

By: Senator(s) Dawkins

To: Judiciary, Division A;  
Appropriations

SENATE BILL NO. 2384

1 AN ACT TO AMEND SECTIONS 73-33-11 AND 73-33-15, MISSISSIPPI  
2 CODE OF 1972, TO REVISE THE SUBPOENA POWER OF THE MISSISSIPPI  
3 PUBLIC ACCOUNTANCY BOARD AND TO AUTHORIZE THE BOARD TO IMPOSE A  
4 CIVIL PENALTY AGAINST PERSONS ADJUDGED TO HAVE VIOLATED CERTAIN  
5 PUBLIC ACCOUNTING REGULATORY LAWS; TO AMEND SECTIONS 27-104-13,  
6 27-104-27 AND 31-17-123, MISSISSIPPI CODE OF 1972, TO EXEMPT  
7 SPECIAL FUNDS GENERATED BY THE MISSISSIPPI PUBLIC ACCOUNTANCY  
8 BOARD FROM PROVISIONS ALLOWING SUCH FUNDS TO BE BORROWED DURING A  
9 REVENUE SHORTFALL; AND FOR RELATED PURPOSES.

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

11 **SECTION 1.** Section 73-33-11, Mississippi Code of 1972, is  
12 amended as follows:

13 73-33-11. The Mississippi State Board of Public Accountancy  
14 may revoke, suspend, impose a civil penalty or take other  
15 appropriate action with respect to any license or permit issued  
16 pursuant to this chapter for any unprofessional conduct by the  
17 licensee or permit holder, or for other sufficient cause, provided  
18 written notice shall have been sent by registered mail (with the  
19 addressee's receipt required) to the holder thereof, twenty (20)  
20 days before any hearing thereon, stating the cause for such  
21 contemplated action and appointing a day and a place for a full  
22 hearing thereon by the board, provided further, no certificate or  
23 license be cancelled or revoked until a hearing shall have been  
24 given to the holder thereof according to law. But, after such  
25 hearing, the board may, in its discretion, suspend the certified  
26 public accountant from practice as a certified public accountant  
27 in this state. When payment of a civil penalty is assessed and  
28 levied by the board in accordance with this section, such civil  
29 penalty shall not exceed Five Thousand Dollars (\$5,000.00) for  
30 each violation.

31           The members of the board are hereby empowered to sit as a  
32 trial board; to administer oaths (or affirmations); to summon any  
33 witness and to compel his attendance and/or his testimony, under  
34 oath (or affirmation) before the board or for purposes of  
35 deposition during any board authorized investigation; to compel  
36 the production \* \* \* of any book, paper or document by the owner  
37 or custodian thereof to a hearing or for purposes of  
38 investigation; and/or to compel any officer to produce, during  
39 investigation or at \* \* \* hearing, a copy of any public record  
40 (not privileged from public inspection by law) in his official  
41 custody, certified to, by him. The board shall elect one (1) of  
42 its members to serve as clerk, to issue summons and other  
43 processes, and to certify copies of its records or, the board may  
44 delegate such duties to the executive director.

45           The accused may be represented by counsel at his own expense  
46 during investigation or hearing or, in the instance of a firm  
47 permit holder through its manager and/or counsel to defend such  
48 charges. If the accused does not appear or answer, judgment may  
49 be entered by default, provided the board finds that proper  
50 service was made on the accused.

51           The minutes of the board shall be recorded in an appropriate  
52 minute book permanently maintained by the board at its office.

53           In a proceeding conducted under this section by the board for  
54 disciplinary action against a licensee or permit holder, those  
55 reasonable costs that are expended by the board in the  
56 investigation and conduct of a proceeding for discipline  
57 including, but not limited to, the cost of service of process,  
58 court reporters, expert witnesses, investigators and legal fees  
59 may be imposed by the board on the accused, the charging party or  
60 both.

61           Such costs shall be paid to the board upon the expiration of  
62 the period allowed for appeal of such penalties under this  
63 section, or may be paid sooner if the guilty party elects. Money

64 collected by the board under this section shall be deposited to  
65 the credit of the board's special fund in the State Treasury.  
66 When payment of a monetary penalty assessed by the board under  
67 this section is not paid when due, the board shall have the power  
68 to institute and maintain proceedings in its name for enforcement  
69 of payment in the Chancery Court of the First Judicial District of  
70 Hinds County, Mississippi, or in the Chancery Court of the county  
71 where the respondent resides.

