

By: Senator(s) Chaney

To: Judiciary, Division A

SENATE BILL NO. 2401

1 AN ACT TO AMEND SECTION 7-7-211, MISSISSIPPI CODE OF 1972, TO
2 CLARIFY THE AUTHORITY OF THE STATE AUDITOR TO AUDIT PUBLIC FUNDS
3 FLOWING INTO NONPROFIT CORPORATIONS; 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 as promulgated by nationally recognized professional
12 organizations and to consult with the State Fiscal Officer in the
13 prescription and implementation of accounting rules and
14 regulations;

15 (b) To prescribe, for all public offices of regional
16 and local subdivisions of the state, systems of accounting,
17 budgeting and reporting financial facts relating to said offices
18 in conformity with legal requirements and with generally accepted
19 accounting principles as promulgated by nationally recognized
20 professional organizations; to assist such subdivisions in need of
21 assistance in the installation of such systems; to revise such
22 systems when deemed necessary, and to report to the Legislature at
23 periodic times the extent to which each office is maintaining such
24 systems, along with such recommendations to the Legislature for
25 improvement as seem desirable;

26 (c) To study and analyze existing managerial policies,
27 methods, procedures, duties and services of the various state

28 departments and institutions upon written request of the Governor,
29 the Legislature or any committee or other body empowered by the
30 Legislature to make such request to determine whether and where
31 operations can be eliminated, combined, simplified and improved;

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

40 (e) To postaudit and, when deemed necessary, preaudit
41 and investigate separately the financial affairs of (i) the
42 offices, boards and commissions of county governments and any
43 departments and institutions thereof and therein; (ii) public
44 school districts, departments of education and junior college
45 districts; and (iii) any other local offices or agencies which
46 share revenues derived from taxes or fees imposed by the State
47 Legislature or receive grants from revenues collected by
48 governmental divisions of the state; the cost of such audits,
49 investigations or other services to be paid as follows: Such part
50 shall be paid by the state from appropriations made by the
51 Legislature for the operation of the State Department of Audit as
52 may exceed the sum of One Hundred Dollars (\$100.00) per day for
53 the services of each staff person engaged in performing the audit
54 or other service, which sum shall be paid by the county, district,
55 department, institution or other agency audited out of its general
56 fund or any other available funds from which such payment is not
57 prohibited by law;

58 (f) To postaudit and, when deemed necessary, preaudit
59 and investigate the financial affairs of the levee boards;
60 agencies created by the Legislature or by executive order of the

61 Governor; profit or nonprofit business entities administering
62 programs financed by funds flowing through the State Treasury or
63 through any of the agencies of the state, or its subdivisions; and
64 all other public bodies supported by funds derived in part or
65 wholly from public funds, except municipalities which annually
66 submit an audit prepared by a qualified certified public
67 accountant using methods and procedures prescribed by the
68 department;

69 (g) To make written demand, when necessary, for the
70 recovery of any amounts representing public funds improperly
71 withheld, misappropriated and/or otherwise illegally expended by
72 an officer, employee or administrative body of any state, county
73 or other public office, and/or for the recovery of the value of
74 any public property disposed of in an unlawful manner by a public
75 officer, employee or administrative body, such demands to be made
76 (i) upon the person or persons liable for such amounts and upon
77 the surety on official bond thereof, and/or (ii) upon any
78 individual, partnership, corporation or association to whom the
79 illegal expenditure was made or with whom the unlawful disposition
80 of public property was made, if such individual, partnership,
81 corporation or association knew or had reason to know through the
82 exercising of reasonable diligence that the expenditure was
83 illegal or the disposition unlawful. Such demand shall be
84 premised on competent evidence, which shall include at least one
85 (1) of the following: (i) sworn statements, (ii) written
86 documentation, (iii) physical evidence, or (iv) reports and
87 findings of government or other law enforcement agencies. Other
88 provisions notwithstanding, a demand letter issued pursuant to
89 this subsection shall remain confidential by the State Auditor
90 until the individual against whom the demand letter is being filed
91 has been served with a copy of such demand letter. If, however,
92 such individual cannot be notified within fifteen (15) days using
93 reasonable means and due diligence, such notification shall be

94 made to the individual's bonding company, if he or she is bonded.
95 Each such demand shall be paid into the proper treasury of the
96 state, county or other public body through the office of the
97 department in the amount demanded within thirty (30) days from the
98 date thereof, together with interest thereon in the sum of one
99 percent (1%) per month from the date such amount or amounts were
100 improperly withheld, misappropriated and/or otherwise illegally
101 expended. In the event, however, such person or persons or such
102 surety shall refuse, neglect or otherwise fail to pay the amount
103 demanded and the interest due thereon within the allotted thirty
104 (30) days, the State Auditor shall have the authority and it shall
105 be his duty to institute suit, and the Attorney General shall
106 prosecute the same in any court of the state to the end that there
107 shall be recovered the total of such amounts from the person or
108 persons and surety on official bond named therein; and the amounts
109 so recovered shall be paid into the proper treasury of the state,
110 county or other public body through the State Auditor. In any
111 case where written demand is issued to a surety on the official
112 bond of such person or persons and the surety refuses, neglects or
113 otherwise fails within one hundred twenty (120) days to either pay
114 the amount demanded and the interest due thereon or to give the
115 State Auditor a written response with specific reasons for
116 nonpayment, then the surety shall be subject to a civil penalty in
117 an amount of twelve percent (12%) of the bond, not to exceed Ten
118 Thousand Dollars (\$10,000.00), to be deposited into the State
119 General Fund;

120 (h) To investigate any alleged or suspected violation
121 of the laws of the state by any officer or employee of the state,
122 county or other public office in the purchase, sale or the use of
123 any supplies, services, equipment or other property belonging
124 thereto; and in such investigation to do any and all things
125 necessary to procure evidence sufficient either to prove or
126 disprove the existence of such alleged or suspected violations.

