

1 HB364
2 207395-1
3 By Representative Sorrell
4 RFD: State Government
5 First Read: 09-FEB-21

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8 SYNOPSIS: Under existing law, the office of State
9 Auditor is an elected position in the executive
10 branch responsible for monitoring the accounts and
11 records of the Department of Finance and the State
12 Treasurer and maintaining property records of all
13 state owned, non-consumable property.

14 Also under existing law, the Department of
15 Examiners of Public Accounts is an agency within
16 the legislative branch, under the direction of a
17 Chief Examiner of Public Accounts who is appointed
18 by the Legislative Committee on Public Accounts and
19 is responsible for examining and auditing the
20 books, accounts, and records of all state and
21 county offices, officers, bureaus, boards,
22 commissioners, corporations, departments, and other
23 agencies.

24 This bill would establish the Department of
25 Examiners of Public Accounts as a division of the
26 office of State Auditor, would provide that the
27 State Auditor assume the responsibilities and

1 powers of the chief examiner, and would provide for
2 the transfer of all functions and all employees of
3 the department to the division.

4 Amendment 621 of the Constitution of Alabama
5 of 1901, now appearing as Section 111.05 of the
6 Official Recompilation of the Constitution of
7 Alabama of 1901, as amended, prohibits a general
8 law whose purpose or effect would be to require a
9 new or increased expenditure of local funds from
10 becoming effective with regard to a local
11 governmental entity without enactment by a 2/3 vote
12 unless: it comes within one of a number of
13 specified exceptions; it is approved by the
14 affected entity; or the Legislature appropriates
15 funds, or provides a local source of revenue, to
16 the entity for the purpose.

17 The purpose or effect of this bill would be
18 to require a new or increased expenditure of local
19 funds within the meaning of the amendment. However,
20 the bill does not require approval of a local
21 governmental entity or enactment by a 2/3 vote to
22 become effective because it comes within one of the
23 specified exceptions contained in the amendment.

24
25 A BILL
26 TO BE ENTITLED
27 AN ACT

1
2 Relating to the State Auditor; to designate existing
3 Chapter 16 of Title 36, consisting of Sections 36-16-1 to
4 36-16-11, inclusive, Code of Alabama 1975, as Article 1; to
5 amend Section 36-16-1, Code of Alabama 1975, relating to the
6 duties of the State Auditor; to add Article 2, to Chapter 16,
7 Title 36, commencing with Section 36-16-20, Code of Alabama
8 1975; to transfer all functions, duties, responsibilities,
9 powers, funds, papers, and property of the Chief Examiner of
10 Public Accounts to the State Auditor; to transfer all
11 functions, duties, responsibilities, powers, funds, papers,
12 and property of the Department of Examiners of Public Accounts
13 to the Division of Examiners of Public Accounts within the
14 office of State Auditor; to repeal Chapter 5A, Title 41,
15 consisting of Sections 41-5A-1 to 41-5A-23, inclusive, Code of
16 Alabama 1975, relating to the existing Chief Examiner and
17 Department of Examiners of Public Accounts, and the creation
18 and operation of the Legislative Committee on Public Accounts;
19 and in connection therewith would have as its purpose or
20 effect the requirement of a new or increased expenditure of
21 local funds within the meaning of Amendment 621 of the
22 Constitution of Alabama of 1901, now appearing as Section
23 111.05 of the Official Recompilation of the Constitution of
24 Alabama of 1901, as amended.

25 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. Chapter 16, consisting of Sections
2 36-16-1 to 36-16-11, is designated as Article 1 of Chapter 16
3 of Title 36 of the Code of Alabama 1975, as follows:

4 ARTICLE 1. GENERAL PROVISIONS.

5 Section 2. Section 36-16-1 of the Code of Alabama
6 1975, is amended to read as follows:

7 "§36-16-1.

8 "The ~~sole~~ powers, functions, and duties of the State
9 Auditor shall ~~be as follows~~ include all of the following:

10 "(1) Those enumerated in the constitution~~;~~.

