

By: Senator(s) Younger

To: Accountability,
Efficiency, Transparency

SENATE BILL NO. 2044

1 AN ACT TO AMEND SECTION 7-7-211, MISSISSIPPI CODE OF 1972, TO
2 EMPOWER THE STATE AUDITOR TO INVESTIGATE MUNICIPALITIES, COUNTIES
3 AND OTHER PUBLIC ENTITIES; AND FOR RELATED PURPOSES.

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

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

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

9 (a) To identify and define for all public offices of
10 the state and its subdivisions generally accepted accounting
11 principles or other accounting principles as promulgated by
12 nationally recognized professional organizations and to consult
13 with the State Fiscal Officer in the prescription and
14 implementation of accounting rules and regulations;

15 (b) To provide best practices, for all public offices
16 of regional and local subdivisions of the state, systems of
17 accounting, budgeting and reporting financial facts relating to
18 said offices in conformity with legal requirements and with



19 generally accepted accounting principles or other accounting
20 principles as promulgated by nationally recognized professional
21 organizations; to assist such subdivisions in need of assistance
22 in the installation of such systems; to revise such systems when
23 deemed necessary, and to report to the Legislature at periodic
24 times the extent to which each office is maintaining such systems,
25 along with such recommendations to the Legislature for improvement
26 as seem desirable;

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

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

42 (e) To postaudit and, when deemed necessary, preaudit
43 and investigate separately the financial affairs of (i) the



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

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



69 2010 activity, no certified public accountant shall be selected to
70 perform the annual audit of a school district who has audited that
71 district for three (3) or more consecutive years previously.
72 Certified public accountants shall be selected in a manner
73 determined by the State Auditor. The school district shall have
74 the responsibility to pay for the audit, including the review by
75 the State Auditor of audits performed by certified public
76 accountants;

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

88 (g) To make written demand, when necessary, for the
89 recovery of any amounts representing public funds improperly
90 withheld, misappropriated and/or otherwise illegally expended by
91 an officer, employee or administrative body of any state, county
92 or other public office, and/or for the recovery of the value of
93 any public property disposed of in an unlawful manner by a public



94 officer, employee or administrative body, such demands to be made
95 (i) upon the person or persons liable for such amounts and upon
96 the surety on official bond thereof, and/or (ii) upon any
97 individual, partnership, corporation or association to whom the
98 illegal expenditure was made or with whom the unlawful disposition
99 of public property was made, if such individual, partnership,
100 corporation or association knew or had reason to know through the
101 exercising of reasonable diligence that the expenditure was
102 illegal or the disposition unlawful. Such demand shall be
103 premised on competent evidence, which shall include at least one
104 (1) of the following: (i) sworn statements, (ii) written
105 documentation, (iii) physical evidence, or (iv) reports and
106 findings of government or other law enforcement agencies. Other
107 provisions notwithstanding, a demand letter issued pursuant to
108 this paragraph shall remain confidential by the State Auditor
109 until the individual against whom the demand letter is being filed
110 has been served with a copy of such demand letter. If, however,
111 such individual cannot be notified within fifteen (15) days using
112 reasonable means and due diligence, such notification shall be
113 made to the individual's bonding company, if he or she is bonded.
114 Each such demand shall be paid into the proper treasury of the
115 state, county or other public body through the office of the
116 department in the amount demanded within thirty (30) days from the
117 date thereof, together with interest thereon in the sum of one
118 percent (1%) per month from the date such amount or amounts were



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

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



144 necessary to procure evidence sufficient either to prove or
145 disprove the existence of such alleged or suspected violations.
146 The * * * Division of Investigation of the State Department of
147 Audit may investigate, for the purpose of prosecution, any
148 suspected criminal violation of the provisions of this chapter.
149 For the purpose of administration and enforcement of this chapter,
150 the enforcement employees of the * * * Division of Investigation
151 of the State Department of Audit have the powers of a law
152 enforcement officer of this state, and shall be empowered to make
153 arrests and to serve and execute search warrants and other valid
154 legal process anywhere within the State of Mississippi. All
155 enforcement employees of the * * * Division of Investigation of
156 the State Department of Audit hired on or after July 1, 1993,
157 shall be required to complete the Law Enforcement Officers
158 Training Program and shall meet the standards of the program;
159 (i) To issue subpoenas, with the approval of, and
160 returnable to, a judge of a chancery or circuit court, in termtime
161 or in vacation, to examine the records, documents or other
162 evidence of persons, firms, corporations or any other entities
163 insofar as such records, documents or other evidence relate to
164 dealings with any state, county or other public entity. The
165 circuit or chancery judge must serve the county in which the
166 records, documents or other evidence is located; or where all or
167 part of the transaction or transactions occurred which are the
168 subject of the subpoena;



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



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

195 (k) The State Auditor shall have the authority to
196 contract with qualified public accounting firms to perform
197 selected audits required in paragraphs (d), (e), (f) and (j) of
198 this section, if funds are made available for such contracts by
199 the Legislature, or if funds are available from the governmental
200 entity covered by paragraphs (d), (e), (f) and (j). Such audits
201 shall be made in accordance with generally accepted standards of
202 auditing. All files, working papers, notes, correspondence and
203 all other data compiled during the course of the audit shall be
204 available, without cost, to the State Auditor for examination and
205 abstracting during the normal business hours of any business day;

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



218 other available funds from which such payment is not prohibited by
219 law;

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

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

228 (o) At the discretion of the State Auditor, the Auditor
229 may conduct risk assessments, as well as performance and
230 compliance audits based on Generally Accepted Government Auditing
231 Standards (GAGAS) of any state-funded economic development program
232 authorized under Title 57, Mississippi Code of 1972. After risk
233 assessments or program audits, the State Auditor may conduct
234 audits of those projects deemed high-risk, specifically as they
235 identify any potential wrongdoing or noncompliance based on
236 objectives of the economic development program. The Auditor is
237 granted authority to gather, audit and review data and information
238 from the Mississippi Development Authority or any of its agents,
239 the Department of Revenue, and when necessary under this
240 paragraph, the recipient business or businesses or any other
241 private, public or nonprofit entity with information relevant to
242 the audit project. The maximum amount the State Auditor may bill



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

246 (p) To review and approve any independent auditor
247 selected by the Mississippi Lottery Corporation in accordance with
248 Section 27-115-89, to conduct an annual audit of the
249 corporation; * * *

250 (q) To conduct audits or investigations of the
251 Mississippi Lottery Corporation if in the opinion of the State
252 Auditor conditions justify such audits or investigations * * *;
253 and

254 (r) Notwithstanding paragraph (f) of this section,
255 whenever the officers or employees of any municipality, county or
256 public entity as defined in Section 57-105-1 are convicted of or
257 plead no contest to a charge of embezzlement under Section
258 97-11-25 in an amount greater than or equal to Twenty-five
259 Thousand Dollars (\$25,000.00), the State Auditor shall have the
260 discretion to conduct a forensic audit of all finances relating to
261 that charge. In conducting such an audit, the State Auditor, or
262 any qualified third-party financial firm the State Auditor should
263 choose, shall have access to and authority to examine and
264 reproduce any and all books, accounts, reports, vouchers,
265 correspondence files, and all other records, money and property of
266 the municipality, county or public entity.



267 **SECTION 2.** This act shall take effect and be in force from
268 and after July 1, 2023.

