

By: Representatives Snowden, McNeal

To: County Affairs;
Municipalities

HOUSE BILL NO. 690

1 AN ACT TO AMEND SECTION 21-35-31, MISSISSIPPI CODE OF 1972,
 2 TO PROVIDE THAT SUBJECT TO THE APPROVAL OF STATE AUDITOR, ANY
 3 MUNICIPALITY MAY UTILIZE A COMPETENT ACCOUNTANT OR CERTIFIED
 4 PUBLIC ACCOUNT TO CONDUCT ITS ANNUAL AUDIT; TO AMEND SECTION
 5 7-7-211, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT FOR ANY
 6 POSTAUDIT OR PREAUDIT, IF DEEMED NECESSARY, OF A COUNTY
 7 GOVERNMENT, SUCH COUNTY GOVERNMENT MAY UTILIZE A COMPETENT
 8 ACCOUNTANT OR CERTIFIED PUBLIC ACCOUNT TO CONDUCT SUCH AUDIT UNDER
 9 CERTAIN CIRCUMSTANCES, IF APPROVED BY THE STATE AUDITOR; TO AMEND
 10 SECTION 7-7-213, MISSISSIPPI CODE OF 1972, TO CONFORM TO THE
 11 PRECEDING SECTIONS; AND FOR RELATED PURPOSES.

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

13 **SECTION 1.** Section 21-35-31, Mississippi Code of 1972, is
 14 amended as follows:

15 **[For municipal fiscal years commencing before October 1,**
 16 **2009, this section shall read as follows:]**

17 21-35-31. The governing authorities of every municipality in
 18 the state shall have their books audited annually, prior to the
 19 close of the next succeeding fiscal year, either by a competent
 20 accountant approved by the State Auditor or by a certified public
 21 accountant, who has paid a privilege tax as such in this state,
 22 and shall pay for same out of the General Fund. No advertisement



23 shall be necessary before entering into such contract, but same
24 shall be entered into as a private contract. Said audit shall be
25 made upon a uniform formula set up and promulgated by the State
26 Auditor, as the head of the State Department of Audit, or the
27 director thereof, appointed by him, as designated and defined in
28 Title 7, Chapter 7, of the Mississippi Code of 1972, or any office
29 or officers hereafter designated to replace or perform the duties
30 imposed by said chapter. Provided, however, any municipality with
31 a population of three thousand (3,000) or less may employ a
32 competent accountant or auditor, approved by the State Auditor, to
33 prepare annually a compilation report and a compliance letter, in
34 a format prescribed by the State Auditor, in lieu of an annual
35 audit when such audit will be a financial hardship on the
36 municipality. Two (2) copies of said audit or compilation shall
37 be mailed to the said State Auditor within thirty (30) days after
38 completion of said audit. Said State Auditor shall, at the end of
39 each fiscal year, submit to the Legislature a composite report
40 showing any information concerning municipalities in this state
41 that he might deem pertinent and necessary to the Legislature for
42 use in its deliberations. A synopsis of said audit, in a format
43 prescribed by the State Auditor, shall be published within thirty
44 (30) days by the governing authorities of such municipalities in a
45 newspaper published in such municipalities or, if no newspaper be
46 published in any such municipality, in any newspaper having a
47 general circulation published in the county wherein such



48 municipality is located. The publication of the audit may be made
49 as provided in Section 21-17-19, Mississippi Code of 1972. Such
50 publication shall be made one (1) time, and the governing
51 authorities of such municipalities shall be authorized to pay only
52 one-half (1/2) of the legal rate prescribed by law for such legal
53 publication.

54 **[For municipal fiscal years commencing on or after October 1,**
55 **2009, this section shall read as follows:]**

56 21-35-31. (1) The governing authority of every municipality
57 in the state shall have the municipal books audited annually,
58 before the close of the next succeeding fiscal year, in accordance
59 with procedures and reporting requirements prescribed by the State
60 Auditor. Subject to the approval of the State Auditor, the
61 governing authority of a municipality may have their books audited
62 either by a competent accountant or by a certified public
63 accountant who has paid a privilege tax as required by the state.
64 The municipality shall pay for the audit or report out of its
65 general fund. No advertisement shall be necessary before entering
66 into the contract, and it shall be entered into as a private
67 contract. The audit or report shall be made upon a uniform
68 formula set up and promulgated by the State Auditor, as the head
69 of the State Department of Audit, or the director thereof,
70 appointed by him, as designated and defined in Title 7, Chapter 7,
71 Mississippi Code of 1972, or any office or officers hereafter
72 designated to replace or perform the duties imposed by said



