MISSISSIPPI LEGISLATURE REGULAR SESSION 2021

By: Representative Turner To: Appropriations

# HOUSE BILL NO. 1256

AN ACT TO AMEND SECTION 7-7-213, MISSISSIPPI CODE OF 1972, TO INCREASE THE FEE TO BE CHARGED BY THE STATE AUDITOR FOR PERFORMING AUDITS AND OTHER SERVICES; TO AMEND SECTION 7-7-211, MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PRECEDING SECTION; AND FOR RELATED PURPOSES.

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

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

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

Fifty Dollars ($50.00) per man-hour plus the actual cost of any independent specialist firm contracted by the State Auditor to assist in the performance of the audit. Costs paid for independent specialists or firms contracted by the State Auditor shall be paid by the audited entity * * * to the specialist or firm conducting the audit as determined by the State Auditor. In the event of failure by any unit of government to pay the charges authorized herein, the Department of Audit shall notify the State Fiscal Officer, and upon a determination that the charges are substantially correct, the State Fiscal Officer shall notify the defaulting unit of his determination. If payment is not made within thirty (30) days after such notification, the State Fiscal Officer shall notify the State Treasurer and Department of Public Accounts that no further warrants are to be issued to the defaulting unit until the deficiency is paid.

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

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

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

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

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

(b) To provide best practices, for all public offices of regional and local subdivisions of the state, systems of accounting, budgeting and reporting financial facts relating to said offices in conformity with legal requirements and with generally accepted accounting principles or other accounting principles as promulgated by nationally recognized professional organizations; to assist such subdivisions in need of assistance in the installation of such systems; to revise such systems when

deemed necessary, and to report to the Legislature at periodic times the extent to which each office is maintaining such systems, along with such recommendations to the Legislature for improvement as seem desirable;

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

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

(e) To postaudit and, when deemed necessary, preaudit and investigate separately the financial affairs of (i) the offices, boards and commissions of county governments and any departments and institutions thereof and therein; (ii) public school districts, departments of education and junior college districts; and (iii) any other local offices or agencies which

share revenues derived from taxes or fees imposed by the State Legislature or receive grants from revenues collected by governmental divisions of the state; the cost of such audits, investigations or other services * * * shall be paid * * * in accordance with Section 7-7-213. Costs paid for independent specialists or firms contracted by the State Auditor shall be paid by the audited entity * * * to the specialist or firm conducting the postaudit as determined by the State Auditor.

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

(f) To postaudit and, when deemed necessary, preaudit and investigate the financial affairs of the levee boards; agencies created by the Legislature or by executive order of the Governor; profit or nonprofit business entities administering programs financed by funds flowing through the State Treasury or

through any of the agencies of the state, or its subdivisions; and all other public bodies supported by funds derived in part or wholly from public funds, except municipalities which annually submit an audit prepared by a qualified certified public accountant using methods and procedures prescribed by the department;

(g) To make written demand, when necessary, for the recovery of any amounts representing public funds improperly withheld, misappropriated and/or otherwise illegally expended by an officer, employee or administrative body of any state, county or other public office, and/or for the recovery of the value of any public property disposed of in an unlawful manner by a public officer, employee or administrative body, such demands to be made (i) upon the person or persons liable for such amounts and upon the surety on official bond thereof, and/or (ii) upon any individual, partnership, corporation or association to whom the illegal expenditure was made or with whom the unlawful disposition of public property was made, if such individual, partnership, corporation or association knew or had reason to know through the exercising of reasonable diligence that the expenditure was illegal or the disposition unlawful. Such demand shall be premised on competent evidence, which shall include at least one (1) of the following: (i) sworn statements, (ii) written documentation, (iii) physical evidence, or (iv) reports and findings of government or other law enforcement agencies. Other

provisions notwithstanding, a demand letter issued pursuant to this paragraph shall remain confidential by the State Auditor until the individual against whom the demand letter is being filed has been served with a copy of such demand letter. If, however, such individual cannot be notified within fifteen (15) days using reasonable means and due diligence, such notification shall be made to the individual's bonding company, if he or she is bonded. Each such demand shall be paid into the proper treasury of the state, county or other public body through the office of the department in the amount demanded within thirty (30) days from the date thereof, together with interest thereon in the sum of one percent (1%) per month from the date such amount or amounts were improperly withheld, misappropriated and/or otherwise illegally expended. In the event, however, such person or persons or such surety shall refuse, neglect or otherwise fail to pay the amount demanded and the interest due thereon within the allotted thirty (30) days, the State Auditor shall have the authority and it shall be his duty to institute suit, and the Attorney General shall prosecute the same in any court of the state to the end that there shall be recovered the total of such amounts from the person or persons and surety on official bond named therein; and the amounts so recovered shall be paid into the proper treasury of the state, county or other public body through the State Auditor. In any case where written demand is issued to a surety on the official bond of such person or persons and the surety refuses, neglects or

