

By: Representative Turner

To: Accountability,  
Efficiency, Transparency

HOUSE BILL NO. 1500

1 AN ACT TO AMEND SECTION 7-7-211, MISSISSIPPI CODE OF 1972, TO  
 2 PROVIDE THAT THE STATE AUDITOR HAS THE AUTHORITY TO REQUEST  
 3 INFORMATION FROM GOVERNMENTAL AND NONGOVERNMENTAL AGENCIES; TO  
 4 PROVIDE THAT IF THE REQUEST FOR INFORMATION IS NOT RESPONDED TO OR  
 5 REFUSED, THE STATE AUDITOR MAY ISSUE A SUBPOENA TO RETRIEVE THE  
 6 REQUESTED INFORMATION; TO AUTHORIZE THE STATE AUDITOR TO CONDUCT  
 7 AN AUDIT ON A NONPROFIT CORPORATION THAT USES PUBLIC FUNDS; TO  
 8 BRING FORWARD SECTIONS 7-7-215 AND 21-35-31, MISSISSIPPI CODE OF  
 9 1972, FOR THE PURPOSE OF POSSIBLE AMENDMENT; AND FOR RELATED  
 10 PURPOSES.

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

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

14 7-7-211. The department shall have the power and it shall be  
 15 its duty:

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



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

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

40           (d) To postaudit each year and, when deemed necessary,  
41 preaudit and investigate the financial affairs of the departments,  
42 institutions, boards, commissions, or other agencies of state  
43 government, as part of the publication of a comprehensive annual  
44 financial report for the State of Mississippi, or as deemed  
45 necessary by the State Auditor. In complying with the  
46 requirements of this paragraph, the department shall have the



47 authority to conduct all necessary audit procedures on an interim  
48 and year-end basis;

49 (e) To postaudit and, when deemed necessary, preaudit  
50 and investigate separately the financial affairs of (i) the  
51 offices, boards and commissions of county governments and any  
52 departments and institutions thereof and therein; (ii) public  
53 school districts, departments of education and junior college  
54 districts; and (iii) any other local offices or agencies which  
55 share revenues derived from taxes or fees imposed by the State  
56 Legislature or receive grants from revenues collected by  
57 governmental divisions of the state; the cost of such audits,  
58 investigations or other services to be paid as follows: Such part  
59 shall be paid by the state from appropriations made by the  
60 Legislature for the operation of the State Department of Audit as  
61 may exceed the sum of Thirty-five Dollars (\$35.00) per man-hour  
62 for the services of each staff person engaged in performing the  
63 audit or other service plus the actual cost of any independent  
64 specialist firm contracted by the State Auditor to assist in the  
65 performance of the audit, which sum shall be paid by the county,  
66 district, department, institution or other agency audited out of  
67 its general fund or any other available funds from which such  
68 payment is not prohibited by law. Costs paid for independent  
69 specialists or firms contracted by the State Auditor shall be paid  
70 by the audited entity through the State Auditor to the specialist  
71 or firm conducting the postaudit.



72 Each school district in the state shall have its financial  
73 records audited annually, at the end of each fiscal year, either  
74 by the State Auditor or by a certified public accountant approved  
75 by the State Auditor. Beginning with the audits of fiscal year  
76 2010 activity, no certified public accountant shall be selected to  
77 perform the annual audit of a school district who has audited that  
78 district for three (3) or more consecutive years previously.  
79 Certified public accountants shall be selected in a manner  
80 determined by the State Auditor. The school district shall have  
81 the responsibility to pay for the audit, including the review by  
82 the State Auditor of audits performed by certified public  
83 accountants;

84 (f) To postaudit and, when deemed necessary, preaudit  
85 and investigate the financial affairs of the levee boards;  
86 agencies created by the Legislature or by executive order of the  
87 Governor; profit or nonprofit business entities administering  
88 programs financed by funds flowing through the State Treasury or  
89 through any of the agencies of the state, or its subdivisions; and  
90 all other public bodies supported by funds derived in part or  
91 wholly from public funds, except municipalities which annually  
92 submit an audit prepared by a qualified certified public  
93 accountant using methods and procedures prescribed by the  
94 department;

95 (g) To make written demand, when necessary, for the  
96 recovery of any amounts representing public funds improperly