11 "(2) The keeping of a seal with the devise, "The
12 State of Alabama, Auditor's Office;".

13 "~~(3) If the Treasurer, in the event of his~~
14 ~~resignation or removal, fails to comply with the provisions of~~
15 ~~this code, or if he dies or absconds, the stating of his~~
16 ~~account in the presence of any person attending on the part of~~
17 ~~such late Treasurer and the delivering of the books, papers~~
18 ~~and moneys belonging to the Treasury to his successor, taking~~
19 ~~his receipt for the same, and recording and filing such~~
20 ~~receipts and statement and reporting the same to the next~~
21 Legislature; In the event the State Treasurer resigns or is
22 removed from office, fails to comply with this code, or dies
23 or leaves office for any reason, the State Auditor shall
24 deliver the books, papers, and monies belonging to the State
25 Treasurer to his or her successor, recording and filing any
26 receipts and statements relating to the transfer, and shall

1 submit a comprehensive report on the transfer to the
2 Legislature during the next legislative session.

3 "(4) The postauditing of the accounts and records of
4 the Department of Finance and the State Treasurer~~7~~.

5 "(5) The serving on the boards and commissions of
6 which he or she is by law an ex officio member~~7~~~~and~~.

7 "(6) The making of a full and complete report to the
8 Governor at the close of each fiscal year showing the audited
9 receipts and disbursements of the government for the last
10 completed fiscal year, as required by the constitution and as
11 shown by the records and documents in the office of the
12 Department of Finance~~7~~~~which records shall be audited by him~~.
13 The report shall also include the results of his or her audit
14 of all taxes and revenues collected and paid into the Treasury
15 and shall give the results of all other audits made by him or
16 her. The report shall be printed and bound with, and as a part
17 of, the annual financial report of the state prepared by the
18 Department of Finance. The State Auditor shall make additional
19 reports ~~oftener~~ upon, and matters pertaining to, ~~his~~ the
20 office if required by the Governor or the Legislature.

21 "(7) Commencing on October 1, 2023, the assumption
22 and performance of all functions, responsibilities, powers,
23 and duties of the Chief Examiner of Public Accounts and the
24 Department of Examiners of Public Accounts as constituted
25 pursuant to Chapter 5A of Title 41, which is repealed. All
26 funds, papers, and property of the Department of Examiners of
27 Public Accounts, as constituted before October 1, 2023, shall

1 be transferred to the ownership and control of the office of
2 the State Auditor, to maintain and use in continuance of the
3 functions of the Department of Examiners of Public Accounts as
4 the Division of Examiners of Public Accounts in the office of
5 the State Auditor."

6 Section 3. Article 2, commencing with Section
7 36-16-20, is added to Chapter 16 of Title 36 of the Code of
8 Alabama 1975, as follows:

9 ARTICLE 2. DIVISION OF EXAMINERS OF PUBLIC ACCOUNTS.

10 §36-16-20.

11 (a) There is created within the office of State
12 Auditor the Division of Examiners of Public Accounts, composed
13 of the former Department of Examiners of Public Accounts and
14 any additional subdivisions or units the State Auditor
15 determines to be necessary.

16 (b) The principal office of the division shall be
17 located in Montgomery, Alabama, but the division may conduct
18 examinations and audits and establish offices throughout the
19 state.

20 (c) The affairs of the division shall be
21 administered by the State Auditor.

22 (d) Any reference in this title or code to the Chief
23 Examiner of Public Accounts or to the Chief Examiner of the
24 Department of Examiners of Public Accounts shall be deemed a
25 reference to the State Auditor.

26 §36-16-21.

1 (a) The State Auditor shall be the executive and
2 administrative head of the Division of Examiners of Public
3 Accounts and shall have the power and duty to do all of the
4 following:

5 (1) Exercise general supervision of and adopt rules
6 for the governance of the division.

7 (2) Prescribe uniform rules pertaining to
8 investigations, examinations, audits, and divisional hearings.

9 (3) Supervise the fiscal affairs and
10 responsibilities of the division.