otherwise fails within one hundred twenty (120) days to either pay the amount demanded and the interest due thereon or to give the State Auditor a written response with specific reasons for nonpayment, then the surety shall be subject to a civil penalty in an amount of twelve percent (12%) of the bond, not to exceed Ten Thousand Dollars ($10,000.00), to be deposited into the State General Fund;

(h) To investigate any alleged or suspected violation of the laws of the state by any officer or employee of the state, county or other public office in the purchase, sale or the use of any supplies, services, equipment or other property belonging thereto; and in such investigation to do any and all things necessary to procure evidence sufficient either to prove or disprove the existence of such alleged or suspected violations. The * * * Division of Investigation of the State Department of Audit may investigate, for the purpose of prosecution, any suspected criminal violation of the provisions of this chapter. For the purpose of administration and enforcement of this chapter, the enforcement employees of the * * * Division of Investigation of the State Department of Audit have the powers of a law enforcement officer of this state, and shall be empowered to make arrests and to serve and execute search warrants and other valid legal process anywhere within the State of Mississippi. All enforcement employees of the * * * Division of Investigation of the State Department of Audit hired on or after July 1, 1993,

shall be required to complete the Law Enforcement Officers Training Program and shall meet the standards of the program;

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

(j) In any instances in which the State Auditor is or shall be authorized or required to examine or audit, whether preaudit or postaudit, any books, ledgers, accounts or other records of the affairs of any public hospital owned or owned and operated by one or more political subdivisions or parts thereof or any combination thereof, or any school district, including activity funds thereof, it shall be sufficient compliance therewith, in the discretion of the State Auditor, that such examination or audit be made from the report of any audit or other examination certified by a certified public accountant and prepared by or under the supervision of such certified public accountant. Such audits shall be made in accordance with generally accepted standards of auditing, with the use of an audit

program prepared by the State Auditor, and final reports of such audits shall conform to the format prescribed by the State Auditor. All files, working papers, notes, correspondence and all other data compiled during the course of the audit shall be available, without cost, to the State Auditor for examination and abstracting during the normal business hours of any business day. The expense of such certified reports shall be borne by the respective hospital, or any available school district funds other than minimum program funds, subject to examination or audit. The State Auditor shall not be bound by such certified reports and may *** * *** conduct such examination or audit from the books, ledgers, accounts or other records involved as may be appropriate and authorized by law;

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

(l) The State Auditor shall have the authority to establish training courses and programs for the personnel of the various state and local governmental entities under the jurisdiction of the Office of the State Auditor. The training courses and programs shall include, but not be limited to, topics on internal control of funds, property and equipment control and inventory, governmental accounting and financial reporting, and internal auditing. The State Auditor is authorized to charge a fee from the participants of these courses and programs, which fee shall be deposited into the Department of Audit Special Fund. State and local governmental entities are authorized to pay such fee and any travel expenses out of their general funds or any other available funds from which such payment is not prohibited by law;

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

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

(o) At the discretion of the State Auditor, the Auditor may conduct risk assessments, as well as performance and compliance audits based on Generally Accepted Government Auditing

Standards (GAGAS) of any state-funded economic development program authorized under Title 57, Mississippi Code of 1972. After risk assessments or program audits, the State Auditor may conduct audits of those projects deemed high-risk, specifically as they identify any potential wrongdoing or noncompliance based on objectives of the economic development program. The Auditor is granted authority to gather, audit and review data and information from the Mississippi Development Authority or any of its agents, the Department of Revenue, and when necessary under this paragraph, the recipient business or businesses or any other private, public or nonprofit entity with information relevant to the audit project. The maximum amount the State Auditor may bill the oversight agency under this paragraph in any fiscal year is One Hundred Thousand Dollars ($100,000.00), based on reasonable and necessary expenses;

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

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

**SECTION 3.** This act shall take effect and be in force from and after July 1, 2021.