

By: Representative Boyd (19th)

To: Accountability,
Efficiency, Transparency;
Appropriations

HOUSE BILL NO. 1153

1 AN ACT TO AMEND SECTION 7-7-213, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE THAT INVESTIGATIVE AND AUDIT COSTS INCURRED BY INDEPENDENT
3 SPECIALISTS OR FIRMS CONTRACTED BY THE STATE AUDITOR MAY BE PAID
4 AS A PERCENTAGE OF THE RECOVERY; TO AMEND SECTION 7-7-211,
5 MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PRECEDING SECTION; AND
6 FOR RELATED PURPOSES.

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

8 **SECTION 1.** Section 7-7-213, Mississippi Code of 1972, is
9 amended as follows:

10 7-7-213. (1) The costs of audits and other services
11 required by Sections 7-7-201 through 7-7-215, except for those
12 audits and services authorized by Section 7-7-211(k) which shall
13 be funded by appropriations made by the Legislature from such
14 funds as it deems appropriate, shall be paid from a special fund
15 hereby created in the State Treasury, to be known as the State
16 Department of Audit Fund, into which will be paid each year the
17 amounts received for performing audits required by law. Except
18 for any municipality required under this chapter to be audited by
19 the State Auditor, the amounts to be charged for performing audits
20 and other services shall be the actual cost, not to exceed



21 Thirty-five Dollars (\$35.00) per man-hour plus the actual cost of
22 any independent specialist firm contracted by the State Auditor to
23 assist in the performance of the audit. Costs paid for
24 independent specialists or firms contracted by the State Auditor
25 shall be paid by the audited entity through the State Auditor to
26 the specialist or firm conducting the audit. In the event of
27 failure by any unit of government to pay the charges authorized
28 herein, the Department of Audit shall notify the State Fiscal
29 Officer, and upon a determination that the charges are
30 substantially correct, the State Fiscal Officer shall notify the
31 defaulting unit of his determination. If payment is not made
32 within thirty (30) days after such notification, the State Fiscal
33 Officer shall notify the State Treasurer and Department of Public
34 Accounts that no further warrants are to be issued to the
35 defaulting unit until the deficiency is paid.

36 (2) The cost of any service by the department not required
37 of it under the provisions of the cited sections but made
38 necessary by the willful fault or negligence of an officer or
39 employee of any public office of the state shall be recovered (i)
40 from such officer or employee and/or surety on official bond
41 thereof and/or (ii) from the individual, partnership, corporation
42 or association involved, in the same manner and under the same
43 terms, when necessary, as provided the department for recovering
44 public funds in Section 7-7-211. Investigative and audit costs



45 incurred by independent specialists or firms contracted by the
46 State Auditor may be paid as a percentage of the recovery.

47 (3) The State Auditor shall deliver a copy of any audit of
48 the fiscal and financial affairs of a county to the chancery clerk
49 of such county and shall deliver a notice stating that a copy of
50 such audit is on file in the chancery clerk's office to some
51 newspaper published in the county to be published. If no
52 newspaper is published in the county, a copy of such notice shall
53 be delivered to a newspaper having a general circulation therein.

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

56 7-7-211. The department shall have the power and it shall be
57 its duty:

58 (a) To identify and define for all public offices of
59 the state and its subdivisions generally accepted accounting
60 principles or other accounting principles as promulgated by
61 nationally recognized professional organizations and to consult
62 with the State Fiscal Officer in the prescription and
63 implementation of accounting rules and regulations;

64 (b) To provide best practices, for all public offices
65 of regional and local subdivisions of the state, systems of
66 accounting, budgeting and reporting financial facts relating to
67 said offices in conformity with legal requirements and with
68 generally accepted accounting principles or other accounting
69 principles as promulgated by nationally recognized professional