11 (4) Appoint and remove the staff, officers, and
12 employees of the division, subject to the Merit System Act and
13 the rules issued pursuant thereto.

14 (5) Keep an accurate and complete record of all
15 proceedings of the division; record and file all bonds,
16 reports, and other documents; and assume responsibility for
17 the custody and preservation of all papers and documents of
18 the division.

19 (6) Make recommendations and an annual report to the
20 Governor concerning the condition, operation, functioning, and
21 findings of the division.

22 (7) Invoke any legal, equitable, or special remedy
23 for the enforcement of orders or this article.

24 (8) Notwithstanding any other law to the contrary,
25 exercise any other power necessary to expedite the making of
26 thorough and accurate audits of the accounts of all
27 individuals or entities receiving or disbursing public funds.

1 (9) Examine and audit the books, accounts, and
2 records of all state and county offices, officers, bureaus,
3 authorities, boards, commissions, corporations, departments,
4 and agencies.

5 (10) a. Prepare, in consultation with the
6 Association of County Commissions of Alabama, except with
7 respect to county boards of education, bookkeeping,
8 accounting, and reporting systems, procedures, records, and
9 forms as may be necessary to install a uniform system of
10 accounting and reporting in the various county offices. This
11 paragraph does not authorize the Division of Examiners of
12 Public Accounts to prescribe specific accounting software to
13 be utilized in various county offices.

14 b. Prepare bookkeeping, accounting, and reporting
15 systems, procedures, records, and forms as may be necessary to
16 install a uniform system of accounting and reporting in the
17 various state offices.

18 (11) Report to the Governor and the Contract Review
19 Permanent Legislative Oversight Committee every expenditure or
20 contract found to have been made in violation of law.

21 (12) Prepare, for use by the county boards of
22 education, bookkeeping, accounting, and reporting systems,
23 procedures, records, and forms necessary for the installation
24 of a uniform system of accounting and reporting by the several
25 county boards of education; install the bookkeeping,
26 accounting, and reporting systems for the county boards of

1 education; and exercise and maintain continuing supervision
2 thereof.

3 (13) Prepare and furnish to the chairs of the county
4 commissions of the several counties of the state a fiscal
5 statement of each county, as of the end of each fiscal year,
6 the statement showing receipts, disbursements, outstanding
7 indebtedness, and securities owned of and by each of the
8 several counties.

9 (b) All powers and duties vested in the State
10 Auditor may be delegated to his or her appointed assistants,
11 staff, deputies, and employees, but the State Auditor shall be
12 responsible for their actions.

13 §36-16-22.

14 (a) For the purposes of this section, the following
15 words have the following meanings:

16 (1) OVERPAYMENT. Any payment in excess of amounts
17 due and includes failure to meet eligibility requirements,
18 failure to identify third party liability where applicable,
19 any payment for an ineligible good or service, any payment for
20 a good or service not received, duplicate payments, invoice
21 and pricing errors, failure to apply discounts, rebates, or
22 other allowances, failure to comply with contracts or
23 purchasing agreements, or both, failure to provide adequate
24 documentation or necessary signatures, or both, on documents,
25 or any other inadvertent error resulting in overpayment.

26 (2) RECOVERY AUDIT. A financial management technique
27 used to identify overpayments made by a state agency with

1 respect to individuals, vendors, service providers, and other
2 entities in connection with a payment activity.

3 (3) RECOVERY AUDITOR. A private contractor with
4 recovery audit expertise.

5 (4) STATE AGENCY. A department, office, board,
6 authority, commission, bureau, division, institution, state
7 institution of higher education of this state, or any other
8 state entity that makes payments of state funds.