127 The Department of Investigation of the State Department of Audit
128 may investigate, for the purpose of prosecution, any suspected
129 criminal violation of the provisions of this chapter. For the
130 purpose of administration and enforcement of this chapter, the
131 enforcement employees of the Department of Investigation of the
132 State Department of Audit have the powers of a law enforcement
133 officer of this state, and shall be empowered to make arrests and
134 to serve and execute search warrants and other valid legal process
135 anywhere within the State of Mississippi. All enforcement
136 employees of the Department of Investigation of the State
137 Department of Audit hired on or after July 1, 1993, shall be
138 required to complete the Law Enforcement Officers Training Program
139 and shall meet the standards of the program;

140 (i) To issue subpoenas, with the approval of, and
141 returnable to, a judge of a chancery or circuit court, in termtime
142 or in vacation, to examine the records, documents or other
143 evidence of persons, firms, corporations or any other entities
144 insofar as such records, documents or other evidence relate to
145 dealings with any state, county or other public entity. The
146 circuit or chancery judge must serve the county in which the
147 records, documents or other evidence is located; or where all or
148 part of the transaction or transactions occurred which are the
149 subject of the subpoena;

150 (j) In any instances in which the State Auditor is or
151 shall be authorized or required to examine or audit, whether
152 preaudit or postaudit, any books, ledgers, accounts or other
153 records of the affairs of any public hospital owned or owned and
154 operated by one or more political subdivisions or parts thereof or
155 any combination thereof, or any school district, including
156 activity funds thereof, it shall be sufficient compliance
157 therewith, in the discretion of the State Auditor, that such
158 examination or audit be made from the report of any audit or other
159 examination certified by a certified public accountant and

160 prepared by or under the supervision of such certified public
161 accountant. Such audits shall be made in accordance with
162 generally accepted standards of auditing, with the use of an audit
163 program prepared by the State Auditor, and final reports of such
164 audits shall conform to the format prescribed by the State
165 Auditor. All files, working papers, notes, correspondence and all
166 other data compiled during the course of the audit shall be
167 available, without cost, to the State Auditor for examination and
168 abstracting during the normal business hours of any business day.
169 The expense of such certified reports shall be borne by the
170 respective hospital, or any available school district funds other
171 than minimum program funds, subject to examination or audit. The
172 State Auditor shall not be bound by such certified reports and
173 may, in his or their discretion, conduct such examination or audit
174 from the books, ledgers, accounts or other records involved as may
175 be appropriate and authorized by law;

176 (k) The State Auditor shall have the authority to
177 contract with qualified public accounting firms to perform
178 selected audits required in subsections (d), (e) and (f) of this
179 section, if funds are made available for such contracts by the
180 Legislature, or if funds are available from the governmental
181 entity covered by subsections (d), (e) and (f). Such audits shall
182 be made in accordance with generally accepted standards of
183 auditing, with the use of an audit program prepared by the State
184 Auditor, and final reports of such audits shall conform to the
185 format prescribed by the State Auditor. All files, working
186 papers, notes, correspondence and all other data compiled during
187 the course of the audit shall be available, without cost, to the
188 State Auditor for examination and abstracting during the normal
189 business hours of any business day;

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

193 jurisdiction of the Office of the State Auditor. The training
194 courses and programs shall include, but not be limited to, topics
195 on internal control of funds, property and equipment control and
196 inventory, governmental accounting and financial reporting, and
197 internal auditing. The State Auditor is authorized to charge a
198 fee from the participants of these courses and programs, which fee
199 shall be deposited into the Department of Audit Special Fund.
200 State and local governmental entities are authorized to pay such
201 fee and any travel expenses out of their general funds or any
202 other available funds from which such payment is not prohibited by
203 law;

204 (m) Upon written request by the Governor or any member
205 of the State Legislature, or on his own motion, the State Auditor
206 may audit any state funds, state and federal funds, or funds, if
207 in excess of One Thousand Dollars (\$1,000.00), of a political
208 subdivision of the state that are received by any nonprofit
209 corporation incorporated under the laws of this state; the
210 authority granted by this paragraph shall be in addition to any
211 other authority granted under this section, including, but not
212 limited to, paragraph (f) of this section;

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

217 (o) To annually postaudit the Chickasawhay Natural Gas
218 District. The Department of Audit shall charge the Chickasawhay
219 Natural Gas District, audited by the authority of this paragraph,
220 the sum of Thirty Dollars (\$30.00) per hour for each hour of staff
221 time devoted to the auditing of the district. The Chickasawhay
222 Natural Gas District shall pay for the audit fees from any sums
223 available to the district for its general operations.

224 **SECTION 2.** This act shall take effect and be in force from
225 and after its passage.