23 qualified under the terms of a merit system, which the State
24 Auditor and director shall establish covering all personnel of the
25 department and shall adopt and enforce all necessary rules and
26 regulations to maintain. It shall be the duty of each successive
27 incumbent in the Office of State Auditor to maintain said merit
28 system as previously established, and he shall not replace or
29 discharge any employee then covered thereby except for dereliction

30 of duty or other acts and deeds committed in violation of the
31 rules and regulations thereof. Any expense incurred incident to
32 the maintenance of the merit system shall be paid out of the
33 Department of Audit fund. The salary and qualifications of the
34 attorney authorized by this section shall be fixed by the
35 director, but the salary shall not exceed the salary authorized
36 for an assistant attorney general who performs similar duties.

37 **SECTION 2.** Section 7-7-211, Mississippi Code of 1972, is
38 amended as follows:

39 7-7-211. The department shall have the power and it shall be
40 its duty:

41 (a) To identify and define for all public offices of
42 the state and its subdivisions generally accepted accounting
43 principles as promulgated by nationally recognized professional
44 organizations and to consult with the State Fiscal Officer in the
45 prescription and implementation of accounting rules and
46 regulations;

47 (b) To prescribe, for all public offices of regional
48 and local subdivisions of the state, systems of accounting,
49 budgeting and reporting financial facts relating to said offices
50 in conformity with legal requirements and with generally accepted
51 accounting principles as promulgated by nationally recognized
52 professional organizations; to assist such subdivisions in need of
53 assistance in the installation of such systems; to revise such
54 systems when deemed necessary, and to report to the Legislature at
55 periodic times the extent to which each office is maintaining such
56 systems, along with such recommendations to the Legislature for
57 improvement as seem desirable;

58 (c) To study and analyze existing managerial policies,
59 methods, procedures, duties and services of the various state
60 departments and institutions upon written request of the Governor,
61 the Legislature or any committee or other body empowered by the

62 Legislature to make such request to determine whether and where
63 operations can be eliminated, combined, simplified and improved;

64 (d) To postaudit each year and, when deemed necessary,
65 preaudit and investigate the financial affairs of the departments,
66 institutions, boards, commissions or other agencies of state
67 government, as part of the publication of a comprehensive annual
68 financial report for the State of Mississippi. In complying with
69 the requirements of this subsection, the department shall have the
70 authority to conduct all necessary audit procedures on an interim
71 and year-end basis;

72 (e) To postaudit and, when deemed necessary, preaudit
73 and investigate separately the financial affairs of (i) the
74 offices, boards and commissions of county governments and any
75 departments and institutions thereof and therein; (ii) public
76 school districts, departments of education and junior college
77 districts; and (iii) any other local offices or agencies which
78 share revenues derived from taxes or fees imposed by the State
79 Legislature or receive grants from revenues collected by
80 governmental divisions of the state; the cost of such audits,
81 investigations or other services to be paid as follows: Such part
82 shall be paid by the state from appropriations made by the
83 Legislature for the operation of the State Department of Audit as
84 may exceed the sum of One Hundred Dollars (\$100.00) per day for
85 the services of each staff person engaged in performing the audit
86 or other service, which sum shall be paid by the county, district,
87 department, institution or other agency audited out of its general
88 fund or any other available funds from which such payment is not
89 prohibited by law;

90 (f) To postaudit and, when deemed necessary, preaudit
91 and investigate the financial affairs of the levee boards;
92 agencies created by the Legislature or by executive order of the
93 Governor; profit or nonprofit business entities administering
94 programs financed by funds flowing through the State Treasury or

95 through any of the agencies of the state, or its subdivisions; and
96 all other public bodies supported by funds derived in part or
97 wholly from public funds, except municipalities which annually
98 submit an audit prepared by a qualified certified public
99 accountant using methods and procedures prescribed by the
100 department;

101 (g) To make written demand, when necessary, for the
102 recovery of any amounts representing public funds improperly
103 withheld, misappropriated and/or otherwise illegally expended by
104 an officer, employee or administrative body of any state, county
105 or other public office, and/or for the recovery of the value of
106 any public property disposed of in an unlawful manner by a public
107 officer, employee or administrative body, such demands to be made
108 (i) upon the person or persons liable for such amounts and upon
109 the surety on official bond thereof, and/or (ii) upon any
110 individual, partnership, corporation or association to whom the
111 illegal expenditure was made or with whom the unlawful disposition
112 of public property was made, if such individual, partnership,
113 corporation or association knew or had reason to know through the
114 exercising of reasonable diligence that the expenditure was
115 illegal or the disposition unlawful. Such demand shall be
116 premised on competent evidence, which shall include at least one
117 (1) of the following: (i) sworn statements, (ii) written
118 documentation, (iii) physical evidence, or (iv) reports and
119 findings of government or other law enforcement agencies. Other
120 provisions notwithstanding, a demand letter issued pursuant to
121 this subsection shall remain confidential by the State Auditor
122 until the individual against whom the demand letter is being filed
123 has been served with a copy of such demand letter. If, however,
124 such individual cannot be notified within fifteen (15) days using
125 reasonable means and due diligence, such notification shall be
126 made to the individual's bonding company, if he or she is bonded.
127 Each such demand shall be paid into the proper treasury of the