9 (b) The State Auditor may contract with recovery
10 auditors to conduct and perform recovery audits of payments
11 made by state agencies to individuals, vendors, service
12 providers, and other entities. Any audit conducted pursuant to
13 this subsection of any payment made by a state agency to an
14 electric utility regulated by the Public Service Commission is
15 limited to the three-year period following the date of the
16 payment to be audited. All other audits conducted pursuant to
17 this subsection shall be limited to the two-year period
18 following the date of the payment to be audited. Overpayments
19 between one state agency and another state agency are not
20 subject to recovery under this section. Any contract shall be
21 entered into in accordance with the purchasing provisions of
22 the state. The contracts may provide for reasonable
23 compensation for services provided under the contract,
24 including compensation determined by the application of a
25 specified percentage of the total amount recovered because of
26 the recovery auditor's audit activities. In no event shall the
27 compensation to a recovery auditor exceed 15 percent of the

1 amount recovered because of the recovery auditor's audit
2 activities. A recovery audit of a payment may not be made
3 within 90 days of the date of the payment. No payment shall be
4 due a recovery auditor from any payment identified as an
5 overpayment until the overpayment has been recovered and
6 credited to the special fund established in this section.

7 (c) (1) A state agency whose payments are being
8 audited under a recovery contract pursuant to this section
9 shall provide a recovery auditor with any payment-related
10 information as determined by the State Auditor, including any
11 confidential information that is necessary for the performance
12 of the audit or the recovery audit of an overpayment, to the
13 extent the agency is not prohibited from sharing the
14 information under an agreement with another state or the
15 federal government.

16 (2) A recovery audit shall be complementary to any
17 other financial management process and shall not supplant any
18 existing or future state audit or program integrity activity
19 by a state agency.

20 (3) A recovery auditor acting under a contract
21 authorized by this section, and each employee or agent of the
22 recovery auditor, is subject to all prohibitions against the
23 disclosure of confidential information obtained from the state
24 in connection with the contract that applies to any official
25 or employee of the applicable state agency. A recovery auditor
26 acting under a contract authorized by this section or an
27 employee or agent of the recovery auditor who discloses

1 confidential information in violation of a prohibition made
2 applicable to the recovery auditor under this section is
3 subject to prosecution by the Attorney General in any court
4 within this state.

5 (d) (1) Recovery audits shall be performed on
6 payments to individuals, vendors, service providers, and other
7 entities made by each state agency as determined by the State
8 Auditor. Notwithstanding the foregoing, the recovery audits
9 provided for in this section shall not be performed on any
10 entity, vendor, or service provider that is subject to audits
11 under the federally mandated Recovery Audit Contractor Program
12 adopted by the Alabama Medicaid Agency under Section 1902(a)
13 (42) of the Social Security Act, as amended.

14 (2) Recovery audits performed on individuals,
15 vendors, service providers, and other entities are limited to
16 the three-year period following the date of the payment to be
17 audited. A recovery audit shall be completed within 12 months
18 after notification to the entity that a recovery audit will be
19 performed.

20 (3) Based on a request by the recovery auditor, the
21 State Auditor, for good cause shown, may provide one extension
22 of the time to complete a recovery audit not to exceed 60
23 days. A recovery auditor shall make the request for an
24 extension in writing setting forth the circumstances
25 necessitating the extension not less than 30 days prior to the
26 expiration of the 12-month period and shall deliver a copy of
27 the request to the subject of the recovery audit.

1 (4) Recovery audits that utilize sample analysis
2 shall be performed in accordance with generally accepted
3 industry standards for determining statistically valid
4 sampling techniques and sampling periods. An audit period
5 cannot be reopened after the initial audit is completed. An
6 audit's sample size should be mutually determined by the
7 participating parties before the audit commences.

8 (e) (1) A special fund is established within the
9 State Treasury for the deposit of all funds generated from
10 recovery audits conducted pursuant to this section after
11 payment to the Division of Examiners of Public Accounts for
12 actual costs of time and effort devoted to the recovery audit
13 as determined by the State Auditor and of any percentages due
14 under the contract to perform the audit. Amounts due a federal
15 agency by a state agency as a result of a recovery audit shall
16 be disbursed from the fund after certification by the agency
17 of the amount due and verification of the amount by the State
18 Auditor. Any amounts recovered that were appropriated for
19 funds constitutionally earmarked shall be appropriated in
20 accordance with law. Any amounts remaining in the fund shall
21 be subject to expenditure for any lawful purpose through
22 appropriation by the Legislature.

