

By: Representative Yates

To: State Affairs

HOUSE BILL NO. 1225

1 AN ACT TO AMEND SECTION 21-35-31, MISSISSIPPI CODE OF 1972,
2 TO AUTHORIZE THE STATE AUDITOR, IN HIS DISCRETION, TO REVIEW AND
3 INVESTIGATE MUNICIPALITIES UNDER CERTAIN PRESCRIBED CONDITIONS; TO
4 AMEND SECTIONS 7-7-211 AND 7-7-213, MISSISSIPPI CODE OF 1972, IN
5 CONFORMITY TO THE PRECEDING PROVISIONS OF THIS ACT; AND FOR
6 RELATED PURPOSES.

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

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

10 * * *

11 21-35-31. (1) The governing authority of every municipality
12 in the state shall have the municipal books audited annually,
13 before the close of the next succeeding fiscal year, in accordance
14 with procedures and reporting requirements prescribed by the State
15 Auditor. The municipality shall pay for the audit or report out
16 of its general fund. No advertisement shall be necessary before
17 entering into the contract, and it shall be entered into as a
18 private contract. The audit or report shall be made upon a
19 uniform formula set up and promulgated by the State Auditor, as
20 the head of the State Department of Audit, or the director



21 thereof, appointed by him, as designated and defined in Title 7,
22 Chapter 7, Mississippi Code of 1972, or any office or officers
23 hereafter designated to replace or perform the duties imposed
24 by * * * that chapter. Two (2) copies of the audit or report
25 shall be mailed to the * * * State Auditor within thirty (30) days
26 after completion. The State Auditor, at the end of each fiscal
27 year, shall submit to the Legislature a composite report showing
28 any information concerning municipalities in this state that the
29 Auditor deems pertinent and necessary to the Legislature for use
30 in its deliberations. A synopsis of the audit or report, in a
31 format prescribed by the State Auditor, shall be published within
32 thirty (30) days by the governing authority of each municipality
33 in a newspaper published in the municipality or, if no newspaper
34 is published in a municipality, in any newspaper having a general
35 circulation published in the county wherein the municipality is
36 located. The publication of the audit or report may be made as
37 provided in Section 21-17-19. Publication shall be made one (1)
38 time, and the governing authority of each municipality shall be
39 authorized to pay only one-half (1/2) of the legal rate prescribed
40 by law for such legal publication.

41 (2) It shall be the duty of the State Auditor to determine
42 whether each municipality has complied with the requirements of
43 subsection (1) of this section. If, upon examination, the State
44 Auditor determines that a municipality has not initiated efforts
45 to comply with the requirements of subsection (1), the State



46 Auditor shall file a certified written notice with the clerk of
47 the municipality notifying the governing authority of the
48 municipality that a certificate of noncompliance will be issued to
49 the * * * Department of Revenue and to the Attorney General thirty
50 (30) days immediately following the date of the filing of the
51 notice unless within that period, the municipality substantially
52 complies with the requirements of subsection (1). If, after
53 thirty (30) days from the giving of the notice, the municipality,
54 in the opinion of the State Auditor, has not substantially
55 initiated efforts to comply with the requirements of subsection
56 (1), the State Auditor shall issue a certificate of noncompliance
57 to the clerk of the municipality, * * * Department of Revenue and
58 the Attorney General. Thereafter, the * * * Department of Revenue
59 shall withhold from all allocations and payments to the
60 municipality that would otherwise be payable the amount necessary
61 to pay one hundred fifty percent (150%) of the cost of preparing
62 the required audit or report as contracted for by the State
63 Auditor. The cost shall be determined by the State Auditor after
64 receiving proposals for the audit or report required in subsection
65 (1) of this section. The State Auditor shall notify the * * *
66 Department of Revenue of the amount in writing, and the * * *
67 Department of Revenue shall transfer that amount to the State
68 Auditor. The State Auditor is authorized to escalate, budget and
69 expend these funds in accordance with rules and regulations of the
70 Department of Finance and Administration consistent with the



71 escalation of federal funds. All remaining funds shall be
72 retained by the State Auditor to offset the costs of administering
73 these contracts. The State Auditor shall not unreasonably delay
74 the issuance of a written notice of cancellation of a certificate
75 of noncompliance but shall promptly issue a written notice of
76 cancellation of certificate of noncompliance upon an affirmative
77 showing by the municipality that it has come into substantial
78 compliance.

79 (3) At the discretion of the State Auditor, the Auditor may
80 review and investigate a municipality using methods and procedures
81 prescribed by the State Auditor whenever any of the following
82 occur:

83 (a) The audits filed by the municipality during the
84 preceding three (3) years contain an adverse opinion or disclaimer
85 of opinion; or

86 (b) Any audit has been performed by an audit firm with
87 a grade of "Pass with Deficiencies" or "Fail" on the firm's most
88 recent peer review; or

89 (c) The municipality's contract auditor has received a
90 violation relating to a government audit from the Mississippi
91 State Board of Public Accountancy in the preceding three (3)
92 years.