70 organizations; to assist such subdivisions in need of assistance
71 in the installation of such systems; to revise such systems when
72 deemed necessary, and to report to the Legislature at periodic
73 times the extent to which each office is maintaining such systems,
74 along with such recommendations to the Legislature for improvement
75 as seem desirable;

76 (c) To study and analyze existing managerial policies,
77 methods, procedures, duties and services of the various state
78 departments and institutions upon written request of the Governor,
79 the Legislature or any committee or other body empowered by the
80 Legislature to make such request to determine whether and where
81 operations can be eliminated, combined, simplified and improved;

82 (d) To postaudit each year and, when deemed necessary,
83 preaudit and investigate the financial affairs of the departments,
84 institutions, boards, commissions, or other agencies of state
85 government, as part of the publication of a comprehensive annual
86 financial report for the State of Mississippi, or as deemed
87 necessary by the State Auditor. In complying with the
88 requirements of this paragraph, the department shall have the
89 authority to conduct all necessary audit procedures on an interim
90 and year-end basis;

91 (e) To postaudit and, when deemed necessary, preaudit
92 and investigate separately the financial affairs of (i) the
93 offices, boards and commissions of county governments and any
94 departments and institutions thereof and therein; (ii) public



95 school districts, departments of education and junior college
96 districts; and (iii) any other local offices or agencies which
97 share revenues derived from taxes or fees imposed by the State
98 Legislature or receive grants from revenues collected by
99 governmental divisions of the state; the cost of such audits,
100 investigations or other services to be paid as follows: Such part
101 shall be paid by the state from appropriations made by the
102 Legislature for the operation of the State Department of Audit as
103 may exceed the sum of Thirty-five Dollars (\$35.00) per man-hour
104 for the services of each staff person engaged in performing the
105 audit or other service plus the actual cost of any independent
106 specialist firm contracted by the State Auditor to assist in the
107 performance of the audit, which sum shall be paid by the county,
108 district, department, institution or other agency audited out of
109 its general fund or any other available funds from which such
110 payment is not prohibited by law. Costs paid for independent
111 specialists or firms contracted by the State Auditor shall be paid
112 by the audited entity through the State Auditor to the specialist
113 or firm conducting the postaudit; however, investigative and audit
114 costs incurred by independent specialists or firms contracted by
115 the State Auditor may be paid as a percentage of the recovery.

116 Each school district in the state shall have its financial
117 records audited annually, at the end of each fiscal year, either
118 by the State Auditor or by a certified public accountant approved
119 by the State Auditor. Beginning with the audits of fiscal year



120 2010 activity, no certified public accountant shall be selected to
121 perform the annual audit of a school district who has audited that
122 district for three (3) or more consecutive years previously.
123 Certified public accountants shall be selected in a manner
124 determined by the State Auditor. The school district shall have
125 the responsibility to pay for the audit, including the review by
126 the State Auditor of audits performed by certified public
127 accountants;

128 (f) To postaudit and, when deemed necessary, preaudit
129 and investigate the financial affairs of the levee boards;
130 agencies created by the Legislature or by executive order of the
131 Governor; profit or nonprofit business entities administering
132 programs financed by funds flowing through the State Treasury or
133 through any of the agencies of the state, or its subdivisions; and
134 all other public bodies supported by funds derived in part or
135 wholly from public funds, except municipalities which annually
136 submit an audit prepared by a qualified certified public
137 accountant using methods and procedures prescribed by the
138 department;

139 (g) To make written demand, when necessary, for the
140 recovery of any amounts representing public funds improperly
141 withheld, misappropriated and/or otherwise illegally expended by
142 an officer, employee or administrative body of any state, county
143 or other public office, and/or for the recovery of the value of
144 any public property disposed of in an unlawful manner by a public