23 (2) A state agency audited under this section shall
24 compute the amount of federal money due the federal government
25 from any federal money that is recovered through the audit.
26 The state agency shall compute the amount due in accordance

1 with the rules of the federal program through which the agency
2 received the federal money.

3 (f) Recovery audit reports shall be public records
4 and released by the State Auditor in accordance with normal
5 report release procedures. Copies shall be available in
6 electronic form on the website of the division, if
7 independently maintained, or as made part of the website of
8 the State Auditor and identified as a report of the division.

9 (g) If the entity audited by the recovery auditor
10 disagrees with the results or report of the recovery audit,
11 the entity and the state may agree to arbitration of the
12 dispute pursuant to Division 1 of Article 1 of Chapter 6 of
13 Title 6. The compensation of the arbitrators and the cost of
14 the arbitration shall be paid by the entity audited and the
15 recovery auditor in amounts that are in proportion to the
16 ruling of the arbitrators regarding the correctness of the
17 recovery auditor's report on an overpayment. This subsection
18 does not limit or restrict the powers of the Division of
19 Examiners of Public Accounts or the Attorney General to
20 recover any overpayment.

21 §36-16-23.

22 (a) The State Auditor may delegate to a deputy chief
23 examiner authority to perform any duties the State Auditor may
24 prescribe. The State Auditor is responsible for all acts
25 delegated to the deputy chief examiner pursuant to this
26 subsection.

1 (b) (1) Subject to the requirement in subdivision
2 (2), the deputy chief examiner shall be selected with
3 consideration of his or her training, experience, capacity,
4 and fitness for the duties as deputy chief examiner.

5 (2) If the State Auditor is not a certified public
6 accountant licensed in this state, the deputy chief examiner
7 shall be a certified public accountant licensed in this state
8 with at least eight years of experience as a certified public
9 accountant or eight years of actual experience as an examiner
10 of public accounts.

11 (3) The deputy chief examiner shall be in the
12 unclassified service.

13 §36-16-24.

14 (a) The salary of the deputy chief examiner shall be
15 fixed by the State Auditor. The salary of the deputy chief
16 examiner is not subject to Section 36-6-6.

17 (b) The compensation for the deputy chief examiner
18 shall be paid out of funds appropriated to the office of the
19 State Auditor and in the same manner as salaries of other
20 officers and employees are paid.

21 §36-16-25.

22 (a) (1) The employees of the division shall be
23 members of the classified service of the Merit System unless
24 otherwise specified by law.

25 (2) An employee's failure to maintain technical or
26 professional qualifications shall be good cause for severance.

1 (b) The State Auditor shall appoint assistants,
2 deputies, and employees as may be necessary for the sufficient
3 operation of the division.

4 (c) The State Auditor may appoint three unclassified
5 subdivision or unit heads. The salaries of the subdivision or
6 unit heads shall be fixed by the State Auditor, and are not
7 subject to Section 36-6-6.

8 §36-16-26.

9 (a) The Attorney General and the district attorneys
10 of the several circuits shall render to the State Auditor,
11 without additional compensation, legal services as he or she
12 may request for the division.

13 (b) Whenever the legality of any payment or shortage
14 is involved in an examination, the State Auditor shall submit
15 the facts in writing to the Attorney General and request his
16 or her opinion as to the applicable law. The Attorney General
17 shall immediately provide a copy of each opinion affecting any
18 state or county officer in the collection or disbursement of
19 public funds to the officer affected to the State Auditor and
20 Governor.

21 §36-16-27.

22 (a) The State Auditor shall appoint a chief legal
23 counsel for the division pursuant to subsection (b) of Section
24 36-15-5.1.

25 (b) The chief legal counsel shall be of good
26 character and qualified by training and experience to perform
27 the duties of his or her office.