73 chapter. Two (2) copies of the audit or report shall be mailed to
74 the * * * State Auditor within thirty (30) days after completion.
75 The State Auditor, at the end of each fiscal year, shall submit to
76 the Legislature a composite report showing any information
77 concerning municipalities in this state that the Auditor deems
78 pertinent and necessary to the Legislature for use in its
79 deliberations. A synopsis of the audit or report, in a format
80 prescribed by the State Auditor, shall be published within thirty
81 (30) days by the governing authority of each municipality in a
82 newspaper published in the municipality or, if no newspaper is
83 published in a municipality, in any newspaper having a general
84 circulation published in the county wherein the municipality is
85 located. The publication of the audit or report may be made as
86 provided in Section 21-17-19. Publication shall be made one (1)
87 time, and the governing authority of each municipality shall be
88 authorized to pay only one-half (1/2) of the legal rate prescribed
89 by law for such legal publication.

90 (2) It shall be the duty of the State Auditor to determine
91 whether each municipality has complied with the requirements of
92 subsection (1) of this section. If upon examination the State
93 Auditor determines that a municipality has not initiated efforts
94 to comply with the requirements of subsection (1), the State
95 Auditor shall file a certified written notice with the clerk of
96 the municipality notifying the governing authority of the
97 municipality that a certificate of noncompliance will be issued to



98 the * * * Department of Revenue and to the Attorney General thirty
99 (30) days immediately following the date of the filing of the
100 notice unless within that period the municipality substantially
101 complies with the requirements of subsection (1). If, after
102 thirty (30) days from the giving of the notice, the municipality,
103 in the opinion of the State Auditor, has not substantially
104 initiated efforts to comply with the requirements of subsection
105 (1), the State Auditor shall issue a certificate of noncompliance
106 to the clerk of the municipality, * * * Department of Revenue and
107 the Attorney General. Thereafter, the * * * Department of Revenue
108 shall withhold from all allocations and payments to the
109 municipality that would otherwise be payable the amount necessary
110 to pay one hundred fifty percent (150%) of the cost of preparing
111 the required audit or report as contracted for by the State
112 Auditor. The cost shall be determined by the State Auditor after
113 receiving proposals for the audit or report required in subsection
114 (1) of this section. The State Auditor shall notify the * * *
115 Department of Revenue of the amount in writing, and the * * *
116 Department of Revenue shall transfer that amount to the State
117 Auditor. The State Auditor is authorized to escalate, budget and
118 expend these funds in accordance with rules and regulations of the
119 Department of Finance and Administration consistent with the
120 escalation of federal funds. All remaining funds shall be
121 retained by the State Auditor to offset the costs of administering
122 these contracts. The State Auditor shall not unreasonably delay



123 the issuance of a written notice of cancellation of a certificate
124 of noncompliance but shall promptly issue a written notice of
125 cancellation of certificate of noncompliance upon an affirmative
126 showing by the municipality that it has come into substantial
127 compliance.

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

130 7-7-211. The department shall have the power and it shall be
131 its duty:

132 (a) To identify and define for all public offices of
133 the state and its subdivisions generally accepted accounting
134 principles or other accounting principles as promulgated by
135 nationally recognized professional organizations and to consult
136 with the State Fiscal Officer in the prescription and
137 implementation of accounting rules and regulations;

138 (b) To provide best practices, for all public offices
139 of regional and local subdivisions of the state, systems of
140 accounting, budgeting and reporting financial facts relating to
141 said offices in conformity with legal requirements and with
142 generally accepted accounting principles or other accounting
143 principles as promulgated by nationally recognized professional
144 organizations; to assist such subdivisions in need of assistance
145 in the installation of such systems; to revise such systems when
146 deemed necessary, and to report to the Legislature at periodic
147 times the extent to which each office is maintaining such systems,



148 along with such recommendations to the Legislature for improvement
149 as seem desirable;

150 (c) To study and analyze existing managerial policies,
151 methods, procedures, duties and services of the various state
152 departments and institutions upon written request of the Governor,
153 the Legislature or any committee or other body empowered by the
154 Legislature to make such request to determine whether and where
155 operations can be eliminated, combined, simplified and improved;

156 (d) To postaudit each year and, when deemed necessary,
157 preaudit and investigate the financial affairs of the departments,
158 institutions, boards, commissions, or other agencies of state
159 government, as part of the publication of a comprehensive annual
160 financial report for the State of Mississippi, or as deemed
161 necessary by the State Auditor. In complying with the
162 requirements of this paragraph, the department shall have the
163 authority to conduct all necessary audit procedures on an interim
164 and year-end basis;