72 In case of a decision adverse to the accused, appeal shall be  
73 made within thirty (30) days from the day on which decision is  
74 made to the circuit court of the First Judicial District of Hinds  
75 County, Mississippi, or in the circuit court of the county in  
76 which the accused resides. In the case of a nonresident licensee,  
77 the appeal shall be made to the First Judicial District of Hinds  
78 County, Mississippi. The order of the board shall not take effect  
79 until the expiration of said thirty (30) days.

80 In case of an appeal, bond for costs in the circuit court  
81 shall be given as in other cases; and the order of the board shall  
82 not take effect until such appeal has been finally disposed of by  
83 the court or courts.

84 The board may, at any time, reinstate a license or permit if  
85 it finds that such reinstatement is justified.

86 In addition to the reasons specified in the first paragraph  
87 of this section, the board shall be authorized to suspend the  
88 license of any licensee for being out of compliance with an order  
89 for support, as defined in Section 93-11-153. The procedure for  
90 suspension of a license for being out of compliance with an order  
91 for support, and the procedure for the reissuance or reinstatement  
92 of a license suspended for that purpose, and the payment of any  
93 fees for the reissuance or reinstatement of a license suspended  
94 for that purpose, shall be governed by Section 93-11-157 or  
95 93-11-163, as the case may be. Actions taken by the board in  
96 suspending a license when required by Section 93-11-157 or

97 93-11-163 are not actions from which an appeal may be taken under  
98 this section. Any appeal of a license suspension that is required  
99 by Section 93-11-157 or 93-11-163 shall be taken in accordance  
100 with the appeal procedure specified in Section 93-11-157 or  
101 93-11-163, as the case may be, rather than the procedure specified  
102 in this section. If there is any conflict between any provision  
103 of Section 93-11-157 or 93-11-163 and any provision of this  
104 chapter, the provisions of Section 93-11-157 or 93-11-163, as the  
105 case may be, shall control.

106 **SECTION 2.** Section 73-33-15, Mississippi Code of 1972, is  
107 amended as follows:

108 73-33-15. (1) It shall be unlawful for any person, except a  
109 registered public accountant, who is associated and registered  
110 with a firm permit holder and/or for any firm, except for a  
111 certified public accountant firm that holds a valid CPA firm  
112 permit to practice public accounting issued pursuant to this  
113 chapter to:

114 (a) Issue, sign or permit his name or firm name to be  
115 associated with any report, transmittal letter or other written  
116 communication issued as a result of an examination of financial  
117 statements or financial information which contains either an  
118 expression of opinion or other attestation as to the fairness,  
119 accuracy or reliability of such financial statements;

120 (b) Offer to perform, or perform, for the public,  
121 public accounting, tax consulting or other accounting-related  
122 services while holding himself out as a certified public  
123 accountant or as a firm of certified public accountants or  
124 certified public accountant firm; or

125 (c) Maintain an office or other facility for the  
126 transaction of business as a certified public accountant or  
127 certified public accountant firm.

128 (2) Any person or firm violating subsection (1) of this  
129 section shall be guilty of a misdemeanor, and may, upon conviction

130 therefor, be punished by a criminal fine of not less than Five  
131 Hundred Dollars (\$500.00) nor more than Five Thousand Dollars  
132 (\$5,000.00), or by imprisonment in the county jail for not less  
133 than ten (10) days nor more than six (6) months, or by both such  
134 fine and imprisonment in the discretion of the court.

135 (3) In addition to any other penalty which may be  
136 applicable, the board may impose a civil penalty against any  
137 person adjudged by the board to be in violation of subsection (1)  
138 of this section. The civil penalty shall not exceed Five Thousand  
139 Dollars (\$5,000.00) per violation and shall be deposited into the  
140 special fund to the credit of the board.

141 (4) The provisions of paragraph (a) of subsection (1) of  
142 this section shall not be construed to apply to an attorney  
143 licensed to practice law in this state; to a person for making  
144 statements as to his own business; to an officer or salaried  
145 employee of a firm, partnership or corporation for making an  
146 internal audit, statement or tax return for the same; to a  
147 bookkeeper for making an internal audit, statement or tax return  
148 for his employer, whose books he regularly keeps for a salary; to  
149 a receiver, a trustee or fiduciary as to any statement or tax  
150 return with reference to the business or property entrusted to him  
151 as such; to any federal, state, county, district or municipal  
152 officer as to any audit, statement, or tax return made by him in  
153 the discharge of the duties of such office.

154 (5) Nothing in this section shall require a sole proprietor  
155 not acting as a practice unit to associate and register with a  
156 certified public accounting firm before engaging in the practice  
157 of public accounting.