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



95 7-7-211. The department shall have the power and it shall be
96 its duty:

97 (a) To identify and define for all public offices of
98 the state and its subdivisions generally accepted accounting
99 principles or other accounting principles as promulgated by
100 nationally recognized professional organizations and to consult
101 with the State Fiscal Officer in the prescription and
102 implementation of accounting rules and regulations;

103 (b) To provide best practices, for all public offices
104 of regional and local subdivisions of the state, systems of
105 accounting, budgeting and reporting financial facts relating
106 to * * * those offices in conformity with legal requirements and
107 with generally accepted accounting principles or other accounting
108 principles as promulgated by nationally recognized professional
109 organizations; to assist such subdivisions in need of assistance
110 in the installation of such systems; to revise such systems when
111 deemed necessary, and to report to the Legislature at periodic
112 times the extent to which each office is maintaining such systems,
113 along with such recommendations to the Legislature for improvement
114 as seem desirable;

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



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

121 (d) To postaudit each year and, when deemed necessary,
122 preaudit and investigate the financial affairs of the departments,
123 institutions, boards, commissions, or other agencies of state
124 government, as part of the publication of a comprehensive annual
125 financial report for the State of Mississippi, or as deemed
126 necessary by the State Auditor. In complying with the
127 requirements of this paragraph, the department shall have the
128 authority to conduct all necessary audit procedures on an interim
129 and year-end basis;

130 (e) To postaudit and, when deemed necessary, preaudit
131 and investigate separately the financial affairs of: (i) the
132 offices, boards and commissions of county governments and any
133 departments and institutions thereof and therein; (ii) public
134 school districts, departments of education and community and
135 junior college districts; and (iii) any other local offices or
136 agencies which share revenues derived from taxes or fees imposed
137 by the State Legislature or receive grants from revenues collected
138 by governmental divisions of the state; the cost of such audits,
139 investigations or other services to be paid as follows: Such part
140 shall be paid by the state from appropriations made by the
141 Legislature for the operation of the State Department of Audit as
142 may exceed the sum of Thirty-five Dollars (\$35.00) per man-hour
143 for the services of each staff person engaged in performing the



144 audit or other service plus the actual cost of any independent
145 specialist firm contracted by the State Auditor to assist in the
146 performance of the audit, which sum shall be paid by the county,
147 district, department, institution or other agency audited out of
148 its general fund or any other available funds from which such
149 payment is not prohibited by law. Costs paid for independent
150 specialists or firms contracted by the State Auditor shall be paid
151 by the audited entity through the State Auditor to the specialist
152 or firm conducting the postaudit.

153 Each school district in the state shall have its financial
154 records audited annually, at the end of each fiscal year, either
155 by the State Auditor or by a certified public accountant approved
156 by the State Auditor. Beginning with the audits of fiscal year
157 2010 activity, no certified public accountant shall be selected to
158 perform the annual audit of a school district who has audited that
159 district for three (3) or more consecutive years previously.
160 Certified public accountants shall be selected in a manner
161 determined by the State Auditor. The school district shall have
162 the responsibility to pay for the audit, including the review by
163 the State Auditor of audits performed by certified public
164 accountants;

165 (f) To postaudit and, when deemed necessary, preaudit
166 and investigate the financial affairs of: the levee boards;
167 agencies created by the Legislature or by executive order of the
168 Governor; profit or nonprofit business entities administering



169 programs financed by funds flowing through the State Treasury or
170 through any of the agencies of the state, or its subdivisions; and
171 all other public bodies supported by funds derived in part or
172 wholly from public funds * * *;

173 (g) To make written demand, when necessary, for the
174 recovery of any amounts representing public funds improperly
175 withheld, misappropriated and/or otherwise illegally expended by
176 an officer, employee or administrative body of any state, county
177 or other public office, and/or for the recovery of the value of
178 any public property disposed of in an unlawful manner by a public
179 officer, employee or administrative body, such demands to be made:

180 (i) upon the person or persons liable for such amounts and upon
181 the surety on official bond thereof * * *; and/or (ii) upon any
182 individual, partnership, corporation or association to whom the
183 illegal expenditure was made or with whom the unlawful disposition
184 of public property was made, if such individual, partnership,
185 corporation or association knew or had reason to know through the
186 exercising of reasonable diligence that the expenditure was
187 illegal or the disposition unlawful. Such demand shall be
188 premised on competent evidence, which shall include at least one
189 (1) of the following: (i) sworn statements * * *; (ii) written
190 documentation * * *; (iii) physical evidence * * *; or (iv)
191 reports and findings of government or other law enforcement
192 agencies. Other provisions notwithstanding, a demand letter
193 issued pursuant to this paragraph shall remain confidential by the