165 (e) (i) To postaudit and, when deemed necessary,
166 preaudit and investigate separately the financial affairs of (i)
167 the offices, boards and commissions of county governments and any
168 departments and institutions thereof and therein; (ii) public
169 school districts, departments of education and junior college
170 districts; and (iii) any other local offices or agencies which
171 share revenues derived from taxes or fees imposed by the State
172 Legislature or receive grants from revenues collected by



173 governmental divisions of the state; the cost of such audits,
174 investigations or other services to be paid as follows: Such part
175 shall be paid by the state from appropriations made by the
176 Legislature for the operation of the State Department of Audit as
177 may exceed the sum of Thirty-five Dollars (\$35.00) per man-hour
178 for the services of each staff person engaged in performing the
179 audit or other service plus the actual cost of any independent
180 specialist firm contracted by the State Auditor to assist in the
181 performance of the audit, which sum shall be paid by the county,
182 district, department, institution or other agency audited out of
183 its general fund or any other available funds from which such
184 payment is not prohibited by law. Except as otherwise provided in
185 this paragraph, costs paid for independent specialists or firms
186 contracted by the State Auditor shall be paid by the audited
187 entity through the State Auditor to the specialist or firm
188 conducting the postaudit.

189 (ii) Concerning county government audits, any
190 man-hours that are not paid from appropriations made by the
191 Legislature for the operation of the State Department of Audit for
192 services prescribed under this paragraph (e) (i) and subject to the
193 approval of the State Auditor, the offices, boards and commissions
194 of a county government and any departments and institutions of
195 such county government may have their books audited either by a
196 competent accountant or by a certified public accountant who has
197 paid a privilege tax as required by the state. The county



198 government shall pay for the audit services prescribed under this
199 subparagraph out of its county general fund for any postaudit or
200 preaudit deemed necessary by the State Auditor, if the use of such
201 competent accountant or certified public accountant is approved by
202 the State Auditor.

203 Each school district in the state shall have its financial
204 records audited annually, at the end of each fiscal year, either
205 by the State Auditor or by a certified public accountant approved
206 by the State Auditor. Beginning with the audits of fiscal year
207 2010 activity, no certified public accountant shall be selected to
208 perform the annual audit of a school district who has audited that
209 district for three (3) or more consecutive years previously.
210 Certified public accountants shall be selected in a manner
211 determined by the State Auditor. The school district shall have
212 the responsibility to pay for the audit, including the review by
213 the State Auditor of audits performed by certified public
214 accountants;

215 (f) To postaudit and, when deemed necessary, preaudit
216 and investigate the financial affairs of the levee boards;
217 agencies created by the Legislature or by executive order of the
218 Governor; profit or nonprofit business entities administering
219 programs financed by funds flowing through the State Treasury or
220 through any of the agencies of the state, or its subdivisions; and
221 all other public bodies supported by funds derived in part or
222 wholly from public funds, except municipalities which annually



223 submit an audit prepared by a qualified certified public
224 accountant using methods and procedures prescribed by the
225 department;

226 (g) To make written demand, when necessary, for the
227 recovery of any amounts representing public funds improperly
228 withheld, misappropriated and/or otherwise illegally expended by
229 an officer, employee or administrative body of any state, county
230 or other public office, and/or for the recovery of the value of
231 any public property disposed of in an unlawful manner by a public
232 officer, employee or administrative body, such demands to be made
233 (i) upon the person or persons liable for such amounts and upon
234 the surety on official bond thereof, and/or (ii) upon any
235 individual, partnership, corporation or association to whom the
236 illegal expenditure was made or with whom the unlawful disposition
237 of public property was made, if such individual, partnership,
238 corporation or association knew or had reason to know through the
239 exercising of reasonable diligence that the expenditure was
240 illegal or the disposition unlawful. Such demand shall be
241 premised on competent evidence, which shall include at least one
242 (1) of the following: (i) sworn statements, (ii) written
243 documentation, (iii) physical evidence, or (iv) reports and
244 findings of government or other law enforcement agencies. Other
245 provisions notwithstanding, a demand letter issued pursuant to
246 this paragraph shall remain confidential by the State Auditor
247 until the individual against whom the demand letter is being filed