158 **SECTION 3.** Section 27-104-13, Mississippi Code of 1972, is  
159 amended as follows:

160 27-104-13. The State Fiscal Officer shall have the right to  
161 disapprove or reduce and revise such estimates of general funds  
162 and state-source special funds for any general fund or

163 special-fund agency, and for the "administration and other  
164 expenses" budget of the Department of Transportation, in an amount  
165 not to exceed five percent (5%) if he finds that funds will not be  
166 available within the period for which the budget is drawn, or if  
167 he finds that the requested expenditures, or any part thereof, are  
168 not authorized by law, and such action shall be reported to the  
169 Legislative Budget Office. The State Fiscal Officer may, upon his  
170 determination of need based upon a finding that funds will not be  
171 available within the period for which the budget is drawn,  
172 transfer funds as provided in Section 27-103-203, from the Working  
173 Cash-Stabilization Reserve Fund to the General Fund to supplement  
174 the general fund revenue. In the event that the estimates of  
175 general funds and state-source special funds of all general fund  
176 and special-fund agencies, and of the "administration and other  
177 expenses" budget of the Department of Transportation, have been  
178 reduced by five percent (5%), additional reductions may be made  
179 but shall consist of a uniform percentage reduction of general  
180 funds and state-source special funds to all general fund and  
181 special-fund agencies, and to the "administration and other  
182 expenses" budget of the Department of Transportation. Any  
183 state-source special funds reduced under the provisions of this  
184 section shall be transferred to the State General Fund upon  
185 requisitions for warrants signed by the respective agency head and  
186 said transfer shall be made within a reasonable period to be  
187 determined by the State Fiscal Officer.

188 For the purpose of this section, "state-source special funds"  
189 shall be construed to mean any special funds in any agency derived  
190 from any source, but shall not include the following special  
191 funds: special funds derived from federal sources, from local or  
192 regional political subdivisions, or from donations; special funds  
193 held in a fiduciary capacity for the benefit of specific persons  
194 or classes of persons; self-generated special funds of the state  
195 institutions of higher learning or the state junior colleges;

196 special funds of Mississippi Industries for the Blind, the State  
197 Port at Gulfport, Yellow Creek Inland Port, Pat Harrison Waterway  
198 District, Pearl River Basin Development District, Pearl River  
199 Valley Water Management District, Tombigbee River Valley Water  
200 Management District, Yellow Creek Watershed Authority, or Coast  
201 Coliseum Commission, the Mississippi Board of Public Accountancy;  
202 special funds of the Department of Wildlife, Fisheries and Parks  
203 derived from the issuance of hunting or fishing licenses; and  
204 special funds generated by agencies whose primary function  
205 includes the establishment of standards and the issuance of  
206 licenses for the practice of a profession within the State of  
207 Mississippi.

208       **SECTION 4.** Section 27-104-27, Mississippi Code of 1972, is  
209 amended as follows:

210       27-104-27. Notwithstanding anything in Sections 27-103-101  
211 through 27-103-139 and 27-104-1 through 27-104-29 contained, the  
212 same shall not be construed to apply to any agency supported  
213 wholly by funds granted or allotted under any act of Congress.  
214 The State Auditor of Public Accounts and after July 1, 1986, the  
215 State Fiscal Officer shall determine which special fund accounts  
216 in the State Treasury require an appropriation act and request an  
217 appropriation for such special fund accounts. For all other  
218 special fund accounts, the State Auditor of Public Accounts, or  
219 the State Fiscal Officer after July 1, 1986, shall certify that  
220 such accounts do not require an appropriation. The Legislative  
221 Budget Office shall recommend an appropriation for each special  
222 fund account existing in the State Treasury so certified as  
223 requiring an appropriation, unless exempted as hereinafter  
224 provided. In the event the Legislative Budget Committee and the  
225 State Fiscal Officer find that any state agency should not be  
226 included under the provisions of Sections 27-103-101 through  
227 27-103-139 and 27-104-1 through 27-104-29, then the said committee  
228 and officer may, in their discretion, exempt said state agency

229 from the provisions thereof. Sections 27-103-101 through  
230 27-103-139 and 27-104-1 through 27-104-29 shall not apply to funds  
231 collected and disbursed by a state agency created and existing  
232 under the provisions of Sections 73-3-101 through 73-3-169.  
233 Sections 27-103-101 through 27-103-139 and 27-104-1 through  
234 27-104-29 shall not apply to funds deposited into the special fund  
235 created pursuant to Section 45-9-101, the special fund created  
236 pursuant to Section 69-37-39, the special fund created pursuant to  
237 Section 1 of Chapter 521, Laws of 1999, the special fund created  
238 pursuant to Section 31-17-127 or the special fund created pursuant  
239 to Section 65-1-110, the special fund created pursuant to Section  
240 73-33-8.