194 State Auditor until the individual against whom the demand letter
195 is being filed has been served with a copy of such demand letter.
196 If, however, such individual cannot be notified within fifteen
197 (15) days using reasonable means and due diligence, such
198 notification shall be made to the individual's bonding company, if
199 he or she is bonded. Each such demand shall be paid into the
200 proper treasury of the state, county or other public body through
201 the office of the department in the amount demanded within thirty
202 (30) days from the date thereof, together with interest thereon in
203 the sum of one percent (1%) per month from the date such amount or
204 amounts were improperly withheld, misappropriated and/or otherwise
205 illegally expended. In the event, however, such person or persons
206 or such surety shall refuse, neglect or otherwise fail to pay the
207 amount demanded and the interest due thereon within the allotted
208 thirty (30) days, the State Auditor shall have the authority and
209 it shall be his duty to institute suit, and the Attorney General
210 shall prosecute the same in any court of the state to the end that
211 there shall be recovered the total of such amounts from the person
212 or persons and surety on official bond named therein; and the
213 amounts so recovered shall be paid into the proper treasury of the
214 state, county or other public body through the State Auditor. In
215 any case where written demand is issued to a surety on the
216 official bond of such person or persons and the surety refuses,
217 neglects or otherwise fails within one hundred twenty (120) days
218 to either pay the amount demanded and the interest due thereon or



219 to give the State Auditor a written response with specific reasons
220 for nonpayment, then the surety shall be subject to a civil
221 penalty in an amount of twelve percent (12%) of the bond, not to
222 exceed Ten Thousand Dollars (\$10,000.00), to be deposited into the
223 State General Fund;

224 (h) To investigate any alleged or suspected violation
225 of the laws of the state by any officer or employee of the state,
226 county or other public office in the purchase, sale or the use of
227 any supplies, services, equipment or other property belonging
228 thereto; and in such investigation to do any and all things
229 necessary to procure evidence sufficient either to prove or
230 disprove the existence of such alleged or suspected violations.
231 The * * * Division of Investigation of the State Department of
232 Audit may investigate, for the purpose of prosecution, any
233 suspected criminal violation of the provisions of this chapter.
234 For the purpose of administration and enforcement of this chapter,
235 the enforcement employees of the * * * Division of Investigation
236 of the State Department of Audit have the powers of a law
237 enforcement officer of this state, and shall be empowered to make
238 arrests and to serve and execute search warrants and other valid
239 legal process anywhere within the State of Mississippi. All
240 enforcement employees of the * * * Division of Investigation of
241 the State Department of Audit hired on or after July 1, 1993,
242 shall be required to complete the Law Enforcement Officers
243 Training Program and shall meet the standards of the program;



244 (i) To issue subpoenas, with the approval of, and
245 returnable to, a judge of a chancery or circuit court, in termtime
246 or in vacation, to examine the records, documents or other
247 evidence of persons, firms, corporations or any other entities
248 insofar as such records, documents or other evidence relate to
249 dealings with any state, county or other public entity. The
250 circuit or chancery judge must serve the county in which the
251 records, documents or other evidence is located; or where all or
252 part of the transaction or transactions occurred which are the
253 subject of the subpoena;

254 (j) In any instances in which the State Auditor is or
255 shall be authorized or required to examine or audit, whether
256 preaudit or postaudit, any books, ledgers, accounts or other
257 records of the affairs of any public hospital owned or owned and
258 operated by one or more political subdivisions or parts thereof or
259 any combination thereof, or any school district, including
260 activity funds thereof, it shall be sufficient compliance
261 therewith, in the discretion of the State Auditor, that such
262 examination or audit be made from the report of any audit or other
263 examination certified by a certified public accountant and
264 prepared by or under the supervision of such certified public
265 accountant. Such audits shall be made in accordance with
266 generally accepted standards of auditing, with the use of an audit
267 program prepared by the State Auditor, and final reports of such
268 audits shall conform to the format prescribed by the State



269 Auditor. All files, working papers, notes, correspondence and all
270 other data compiled during the course of the audit shall be
271 available, without cost, to the State Auditor for examination and
272 abstracting during the normal business hours of any business day.
273 The expense of such certified reports shall be borne by the
274 respective hospital, or any available school district funds other
275 than * * * adequate education program funds, subject to
276 examination or audit. The State Auditor shall not be bound by
277 such certified reports and may, in his or their discretion,
278 conduct such examination or audit from the books, ledgers,
279 accounts or other records involved as may be appropriate and
280 authorized by law;