1 (c) The State Auditor may appoint two assistant
2 legal counsels for the division pursuant to subsection (b) of
3 Section 36-15-5.1, and may appoint additional assistant legal
4 counsels, as determined necessary by the State Auditor. The
5 assistant legal counsels for the division shall be
6 commissioned as assistant attorneys general, but shall devote
7 their entire time to the affairs of the division.

8 §36-16-28.

9 (a) (1) The books, records, vouchers, and accounts of
10 every state and county office, officer, bureau, board,
11 commission, corporation, institution, department, and agency
12 shall be examined and audited at least once every two years
13 and more frequently if deemed necessary by the State Auditor.

14 (2) The books, records, vouchers, and accounts of
15 any state and county office, officer, bureau, board,
16 commission, corporation, institution, department, and agency
17 shall be examined and audited upon a request by the Governor
18 or the Contract Review Permanent Legislative Oversight
19 Committee. Notwithstanding any other law to the contrary, the
20 books, records, vouchers, and accounts of municipal boards of
21 education or any state entity holding assets within or outside
22 this state or within or outside the State Treasury may be
23 examined and audited upon request of the Governor or the
24 Contract Review Permanent Legislative Oversight Committee.

25 (b) Examinations and audits required under this
26 article shall be made at the expense of the state, unless
27 otherwise provided by law.

1 (c) A person who knowingly makes any materially
2 false, fictitious, or fraudulent statement or representation
3 in any audit or in providing any information under this
4 article shall be guilty of a Class C felony.

5 (d) A state or county office, officer, bureau,
6 board, commission, corporation, institution, department, or
7 agency subject to audit or examination under this section may
8 not contract for or arrange to have an independent financial
9 audit unless the firm to provide the auditing services is
10 authorized and approved by the State Auditor. Any audit or
11 examination that is authorized by the State Auditor is subject
12 to review by the State Auditor prior to finalization of the
13 audit and public release. Notwithstanding the foregoing, this
14 subsection does not apply to an independent financial audit of
15 public pension funds or public health insurance plans as
16 otherwise authorized by law.

17 (e) An institution of higher education governed by a
18 board of trustees, in consultation with the State Auditor, may
19 select a firm to provide auditing services. Any audits
20 conducted are subject to review by the State Auditor.

21 §36-16-29.

22 (a) This section shall be known and may be cited as
23 the Municipal Audit Accountability Act.

24 (b) Any provision of law to the contrary
25 notwithstanding, if the Division of Examiners of Public
26 Accounts suspects fraud or mismanagement of funds by a

1 municipality, the division may examine the books, records,
2 vouchers, and accounts of the municipality.

3 (c) If the mayor of a municipality does not provide
4 for an audit or examination to be conducted on the
5 municipality as required by law, or when fraud or
6 mismanagement of funds by the municipality is suspected, a
7 majority of the members of the governing body of the
8 municipality, by resolution, may submit a written request to
9 the division for an examination by the division of the books,
10 records, vouchers, and accounts of the municipality. The
11 division, pursuant to a cursory review, shall determine
12 whether an in-depth audit by the division is necessary as
13 required by law or by evidence of fraud or mismanagement, and,
14 if warranted by the division, shall conduct a formal audit or
15 examination during the six month period following that
16 determination.

17 (d) If a municipality has an independent audit or
18 examination of the books, records, vouchers, and accounts of
19 the municipality conducted, the governing body of the
20 municipality, upon receipt of the final report of the
21 independent audit or examination, shall provide a copy of the
22 report to the division within 60 days after completion. The
23 division shall establish a repository of independent audit
24 reports received; provide, on a weekly basis, notice to the
25 public of reports received; and, upon request, provide copies
26 of reports received to the public.

1 (e) Any municipality in which the municipal officer
2 or municipal governing body fails or willfully refuses to have
3 a financial audit conducted, or to comply with subsection (d),
4 shall be subject to an audit by the division. The division
5 shall assess the costs of the audit against the municipality.
6 Before performing an audit under this subsection, the division
7 shall notify the municipality of its intent to perform an
8 audit. The municipality shall have 30 days from the date of
9 the notice to file a completed audit report or, if an audit is
10 currently pending, provide the division with the name and
11 address of the independent public accountant retained to
12 perform the audit and an estimated time for completion.