128 state, county or other public body through the office of the
129 department in the amount demanded within thirty (30) days from the
130 date thereof, together with interest thereon in the sum of one
131 percent (1%) per month from the date such amount or amounts were
132 improperly withheld, misappropriated and/or otherwise illegally
133 expended. In the event, however, such person or persons or such
134 surety shall refuse, neglect or otherwise fail to pay the amount
135 demanded and the interest due thereon within the allotted thirty
136 (30) days, the State Auditor shall have the authority and it shall
137 be his duty to institute suit, and the Attorney General, or the
138 district attorney of the district in which the violation occurred,
139 shall prosecute the same * * * to the end that there shall be
140 recovered the total of such amounts from the person or persons and
141 surety on official bond named therein; and the amounts so
142 recovered shall be paid into the proper treasury of the state,
143 county or other public body through the State Auditor. In any
144 case where written demand is issued to a surety on the official
145 bond of such person or persons and the surety refuses, neglects or
146 otherwise fails within one hundred twenty (120) days to either pay
147 the amount demanded and the interest due thereon or to give the
148 State Auditor a written response with specific reasons for
149 nonpayment, then the surety shall be subject to a civil penalty in
150 an amount of twelve percent (12%) of the bond, not to exceed Ten
151 Thousand Dollars (\$10,000.00), to be deposited into the State
152 General Fund;

153 (h) To investigate any alleged or suspected violation
154 of the laws of the state by any officer or employee of the state,
155 county or other public office in the purchase, sale or the use of
156 any supplies, services, equipment or other property belonging
157 thereto; and in such investigation to do any and all things
158 necessary to procure evidence sufficient either to prove or
159 disprove the existence of such alleged or suspected violations.

160 The Department of Investigation of the State Department of Audit

161 may investigate, for the purpose of prosecution, any suspected
162 criminal violation of the provisions of this chapter. For the
163 purpose of administration and enforcement of this chapter, the
164 enforcement employees of the Department of Investigation of the
165 State Department of Audit have the powers of a law enforcement
166 officer of this state, and shall be empowered to make arrests and
167 to serve and execute search warrants and other valid legal process
168 anywhere within the State of Mississippi. All enforcement
169 employees of the Department of Investigation of the State
170 Department of Audit hired on or after July 1, 1993, shall be
171 required to complete the Law Enforcement Officers Training Program
172 and shall meet the standards of the program;

173 (i) To issue subpoenas, with the approval of, and
174 returnable to, a judge of a chancery or circuit court, in termtime
175 or in vacation, to examine the records, documents or other
176 evidence of persons, firms, corporations or any other entities
177 insofar as such records, documents or other evidence relate to
178 dealings with any state, county or other public entity. The
179 circuit or chancery judge must serve the county in which the
180 records, documents or other evidence is located; or where all or
181 part of the transaction or transactions occurred which are the
182 subject of the subpoena;

183 (j) In any instances in which the State Auditor is or
184 shall be authorized or required to examine or audit, whether
185 preaudit or postaudit, any books, ledgers, accounts or other
186 records of the affairs of any public hospital owned or owned and
187 operated by one or more political subdivisions or parts thereof or
188 any combination thereof, or any school district, including
189 activity funds thereof, it shall be sufficient compliance
190 therewith, in the discretion of the State Auditor, that such
191 examination or audit be made from the report of any audit or other
192 examination certified by a certified public accountant and
193 prepared by or under the supervision of such certified public

194 accountant. Such audits shall be made in accordance with
195 generally accepted standards of auditing, with the use of an audit
196 program prepared by the State Auditor, and final reports of such
197 audits shall conform to the format prescribed by the State
198 Auditor. All files, working papers, notes, correspondence and all
199 other data compiled during the course of the audit shall be
200 available, without cost, to the State Auditor for examination and
201 abstracting during the normal business hours of any business day.
202 The expense of such certified reports shall be borne by the
203 respective hospital, or any available school district funds other
204 than minimum program funds, subject to examination or audit. The
205 State Auditor shall not be bound by such certified reports and
206 may, in his or their discretion, conduct such examination or audit
207 from the books, ledgers, accounts or other records involved as may
208 be appropriate and authorized by law;

209 (k) The State Auditor shall have the authority to
210 contract with qualified public accounting firms to perform
211 selected audits required in subsections (d), (e) and (f) of this
212 section, if funds are made available for such contracts by the
213 Legislature, or if funds are available from the governmental
214 entity covered by subsections (d), (e) and (f). Such audits shall
215 be made in accordance with generally accepted standards of
216 auditing, with the use of an audit program prepared by the State
217 Auditor, and final reports of such audits shall conform to the
218 format prescribed by the State Auditor. All files, working
219 papers, notes, correspondence and all other data compiled during
220 the course of the audit shall be available, without cost, to the
221 State Auditor for examination and abstracting during the normal
222 business hours of any business day;

223 (l) The State Auditor shall have the authority to
224 establish training courses and programs for the personnel of the
225 various state and local governmental entities under the
226 jurisdiction of the Office of the State Auditor. The training

227 courses and programs shall include, but not be limited to, topics
228 on internal control of funds, property and equipment control and
229 inventory, governmental accounting and financial reporting, and
230 internal auditing. The State Auditor is authorized to charge a
231 fee from the participants of these courses and programs, which fee
232 shall be deposited into the Department of Audit Special Fund.
233 State and local governmental entities are authorized to pay such
234 fee and any travel expenses out of their general funds or any
235 other available funds from which such payment is not prohibited by
236 law;

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

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

245 (o) To annually postaudit the Chickasawhay Natural Gas
246 District. The Department of Audit shall charge the Chickasawhay
247 Natural Gas District, audited by the authority of this paragraph,
248 the sum of Thirty Dollars (\$30.00) per hour for each hour of staff
249 time devoted to the auditing of the district. The Chickasawhay
250 Natural Gas District shall pay for the audit fees from any sums
251 available to the district for its general operations.

252 **SECTION 3.** This act shall take effect and be in force from
253 and after July 1, 2007.