145 officer, employee or administrative body, such demands to be made
146 (i) upon the person or persons liable for such amounts and upon
147 the surety on official bond thereof, and/or (ii) upon any
148 individual, partnership, corporation or association to whom the
149 illegal expenditure was made or with whom the unlawful disposition
150 of public property was made, if such individual, partnership,
151 corporation or association knew or had reason to know through the
152 exercising of reasonable diligence that the expenditure was
153 illegal or the disposition unlawful. Such demand shall be
154 premised on competent evidence, which shall include at least one
155 (1) of the following: (i) sworn statements, (ii) written
156 documentation, (iii) physical evidence, or (iv) reports and
157 findings of government or other law enforcement agencies. Other
158 provisions notwithstanding, a demand letter issued pursuant to
159 this paragraph shall remain confidential by the State Auditor
160 until the individual against whom the demand letter is being filed
161 has been served with a copy of such demand letter. If, however,
162 such individual cannot be notified within fifteen (15) days using
163 reasonable means and due diligence, such notification shall be
164 made to the individual's bonding company, if he or she is bonded.
165 Each such demand shall be paid into the proper treasury of the
166 state, county or other public body through the office of the
167 department in the amount demanded within thirty (30) days from the
168 date thereof, together with interest thereon in the sum of one
169 percent (1%) per month from the date such amount or amounts were



170 improperly withheld, misappropriated and/or otherwise illegally
171 expended. In the event, however, such person or persons or such
172 surety shall refuse, neglect or otherwise fail to pay the amount
173 demanded and the interest due thereon within the allotted thirty
174 (30) days, the State Auditor shall have the authority and it shall
175 be his duty to institute suit, and the Attorney General shall
176 prosecute the same in any court of the state to the end that there
177 shall be recovered the total of such amounts from the person or
178 persons and surety on official bond named therein; and the amounts
179 so recovered shall be paid into the proper treasury of the state,
180 county or other public body through the State Auditor. In any
181 case where written demand is issued to a surety on the official
182 bond of such person or persons and the surety refuses, neglects or
183 otherwise fails within one hundred twenty (120) days to either pay
184 the amount demanded and the interest due thereon or to give the
185 State Auditor a written response with specific reasons for
186 nonpayment, then the surety shall be subject to a civil penalty in
187 an amount of twelve percent (12%) of the bond, not to exceed Ten
188 Thousand Dollars (\$10,000.00), to be deposited into the State
189 General Fund;

190 (h) To investigate any alleged or suspected violation
191 of the laws of the state by any officer or employee of the state,
192 county or other public office in the purchase, sale or the use of
193 any supplies, services, equipment or other property belonging
194 thereto; and in such investigation to do any and all things



195 necessary to procure evidence sufficient either to prove or
196 disprove the existence of such alleged or suspected violations.
197 The * * * Division of Investigation of the State Department of
198 Audit may investigate, for the purpose of prosecution, any
199 suspected criminal violation of the provisions of this chapter.
200 For the purpose of administration and enforcement of this chapter,
201 the enforcement employees of the * * * Division of Investigation
202 of the State Department of Audit have the powers of a law
203 enforcement officer of this state, and shall be empowered to make
204 arrests and to serve and execute search warrants and other valid
205 legal process anywhere within the State of Mississippi. All
206 enforcement employees of the * * * Division of Investigation of
207 the State Department of Audit hired on or after July 1, 1993,
208 shall be required to complete the Law Enforcement Officers
209 Training Program and shall meet the standards of the program;
210 (i) To issue subpoenas, with the approval of, and
211 returnable to, a judge of a chancery or circuit court, in termtime
212 or in vacation, to examine the records, documents or other
213 evidence of persons, firms, corporations or any other entities
214 insofar as such records, documents or other evidence relate to
215 dealings with any state, county or other public entity. The
216 circuit or chancery judge must serve the county in which the
217 records, documents or other evidence is located; or where all or
218 part of the transaction or transactions occurred which are the
219 subject of the subpoena;