13 (f) If the division determines that a municipal
14 officer or municipal governing body has failed or willfully
15 refused to have a financial audit conducted or to comply with
16 subsection (e), unless the municipal officer or municipal
17 governing body can demonstrate to the division that it has
18 made a good faith effort to perform as required by this
19 section, the division shall levy a penalty of up to two
20 hundred fifty dollars (\$250) per week for each week the
21 failure or refusal continues. Any penalties imposed and
22 collected pursuant to this subsection shall be paid into the
23 State General Fund.

24 §36-16-30.

25 The State Auditor shall compile and make available
26 for distribution both of the following:

27 (1) The rules of the division.

1 (2) Other materials as the State Auditor deems
2 relevant and suitable for the effective administration of this
3 article.

4 §36-16-31.

5 (a) The State Auditor may issue subpoenas to compel
6 the attendance of witnesses and production of papers necessary
7 as evidence in connection with a dispute, claim, examination,
8 audit, or the administration of this article.

9 (b) In case a person refuses to comply with a
10 subpoena, the State Auditor may invoke the aid of any circuit
11 court with jurisdiction in order that the testimony or
12 evidence be produced. Upon proper showing, the court shall
13 issue a subpoena or order requiring the person to appear
14 before the State Auditor or his or her representative and
15 produce all evidence and give all testimony relating to the
16 matter at issue.

17 (c) A person failing to comply with an order may be
18 punished by the court for contempt.

19 §36-16-32.

20 The State Auditor, deputy chief examiner, chief
21 legal counsel, and deputy examiner may administer oaths, take
22 depositions, and certify official acts.

23 §36-16-33.

24 The division shall make a sworn report of its
25 findings within a reasonable time after an audit is completed.
26 The State Auditor shall certify one copy of each report to the
27 circuit judge of the county in which the office examined is

1 located. The judge shall refer to the report in his or her
2 next oral charge to the grand jury. The report shall be
3 entered in full upon the minutes of the court. The reports
4 shall be public records and prima facie evidence of what they
5 charge. Working papers used in the preparation of the reports
6 shall be subject to and treated as being under Section
7 12-16-216, and shall be subject to review by a court of
8 competent jurisdiction, and upon a substantiated request, may
9 be shared with the local district attorney, the Attorney
10 General, and the Ethics Commission. One copy of each report
11 shall be certified to the Governor.

12 §36-16-34.

13 (a) The State Auditor shall keep a docket in which
14 shall be entered, in favor of the state, county, or
15 municipality, as the case may be, cases against persons who
16 have not properly and lawfully accounted for all sums of money
17 coming into their hands as public officers, agents, or
18 employees. If an amount found to be due the state, county, or
19 other governmental unit or agency as a result of an
20 examination or audit is not settled upon demand by the
21 examiner, the State Auditor shall immediately issue notice to
22 the person in default and require him or her to appear on a
23 day certain and show cause why the amount due should not be
24 paid. If the defaulting officer fails to settle or to show
25 just cause why the amount due should not be collected, the
26 State Auditor shall certify the facts and the amount due the
27 state to the Attorney General, and the Attorney General shall

1 bring a civil action in the name of the state against the
2 officer and his or her bondsmen. If the amount due by the
3 officer is in favor of the county or municipality, then the
4 State Auditor shall certify to the district attorney of the
5 circuit the amount or amounts so due, and the district
6 attorney shall proceed to collect the amount by a civil action
7 against the officer and his or her bondsmen.

8 (b) (1) If an overpayment, as defined in Section
9 36-16-22, is discovered and a warrant on the State Treasury
10 has been issued in excess of the amount due to a state
11 employee, the appointing authority at the employing agency,
12 the Comptroller or the State Director of Personnel may compel
13 the employee to return the amount paid in error immediately
14 following the discovery of the error. The employee may return
15 the amount due in a lump sum or in a payment plan agreed to by
16 the employee and the entity seeking recovery of the
17 overpayment.