248 has been served with a copy of such demand letter. If, however,
249 such individual cannot be notified within fifteen (15) days using
250 reasonable means and due diligence, such notification shall be
251 made to the individual's bonding company, if he or she is bonded.
252 Each such demand shall be paid into the proper treasury of the
253 state, county or other public body through the office of the
254 department in the amount demanded within thirty (30) days from the
255 date thereof, together with interest thereon in the sum of one
256 percent (1%) per month from the date such amount or amounts were
257 improperly withheld, misappropriated and/or otherwise illegally
258 expended. In the event, however, such person or persons or such
259 surety shall refuse, neglect or otherwise fail to pay the amount
260 demanded and the interest due thereon within the allotted thirty
261 (30) days, the State Auditor shall have the authority and it shall
262 be his duty to institute suit, and the Attorney General shall
263 prosecute the same in any court of the state to the end that there
264 shall be recovered the total of such amounts from the person or
265 persons and surety on official bond named therein; and the amounts
266 so recovered shall be paid into the proper treasury of the state,
267 county or other public body through the State Auditor. In any
268 case where written demand is issued to a surety on the official
269 bond of such person or persons and the surety refuses, neglects or
270 otherwise fails within one hundred twenty (120) days to either pay
271 the amount demanded and the interest due thereon or to give the
272 State Auditor a written response with specific reasons for



273 nonpayment, then the surety shall be subject to a civil penalty in
274 an amount of twelve percent (12%) of the bond, not to exceed Ten
275 Thousand Dollars (\$10,000.00), to be deposited into the State
276 General Fund;

277 (h) To investigate any alleged or suspected violation
278 of the laws of the state by any officer or employee of the state,
279 county or other public office in the purchase, sale or the use of
280 any supplies, services, equipment or other property belonging
281 thereto; and in such investigation to do any and all things
282 necessary to procure evidence sufficient either to prove or
283 disprove the existence of such alleged or suspected violations.
284 The Department of Investigation of the State Department of Audit
285 may investigate, for the purpose of prosecution, any suspected
286 criminal violation of the provisions of this chapter. For the
287 purpose of administration and enforcement of this chapter, the
288 enforcement employees of the Department of Investigation of the
289 State Department of Audit have the powers of a law enforcement
290 officer of this state, and shall be empowered to make arrests and
291 to serve and execute search warrants and other valid legal process
292 anywhere within the State of Mississippi. All enforcement
293 employees of the Department of Investigation of the State
294 Department of Audit hired on or after July 1, 1993, shall be
295 required to complete the Law Enforcement Officers Training Program
296 and shall meet the standards of the program;



297 (i) To issue subpoenas, with the approval of, and
298 returnable to, a judge of a chancery or circuit court, in termtime
299 or in vacation, to examine the records, documents or other
300 evidence of persons, firms, corporations or any other entities
301 insofar as such records, documents or other evidence relate to
302 dealings with any state, county or other public entity. The
303 circuit or chancery judge must serve the county in which the
304 records, documents or other evidence is located; or where all or
305 part of the transaction or transactions occurred which are the
306 subject of the subpoena;

307 (j) In any instances in which the State Auditor is or
308 shall be authorized or required to examine or audit, whether
309 preaudit or postaudit, any books, ledgers, accounts or other
310 records of the affairs of any public hospital owned or owned and
311 operated by one or more political subdivisions or parts thereof or
312 any combination thereof, or any school district, including
313 activity funds thereof, it shall be sufficient compliance
314 therewith, in the discretion of the State Auditor, that such
315 examination or audit be made from the report of any audit or other
316 examination certified by a certified public accountant and
317 prepared by or under the supervision of such certified public
318 accountant. Such audits shall be made in accordance with
319 generally accepted standards of auditing, with the use of an audit
320 program prepared by the State Auditor, and final reports of such
321 audits shall conform to the format prescribed by the State



322 Auditor. All files, working papers, notes, correspondence and all
323 other data compiled during the course of the audit shall be
324 available, without cost, to the State Auditor for examination and
325 abstracting during the normal business hours of any business day.
326 The expense of such certified reports shall be borne by the
327 respective hospital, or any available school district funds other
328 than minimum program funds, subject to examination or audit. The
329 State Auditor shall not be bound by such certified reports and
330 may, in his or their discretion, conduct such examination or audit
331 from the books, ledgers, accounts or other records involved as may
332 be appropriate and authorized by law;

333 (k) The State Auditor shall have the authority to
334 contract with qualified public accounting firms to perform
335 selected audits required in paragraphs (d), (e), (f) and (j) of
336 this section, if funds are made available for such contracts by
337 the Legislature, or if funds are available from the governmental
338 entity covered by paragraphs (d), (e), (f) and (j). Such audits
339 shall be made in accordance with generally accepted standards of
340 auditing. All files, working papers, notes, correspondence and
341 all other data compiled during the course of the audit shall be
342 available, without cost, to the State Auditor for examination and
343 abstracting during the normal business hours of any business day;