220 (j) In any instances in which the State Auditor is or
221 shall be authorized or required to examine or audit, whether
222 preaudit or postaudit, any books, ledgers, accounts or other
223 records of the affairs of any public hospital owned or owned and
224 operated by one or more political subdivisions or parts thereof or
225 any combination thereof, or any school district, including
226 activity funds thereof, it shall be sufficient compliance
227 therewith, in the discretion of the State Auditor, that such
228 examination or audit be made from the report of any audit or other
229 examination certified by a certified public accountant and
230 prepared by or under the supervision of such certified public
231 accountant. Such audits shall be made in accordance with
232 generally accepted standards of auditing, with the use of an audit
233 program prepared by the State Auditor, and final reports of such
234 audits shall conform to the format prescribed by the State
235 Auditor. All files, working papers, notes, correspondence and all
236 other data compiled during the course of the audit shall be
237 available, without cost, to the State Auditor for examination and
238 abstracting during the normal business hours of any business day.
239 The expense of such certified reports shall be borne by the
240 respective hospital, or any available school district funds other
241 than minimum program funds, subject to examination or audit. The
242 State Auditor shall not be bound by such certified reports and
243 may, in his or their discretion, conduct such examination or audit



244 from the books, ledgers, accounts or other records involved as may
245 be appropriate and authorized by law;

246 (k) The State Auditor shall have the authority to
247 contract with qualified public accounting firms to perform
248 selected audits required in paragraphs (d), (e), (f) and (j) of
249 this section, if funds are made available for such contracts by
250 the Legislature, or if funds are available from the governmental
251 entity covered by paragraphs (d), (e), (f) and (j). Such audits
252 shall be made in accordance with generally accepted standards of
253 auditing. All files, working papers, notes, correspondence and
254 all other data compiled during the course of the audit shall be
255 available, without cost, to the State Auditor for examination and
256 abstracting during the normal business hours of any business day;

257 (l) The State Auditor shall have the authority to
258 establish training courses and programs for the personnel of the
259 various state and local governmental entities under the
260 jurisdiction of the Office of the State Auditor. The training
261 courses and programs shall include, but not be limited to, topics
262 on internal control of funds, property and equipment control and
263 inventory, governmental accounting and financial reporting, and
264 internal auditing. The State Auditor is authorized to charge a
265 fee from the participants of these courses and programs, which fee
266 shall be deposited into the Department of Audit Special Fund.
267 State and local governmental entities are authorized to pay such
268 fee and any travel expenses out of their general funds or any



269 other available funds from which such payment is not prohibited by
270 law;

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

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

279 (o) At the discretion of the State Auditor, the Auditor
280 may conduct risk assessments, as well as performance and
281 compliance audits based on Generally Accepted Government Auditing
282 Standards (GAGAS) of any state-funded economic development program
283 authorized under Title 57, Mississippi Code of 1972. After risk
284 assessments or program audits, the State Auditor may conduct
285 audits of those projects deemed high-risk, specifically as they
286 identify any potential wrongdoing or noncompliance based on
287 objectives of the economic development program. The Auditor is
288 granted authority to gather, audit and review data and information
289 from the Mississippi Development Authority or any of its agents,
290 the Department of Revenue, and when necessary under this
291 paragraph, the recipient business or businesses or any other
292 private, public or nonprofit entity with information relevant to
293 the audit project. The maximum amount the State Auditor may bill



294 the oversight agency under this paragraph in any fiscal year is
295 One Hundred Thousand Dollars (\$100,000.00), based on reasonable
296 and necessary expenses;

297 (p) To review and approve any independent auditor
298 selected by the Mississippi Lottery Corporation in accordance with
299 Section 27-115-89, to conduct an annual audit of the corporation;
300 and

301 (q) To conduct audits or investigations of the
302 Mississippi Lottery Corporation if in the opinion of the State
303 Auditor conditions justify such audits or investigations.

304 **SECTION 3.** This act shall take effect and be in force from
305 and after July 1, 2023.