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



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



146 (h) To investigate any alleged or suspected violation  
147 of the laws of the state by any officer or employee of the state,  
148 county or other public office in the purchase, sale or the use of  
149 any supplies, services, equipment or other property belonging  
150 thereto; and in such investigation to do any and all things  
151 necessary to procure evidence sufficient either to prove or  
152 disprove the existence of such alleged or suspected violations.  
153 The Department of Investigation of the State Department of Audit  
154 may investigate, for the purpose of prosecution, any suspected  
155 criminal violation of the provisions of this chapter. For the  
156 purpose of administration and enforcement of this chapter, the  
157 enforcement employees of the Department of Investigation of the  
158 State Department of Audit have the powers of a law enforcement  
159 officer of this state, and shall be empowered to make arrests and  
160 to serve and execute search warrants and other valid legal process  
161 anywhere within the State of Mississippi. All enforcement  
162 employees of the Department of Investigation of the State  
163 Department of Audit hired on or after July 1, 1993, shall be  
164 required to complete the Law Enforcement Officers Training Program  
165 and shall meet the standards of the program;

166 (i) To examine the documents, books, records, data,  
167 papers, accounts, communications, information, vouchers or other  
168 evidence and to conduct interviews without interference of any  
169 state, county, municipal or other public entity, any  
170 nongovernmental entity that receives public funds and any persons,



171 firms, corporations or any other entities insofar as such evidence  
172 relates to dealings with any state, county, municipal or other  
173 public entity. If the Office of the State Auditor issues a  
174 request to receive the information listed in this subparagraph (i)  
175 to an entity and the entity does not respond to the request for  
176 information or provide the requested information within the time  
177 provided in the request for information, the Office of the State  
178 Auditor may, in its discretion, \* \* \* issue subpoenas, with the  
179 approval of, and returnable to, a judge of a chancery or circuit  
180 court, in termtime or in vacation, to examine the documents,  
181 books, records, data, papers, accounts, communications,  
182 information, vouchers or other evidence and to conduct interviews  
183 without interference of any state, county, municipal or other  
184 public entity, any nongovernmental entity that receives public  
185 funds and any persons, firms, corporations or any other entities  
186 insofar as such evidence relates to dealings with any state,  
187 county, municipal or other public entity. \* \* \* The circuit or  
188 chancery judge must serve the county in which the records,  
189 documents or other evidence is located; or where all or part of  
190 the transaction or transactions occurred which are the subject of  
191 the subpoena;

192 (j) In any instances in which the State Auditor is or  
193 shall be authorized or required to examine or audit, whether  
194 preaudit or postaudit, any books, ledgers, accounts or other  
195 records of the affairs of any public hospital owned or owned and





196 operated by one or more political subdivisions or parts thereof or  
197 any combination thereof, or any school district, including  
198 activity funds thereof, it shall be sufficient compliance  
199 therewith, in the discretion of the State Auditor, that such  
200 examination or audit be made from the report of any audit or other  
201 examination certified by a certified public accountant and  
202 prepared by or under the supervision of such certified public  
203 accountant. Such audits shall be made in accordance with  
204 generally accepted standards of auditing, with the use of an audit  
205 program prepared by the State Auditor, and final reports of such  
206 audits shall conform to the format prescribed by the State  
207 Auditor. All files, working papers, notes, correspondence and all  
208 other data compiled during the course of the audit shall be  
209 available, without cost, to the State Auditor for examination and  
210 abstracting during the normal business hours of any business day.  
211 The expense of such certified reports shall be borne by the  
212 respective hospital, or any available school district funds other  
213 than minimum program funds, subject to examination or audit. The  
214 State Auditor shall not be bound by such certified reports and  
215 may, in his or their discretion, conduct such examination or audit  
216 from the books, ledgers, accounts or other records involved as may  
217 be appropriate and authorized by law;

218 (k) The State Auditor shall have the authority to  
219 contract with qualified public accounting firms to perform  
220 selected audits required in paragraphs (d), (e), (f) and (j) of



221 this section, if funds are made available for such contracts by  
222 the Legislature, or if funds are available from the governmental  
223 entity covered by paragraphs (d), (e), (f) and (j). Such audits  
224 shall be made in accordance with generally accepted standards of  
225 auditing. All files, working papers, notes, correspondence and  
226 all other data compiled during the course of the audit shall be  
227 available, without cost, to the State Auditor for examination and  
228 abstracting during the normal business hours of any business day;

229 (l) The State Auditor shall have the authority to  
230 establish training courses and programs for the personnel of the  
231 various state and local governmental entities under the  
232 jurisdiction of the Office of the State Auditor. The training  
233 courses and programs shall include, but not be limited to, topics  
234 on internal control of funds, property and equipment control and  
235 inventory, governmental accounting and financial reporting, and  
236 internal auditing. The State Auditor is authorized to charge a  
237 fee from the participants of these courses and programs, which fee  
238 shall be deposited into the Department of Audit Special Fund.  
239 State and local governmental entities are authorized to pay such  
240 fee and any travel expenses out of their general funds or any  
241 other available funds from which such payment is not prohibited by  
242 law;