18 (2) If an amount found to be due is not settled upon
19 demand by the entity seeking recovery of the overpayment, the
20 employee shall immediately be issued notice requiring him or
21 her to appear on a day certain and show just cause why the
22 amount due should not be collected. If the employee fails to
23 settle or show just cause why the amount due should not be
24 collected, the entity seeking recovery of the overpayment
25 shall certify the facts and the amount due to the State
26 Auditor and the Attorney General. The Attorney General may

1 bring a civil action in the name of the state against the
2 employee.

3 (3) The Attorney General must notify the entity
4 seeking recovery of the overpayment of his or her intent not
5 to pursue civil action within 60 days of receiving the
6 certified facts, and the appointing authority at the employing
7 agency, the Comptroller or the State Director of Personnel may
8 instead bring a civil action in the name of the state against
9 the employee.

10 (4) Notwithstanding subdivisions (1) to (3),
11 inclusive, nothing in this section shall be construed to
12 infringe upon or circumvent any duties or powers of the State
13 Auditor, the Division of Examiners of Public Accounts, or the
14 Attorney General.

15 §36-16-35.

16 Every state and county officer shall keep the books,
17 records, and accounts and make the reports of his or her
18 office in accordance with the systems, procedures, and forms
19 as may be prescribed by the State Auditor pursuant to this
20 article. Any officer who fails or willfully refuses to comply
21 with this section shall be liable for a penalty of up to two
22 hundred fifty dollars (\$250) for each week the failure or
23 refusal continues. Penalties imposed and collected under this
24 section shall be paid into the General Fund.

25 §36-16-36.

26 All monies or funds received or collected by the
27 Division of Examiners of Public Accounts in the form of fees,

1 receipts, or income as a result of services rendered in
2 connection with municipal audits shall be transferred by the
3 division into the State Treasury to the credit of the General
4 Fund. All monies or funds received or collected by the
5 Division of Examiners of Public Accounts from the federal
6 government shall be deposited into a special fund in the State
7 Treasury, and these monies and funds are hereby appropriated
8 or reappropriated as necessary for the sole use of the
9 Division of Examiners of Public Accounts.

10 §36-16-37.

11 (a) The Division of the Examiners of Public Accounts
12 succeeds to and is vested with the powers, duties, and
13 functions of the Department of Examiners of Public Accounts.

14 (b) The officers and employees of the Department of
15 Examiners of Public Accounts shall be officers and employees
16 of the Division of Examiners of Public Accounts within the
17 office of State Auditor, without interruption of service or
18 loss of benefits.

19 (c) The property, funds, and records of the
20 Department of Examiners of Public Accounts are transferred to
21 the Division of Examiners of Public Accounts within the office
22 of the State Auditor.

23 (d) Any reference in any law to the Department of
24 Examiners of Public Accounts shall be deemed a reference to
25 the Division of Examiners of Public Accounts within the office
26 of the State Auditor.

1 Section 4. All laws or parts of laws which conflict
2 with this act are repealed and specifically Chapter 5A of
3 Title 41, consisting of Sections 41-5A-1 to 41-5A-23,
4 inclusive, Code of Alabama 1975, relating to the appointment
5 and qualifications of the chief examiner of public accounts,
6 the operations of the Department of Examiners of Public
7 Accounts, and the creation and operation of the Legislative
8 Committee on Public Accounts, is repealed.

9 Section 5. Although this bill would have as its
10 purpose or effect the requirement of a new or increased
11 expenditure of local funds, the bill is excluded from further
12 requirements and application under Amendment 621, now
13 appearing as Section 111.05 of the Official Recompilation of
14 the Constitution of Alabama of 1901, as amended, because the
15 bill defines a new crime or amends the definition of an
16 existing crime.

17 Section 6. This act shall become effective October
18 1, 2023, following its passage and approval by the Governor,
19 or its otherwise becoming law.