281 (k) The State Auditor shall have the authority to
282 contract with qualified public accounting firms to perform
283 selected audits required in paragraphs (d), (e), (f) and (j) of
284 this section, if funds are made available for such contracts by
285 the Legislature, or if funds are available from the governmental
286 entity covered by paragraphs (d), (e), (f) and (j). Such audits
287 shall be made in accordance with generally accepted standards of
288 auditing. All files, working papers, notes, correspondence and
289 all other data compiled during the course of the audit shall be
290 available, without cost, to the State Auditor for examination and
291 abstracting during the normal business hours of any business day;

292 (l) The State Auditor shall have the authority to
293 establish training courses and programs for the personnel of the



294 various state and local governmental entities under the
295 jurisdiction of the Office of the State Auditor. The training
296 courses and programs shall include, but not be limited to, topics
297 on internal control of funds, property and equipment control and
298 inventory, governmental accounting and financial reporting, and
299 internal auditing. The State Auditor is authorized to charge a
300 fee from the participants of these courses and programs, which fee
301 shall be deposited into the Department of Audit Special Fund.
302 State and local governmental entities are authorized to pay such
303 fee and any travel expenses out of their general funds or any
304 other available funds from which such payment is not prohibited by
305 law;

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

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

314 (o) At the discretion of the State Auditor, the Auditor
315 may conduct risk assessments, as well as performance and
316 compliance audits based on Generally Accepted Government Auditing
317 Standards (GAGAS) of any state-funded economic development program
318 authorized under Title 57, Mississippi Code of 1972. After risk



319 assessments or program audits, the State Auditor may conduct
320 audits of those projects deemed high-risk, specifically as they
321 identify any potential wrongdoing or noncompliance based on
322 objectives of the economic development program. The Auditor is
323 granted authority to gather, audit and review data and information
324 from the Mississippi Development Authority or any of its agents,
325 the Department of Revenue, and when necessary under this
326 paragraph, the recipient business or businesses or any other
327 private, public or nonprofit entity with information relevant to
328 the audit project. The maximum amount the State Auditor may bill
329 the oversight agency under this paragraph in any fiscal year is
330 One Hundred Thousand Dollars (\$100,000.00), based on reasonable
331 and necessary expenses;

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

336 (q) To conduct audits or investigations of the
337 Mississippi Lottery Corporation if, in the opinion of the State
338 Auditor, conditions justify such audits or investigations.

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

341 7-7-213. (1) The costs of audits and other services
342 required by Sections 7-7-201 through 7-7-215, except for those
343 audits and services authorized by Section 7-7-211(k) which shall



344 be funded by appropriations made by the Legislature from such
345 funds as it deems appropriate, shall be paid from a special fund
346 hereby created in the State Treasury, to be known as the State
347 Department of Audit Fund, into which will be paid each year the
348 amounts received for performing audits required by law. * * * The
349 amounts to be charged for performing audits and other services
350 shall be the actual cost, not to exceed Thirty-five Dollars
351 (\$35.00) per man-hour plus the actual cost of any independent
352 specialist firm contracted by the State Auditor to assist in the
353 performance of the audit. Costs paid for independent specialists
354 or firms contracted by the State Auditor shall be paid by the
355 audited entity through the State Auditor to the specialist or firm
356 conducting the audit. In the event of failure by any unit of
357 government to pay the charges authorized herein, the Department of
358 Audit shall notify the State Fiscal Officer, and upon a
359 determination that the charges are substantially correct, the
360 State Fiscal Officer shall notify the defaulting unit of his
361 determination. If payment is not made within thirty (30) days
362 after such notification, the State Fiscal Officer shall notify the
363 State Treasurer and Department of * * * Finance and Administration
364 that no further warrants are to be issued to the defaulting unit
365 until the deficiency is paid.

366 (2) The cost of any service by the department not required
367 of it under the provisions of the cited sections but made
368 necessary by the willful fault or negligence of an officer or



369 employee of any public office of the state shall be recovered:
370 (i) from such officer or employee and/or surety on official bond
371 thereof; and/or (ii) from the individual, partnership, corporation
372 or association involved, in the same manner and under the same
373 terms, when necessary, as provided the department for recovering
374 public funds in Section 7-7-211.

375 (3) The State Auditor shall deliver a copy of any audit of
376 the fiscal and financial affairs of a county to the chancery clerk
377 of such county and shall deliver a notice stating that a copy of
378 such audit is on file in the chancery clerk's office to some
379 newspaper published in the county to be published. If no
380 newspaper is published in the county, a copy of such notice shall
381 be delivered to a newspaper having a general circulation therein.

382 **SECTION 4.** This act shall take effect and be in force from
383 and after July 1, 2024.