344 (l) The State Auditor shall have the authority to
345 establish training courses and programs for the personnel of the
346 various state and local governmental entities under the



347 jurisdiction of the Office of the State Auditor. The training
348 courses and programs shall include, but not be limited to, topics
349 on internal control of funds, property and equipment control and
350 inventory, governmental accounting and financial reporting, and
351 internal auditing. The State Auditor is authorized to charge a
352 fee from the participants of these courses and programs, which fee
353 shall be deposited into the Department of Audit Special Fund.
354 State and local governmental entities are authorized to pay such
355 fee and any travel expenses out of their general funds or any
356 other available funds from which such payment is not prohibited by
357 law;

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

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

366 (o) At the discretion of the State Auditor, the Auditor
367 may conduct risk assessments, as well as performance and
368 compliance audits based on Generally Accepted Government Auditing
369 Standards (GAGAS) of any state-funded economic development program
370 authorized under Title 57, Mississippi Code of 1972. After risk
371 assessments or program audits, the State Auditor may conduct



372 audits of those projects deemed high-risk, specifically as they
373 identify any potential wrongdoing or noncompliance based on
374 objectives of the economic development program. The Auditor is
375 granted authority to gather, audit and review data and information
376 from the Mississippi Development Authority or any of its agents,
377 the Department of Revenue, and when necessary under this
378 paragraph, the recipient business or businesses or any other
379 private, public or nonprofit entity with information relevant to
380 the audit project. The maximum amount the State Auditor may bill
381 the oversight agency under this paragraph in any fiscal year is
382 One Hundred Thousand Dollars (\$100,000.00), based on reasonable
383 and necessary expenses.

384 **SECTION 3.** Section 7-7-213, Mississippi Code of 1972, is
385 amended as follows:

386 7-7-213. (1) The costs of audits and other services
387 required by Sections 7-7-201 through 7-7-215, except for those
388 audits and services authorized by Section 7-7-211(k) which shall
389 be funded by appropriations made by the Legislature from such
390 funds as it deems appropriate, shall be paid from a special fund
391 hereby created in the State Treasury, to be known as the State
392 Department of Audit Fund, into which will be paid each year the
393 amounts received for performing audits required by law. Except
394 for any municipality required under this chapter to be audited by
395 the State Auditor or when the State Auditor approves a
396 municipality or county to utilize a competent accountant or



397 certified public account as provided in Sections 21-35-31 and
398 7-7-211, the amounts to be charged for performing audits and other
399 services shall be the actual cost, not to exceed Thirty-five
400 Dollars (\$35.00) per man-hour plus the actual cost of any
401 independent specialist firm contracted by the State Auditor to
402 assist in the performance of the audit. Except as otherwise
403 provided in Sections 21-35-31 and 7-7-211, costs paid for
404 independent specialists or firms contracted by the State Auditor
405 shall be paid by the audited entity through the State Auditor to
406 the specialist or firm conducting the audit. In the event of
407 failure by any unit of government to pay the charges authorized
408 herein, the Department of Audit shall notify the State Fiscal
409 Officer, and upon a determination that the charges are
410 substantially correct, the State Fiscal Officer shall notify the
411 defaulting unit of his determination. If payment is not made
412 within thirty (30) days after such notification, the State Fiscal
413 Officer shall notify the State Treasurer and Department of Public
414 Accounts that no further warrants are to be issued to the
415 defaulting unit until the deficiency is paid.

416 (2) The cost of any service by the department not required
417 of it under the provisions of the cited sections but made
418 necessary by the willful fault or negligence of an officer or
419 employee of any public office of the state shall be recovered (i)
420 from such officer or employee and/or surety on official bond
421 thereof and/or (ii) from the individual, partnership, corporation



422 or association involved, in the same manner and under the same
423 terms, when necessary, as provided the department for recovering
424 public funds in Section 7-7-211.

425 (3) The State Auditor shall deliver a copy of any audit of
426 the fiscal and financial affairs of a county to the chancery clerk
427 of such county and shall deliver a notice stating that a copy of
428 such audit is on file in the chancery clerk's office to some
429 newspaper published in the county to be published. If no
430 newspaper is published in the county, a copy of such notice shall
431 be delivered to a newspaper having a general circulation therein.

432 **SECTION 4.** This act shall take effect and be in force from
433 and after July 1, 2018.