241 The State Fiscal Officer shall not promulgate or attempt to  
242 enforce any rule, order or regulation which is not in accordance  
243 with the provisions of a legally executed trust indenture  
244 agreement, nor shall Sections 27-103-101 through 27-103-139 and  
245 27-104-1 through 27-104-29 be construed to apply to funds  
246 collected and disbursed by a state agency under Sections 65-33-45  
247 and 65-33-47.

248 **SECTION 5.** Section 31-17-123, Mississippi Code of 1972, is  
249 amended as follows:

250 31-17-123. The intent of the Legislature is to authorize  
251 borrowing funds under the provisions of Sections 31-17-101 through  
252 31-17-123 to offset any temporary cash flow deficiencies and  
253 should not be construed to authorize the borrowing of any funds in  
254 an amount which cannot be repaid during the fiscal year in which  
255 such funds are borrowed. The State Tax Commission and University  
256 Research Center, utilizing all available revenue forecast data,  
257 shall annually develop a general fund revenue estimate to be  
258 adopted by the Legislative Budget Office as of the date of sine  
259 die adjournment. If, at the end of October, or at the end of any  
260 month thereafter of any fiscal year, the revenues received for the  
261 fiscal year shall fall below ninety-eight percent (98%) of the



262 Legislative Budget Office general fund revenue estimate at the  
263 date of sine die adjournment, the State Fiscal Officer shall  
264 reduce allocations of general funds and state-source special funds  
265 to general fund and special fund agencies and to the  
266 "administration and other expenses" budget of the Department of  
267 Transportation in an amount necessary to keep expenditures within  
268 the sum of actual general fund receipts including any transfers to  
269 the General Fund from the Working Cash-Stabilization Reserve Fund  
270 for the fiscal year. The State Fiscal Officer may, upon his  
271 determination of need based on the revenue shortfall, transfer  
272 funds as provided in Section 27-103-203, from the Working  
273 Cash-Stabilization Reserve Fund to the General Fund to supplement  
274 the general fund revenue. State-source special funds in an amount  
275 equal to any reduction made under the provisions of this section  
276 shall be transferred to the State General Fund upon requisitions  
277 for warrants signed by the respective agency head and such  
278 transfer shall be made within a reasonable period to be determined  
279 by the State Fiscal Officer. No agency's allocation shall be  
280 reduced in an amount to exceed five percent (5%); however, in the  
281 event that the allocations of general funds and state-source  
282 special funds to all general fund and special fund agencies and to  
283 the "administration and other expenses" budget of the Department  
284 of Transportation have been reduced by five percent (5%), any  
285 additional reductions required to be made hereunder shall consist  
286 of a uniform percentage reduction of general funds and  
287 state-source special funds to all general fund and special fund  
288 agencies, and to the "administration and other expenses" budget of  
289 the Department of Transportation. Any receipt from loans  
290 authorized by Sections 31-17-101 through 31-17-123 shall not be  
291 included as revenue receipts. The State Fiscal Officer shall  
292 immediately send notice of any action taken under authority of  
293 this section to the Legislative Budget Office.

294           For the purpose of this section, "state-source special funds"  
295 shall be construed to mean any special funds in any agency derived  
296 from any source, but shall not include the following special  
297 funds: special funds derived from federal sources, from local or  
298 regional political subdivisions, or from donations; special funds  
299 held in a fiduciary capacity for the benefit of specific persons  
300 or classes of persons; self-generated special funds of the state  
301 institutions of higher learning or the state junior colleges;  
302 special funds of Mississippi Industries for the Blind, the State  
303 Port at Gulfport, Yellow Creek Inland Port, Pat Harrison Waterway  
304 District, Pearl River Basin Development District, Pearl River  
305 Valley Water Management District, Tombigbee River Valley Water  
306 Management District, Yellow Creek Watershed Authority, or Coast  
307 Coliseum Commission; special funds of the Department of Wildlife,  
308 Fisheries and Parks derived from the issuance of hunting or  
309 fishing licenses, the Mississippi Board of Public Accountancy; and  
310 special funds generated by agencies whose primary function  
311 includes the establishment of standards and the issuance of  
312 licenses for the practice of a profession within the State of  
313 Mississippi.

314           **SECTION 6.** This act shall take effect and be in force from  
315 and after July 1, 2005.