243 (m) Upon written request by the Governor or any member  
244 of the State Legislature, or as the State Auditor deems necessary  
245 due to an entity's use of public funds, the State Auditor may



246 audit \* \* \* the local, state \* \* \* and federal funds received by  
247 any nonprofit corporation incorporated under the laws of this  
248 state;

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

253 (o) At the discretion of the State Auditor, the Auditor  
254 may conduct risk assessments, as well as performance and  
255 compliance audits based on Generally Accepted Government Auditing  
256 Standards (GAGAS) of any state-funded economic development program  
257 authorized under Title 57, Mississippi Code of 1972. After risk  
258 assessments or program audits, the State Auditor may conduct  
259 audits of those projects deemed high-risk, specifically as they  
260 identify any potential wrongdoing or noncompliance based on  
261 objectives of the economic development program. The Auditor is  
262 granted authority to gather, audit and review data and information  
263 from the Mississippi Development Authority or any of its agents,  
264 the Department of Revenue, and when necessary under this  
265 paragraph, the recipient business or businesses or any other  
266 private, public or nonprofit entity with information relevant to  
267 the audit project. The maximum amount the State Auditor may bill  
268 the oversight agency under this paragraph in any fiscal year is  
269 One Hundred Thousand Dollars (\$100,000.00), based on reasonable  
270 and necessary expenses.



271           **SECTION 2.** Section 7-7-215, Mississippi Code of 1972, is  
272 brought forward as follows:

273           7-7-215. (1) Upon the completion of each audit, the  
274 department shall prepare a report which shall set forth the facts  
275 of such audit in the most comprehensive form, and the original  
276 copy of such report shall be filed in the office to which it  
277 pertains, as a permanent record; one (1) copy thereof shall be  
278 filed in the office of the department, subject to public  
279 inspection, and one (1) copy shall be preserved for use by the  
280 Governor and/or the Legislature. Other provisions  
281 notwithstanding, all work papers associated with an audit shall be  
282 confidential, but available to subsequent auditors engaged in  
283 performing the entities' subsequent audit. The director shall  
284 require such financial reports from every public office and taxing  
285 body as he may deem necessary and for such period as he may  
286 designate, and at the end of each fiscal year the State Auditor  
287 and director shall prepare and publish a report of comparative  
288 financial statistics covering all public offices of the state over  
289 which the department has accounting and auditing supervision. The  
290 Governor may direct the State Auditor and/or the director of the  
291 department to make any special report on any subject under their  
292 jurisdiction and make any special audit or investigation he may  
293 desire, such directives to be issued in writing.

294           (2) All audits conducted by the department shall be in  
295 accordance with generally accepted auditing standards, as



296 promulgated by nationally recognized professional organizations.  
297 Audit and investigative reports, work papers and other evidence  
298 and related supportive material shall be retained and filed  
299 according to an agreement between the State Auditor and the  
300 Department of Archives and History. In conducting audits pursuant  
301 to this article, the department shall have access to all records,  
302 documents, books, papers and other evidence relating to the  
303 financial transactions of any governmental entity subject to audit  
304 by the department.

305         **SECTION 3.** Section 21-35-31, Mississippi Code of 1972, is  
306 brought forward as follows:

307         **[For municipal fiscal years commencing before October 1,**  
308 **2009, this section shall read as follows:]**

309         21-35-31. The governing authorities of every municipality in  
310 the state shall have their books audited annually, prior to the  
311 close of the next succeeding fiscal year, either by a competent  
312 accountant approved by the State Auditor or by a certified public  
313 accountant, who has paid a privilege tax as such in this state,  
314 and shall pay for same out of the General Fund. No advertisement  
315 shall be necessary before entering into such contract, but same  
316 shall be entered into as a private contract. Said audit shall be  
317 made upon a uniform formula set up and promulgated by the State  
318 Auditor, as the head of the State Department of Audit, or the  
319 director thereof, appointed by him, as designated and defined in  
320 Title 7, Chapter 7, of the Mississippi Code of 1972, or any office



321 or officers hereafter designated to replace or perform the duties  
322 imposed by said chapter. Provided, however, any municipality with  
323 a population of three thousand (3,000) or less may employ a  
324 competent accountant or auditor, approved by the State Auditor, to  
325 prepare annually a compilation report and a compliance letter, in  
326 a format prescribed by the State Auditor, in lieu of an annual  
327 audit when such audit will be a financial hardship on the  
328 municipality. Two (2) copies of said audit or compilation shall  
329 be mailed to the said State Auditor within thirty (30) days after  
330 completion of said audit. Said State Auditor shall, at the end of  
331 each fiscal year, submit to the Legislature a composite report  
332 showing any information concerning municipalities in this state  
333 that he might deem pertinent and necessary to the Legislature for  
334 use in its deliberations. A synopsis of said audit, in a format  
335 prescribed by the State Auditor, shall be published within thirty  
336 (30) days by the governing authorities of such municipalities in a  
337 newspaper published in such municipalities or, if no newspaper be  
338 published in any such municipality, in any newspaper having a  
339 general circulation published in the county wherein such  
340 municipality is located. The publication of the audit may be made  
341 as provided in Section 21-17-19, Mississippi Code of 1972. Such  
342 publication shall be made one (1) time, and the governing  
343 authorities of such municipalities shall be authorized to pay only  
344 one-half (1/2) of the legal rate prescribed by law for such legal  
345 publication.



346           **[For municipal fiscal years commencing on or after October 1,**  
347 **2009, this section shall read as follows:]**

348           21-35-31. (1) The governing authority of every municipality  
349 in the state shall have the municipal books audited annually,  
350 before the close of the next succeeding fiscal year, in accordance  
351 with procedures and reporting requirements prescribed by the State  
352 Auditor. The municipality shall pay for the audit or report out  
353 of its general fund. No advertisement shall be necessary before  
354 entering into the contract, and it shall be entered into as a  
355 private contract. The audit or report shall be made upon a  
356 uniform formula set up and promulgated by the State Auditor, as  
357 the head of the State Department of Audit, or the director  
358 thereof, appointed by him, as designated and defined in Title 7,  
359 Chapter 7, Mississippi Code of 1972, or any office or officers  
360 hereafter designated to replace or perform the duties imposed by  
361 said chapter. Two (2) copies of the audit or report shall be  
362 mailed to the said State Auditor within thirty (30) days after  
363 completion. The State Auditor, at the end of each fiscal year,  
364 shall submit to the Legislature a composite report showing any  
365 information concerning municipalities in this state that the  
366 Auditor deems pertinent and necessary to the Legislature for use  
367 in its deliberations. A synopsis of the audit or report, in a  
368 format prescribed by the State Auditor, shall be published within  
369 thirty (30) days by the governing authority of each municipality  
370 in a newspaper published in the municipality or, if no newspaper



371 is published in a municipality, in any newspaper having a general  
372 circulation published in the county wherein the municipality is  
373 located. The publication of the audit or report may be made as  
374 provided in Section 21-17-19. Publication shall be made one (1)  
375 time, and the governing authority of each municipality shall be  
376 authorized to pay only one-half (1/2) of the legal rate prescribed  
377 by law for such legal publication.

378 (2) It shall be the duty of the State Auditor to determine  
379 whether each municipality has complied with the requirements of  
380 subsection (1) of this section. If upon examination the State  
381 Auditor determines that a municipality has not initiated efforts  
382 to comply with the requirements of subsection (1), the State  
383 Auditor shall file a certified written notice with the clerk of  
384 the municipality notifying the governing authority of the  
385 municipality that a certificate of noncompliance will be issued to  
386 the State Tax Commission and to the Attorney General thirty (30)  
387 days immediately following the date of the filing of the notice  
388 unless within that period the municipality substantially complies  
389 with the requirements of subsection (1). If, after thirty (30)  
390 days from the giving of the notice, the municipality, in the  
391 opinion of the State Auditor, has not substantially initiated  
392 efforts to comply with the requirements of subsection (1), the  
393 State Auditor shall issue a certificate of noncompliance to the  
394 clerk of the municipality, State Tax Commission and the Attorney  
395 General. Thereafter, the State Tax Commission shall withhold from





396 all allocations and payments to the municipality that would  
397 otherwise be payable the amount necessary to pay one hundred fifty  
398 percent (150%) of the cost of preparing the required audit or  
399 report as contracted for by the State Auditor. The cost shall be  
400 determined by the State Auditor after receiving proposals for the  
401 audit or report required in subsection (1) of this section. The  
402 State Auditor shall notify the State Tax Commission of the amount  
403 in writing, and the State Tax Commission shall transfer that  
404 amount to the State Auditor. The State Auditor is authorized to  
405 escalate, budget and expend these funds in accordance with rules  
406 and regulations of the Department of Finance and Administration  
407 consistent with the escalation of federal funds. All remaining  
408 funds shall be retained by the State Auditor to offset the costs  
409 of administering these contracts. The State Auditor shall not  
410 unreasonably delay the issuance of a written notice of  
411 cancellation of a certificate of noncompliance but shall promptly  
412 issue a written notice of cancellation of certificate of  
413 noncompliance upon an affirmative showing by the municipality that  
414 it has come into substantial compliance.

415       **SECTION 4.** This act shall take effect and be in force from  
416 and after July 1, 2016.

