

1 HB350
2 156970-3
3 By Representatives Henry, Johnson (K), Collins, Chesteen,
4 Roberts, Buttram, Williams (D), Butler, Long, Baughn,
5 Hubbard (M), Weaver and Harper
6 RFD: Ways and Means General Fund
7 First Read: 22-JAN-14

8 SYNOPSIS: This bill would place the Department of
9 Examiners of Public Accounts within the Office of
10 State Auditor and would provide that the State
11 Auditor would assume the responsibilities and
12 powers of the Chief Examiner.
13

14 A BILL
15 TO BE ENTITLED
16 AN ACT
17

18 To amend Sections 36-16-1, 41-5-1, 41-5-3, 41-5-6,
19 41-5-6.1, 41-5-7, 41-5-8, and 41-5-10 of the Code of Alabama
20 1975, relating to the functions of the Department of Examiners
21 of Public Accounts and the Chief Examiner of the department;
22 and to repeal Sections 41-5-4, 41-5-5, 41-5-9, 41-5-18,
23 41-5-19, and 41-5-20, Code of Alabama 1975, to place the
24 department within the Office of State Auditor; and to provide
25 that the State Auditor shall perform the duties and assume the
26 authority of the Chief Examiner of the Department of Examiners
27 of Public Accounts.

1 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

2 Section 1. Section 36-16-1 of the Code of Alabama
3 1975, is amended to read as follows:

4 "§36-16-1.

5 "(a) The State Auditor shall perform the duties
6 prescribed by law for the State Auditor and shall perform the
7 duties and assume the authority of the Chief Examiner of the
8 Department of Examiners of Public Accounts.

9 "(b) The ~~sole~~ powers, functions and duties of the
10 Auditor shall be as follows:

11 "(1) Those enumerated in the constitution~~7.~~

12 "(2) The keeping of a seal with the devise, "The
13 State of Alabama, Auditor's Office~~7.~~"

14 "(3) If the Treasurer, in the event of his or her
15 resignation or removal, fails to comply with ~~the provisions of~~
16 this code, or if he or she dies or absconds, the stating of
17 his or her account in the presence of any person attending on
18 the part of such late Treasurer and the delivering of the
19 books, papers and moneys belonging to the Treasury to his or
20 her successor, taking ~~his~~ a receipt for the same, and
21 recording and filing such receipts and statement and reporting
22 the same to the next Legislature~~7.~~

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

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

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

16 "(c) On and after October 1, 2014, the State Auditor
17 shall perform all duties and assume all responsibilities and
18 authority previously prescribed by law regarding the Chief
19 Examiner of the Department of Examiners of Public Accounts and
20 the operation of the department.

21 "(d) On and after October 1, 2014, the Department of
22 Examiners of Public Accounts, as constituted in Chapter 5,
23 Title 41 (commencing with Section 41-5-1), shall be operated
24 as a part of the Office of the State Auditor, as directed by
25 the State Auditor acting as the Chief Examiner."

1 Section 2. Sections 41-5-1, 41-5-3, 41-5-6,
2 41-5-6.1, 41-5-7, 41-5-8, and 41-5-10 of the Code of Alabama
3 1975, are amended to read as follows:

4 "§41-5-1.

5 "(a) There is created within the Office of State
6 Auditor a Department of Examiners of Public Accounts, composed
7 of such divisions as the Chief Examiner State Auditor
8 determines to be necessary.

9 "(b) Any reference in this title or in the Code of
10 Alabama 1975, to the Chief Examiner of the Department of
11 Examiners of Public Accounts shall be deemed a reference to
12 the State Auditor.

13 "§41-5-3.

14 "~~(a) The affairs of the department~~ Department of
15 Examiners of Public Accounts shall be administered by a the
16 State Auditor who shall assume all powers and duties of the
17 Chief Examiner, whose actions shall be supervised and
18 controlled by a Legislative Committee on Public Accounts. The
19 Chief Examiner shall be selected and appointed by the
20 Legislative Committee on Public Accounts to serve for a term
21 of seven years and until his successor is appointed and
22 qualified. The first of such terms shall commence on October
23 1, 1947, and such officer shall be eligible for reappointment
24 to such office for such subsequent term of like duration as
25 shall be deemed appropriate by the Legislative Committee on
26 Public Accounts. Vacancies in the office of Chief Examiner
27 arising from any cause shall be filled by the Legislative

1 ~~Committee on Public Accounts, the person so appointed to hold~~
2 ~~office for the unexpired term of his predecessor. Every~~
3 ~~appointment of the Chief Examiner shall be subject to~~
4 ~~confirmation by the Senate at the first regular or special~~
5 ~~session of the Legislature held thereafter; provided, however,~~
6 ~~that this shall not affect the right or authority of the Chief~~
7 ~~Examiner to act pending senatorial confirmation or rejection.~~

8 ~~"(b) The Chief Examiner may be removed from office~~
9 ~~through impeachment proceedings instituted before the Supreme~~
10 ~~Court by the Legislative Committee on Public Accounts, the~~
11 ~~Governor or by charges preferred by not less than 15 members~~
12 ~~of the Legislature for any of the causes enumerated in Section~~
13 ~~173 of the Constitution of Alabama 1901, such proceedings to~~
14 ~~be conducted in accordance with the provisions of Sections~~
15 ~~36-11-7 through 36-11-12.~~

16 ~~"§41-5-6.~~

17 ~~"The department State Auditor, serving in the~~
18 ~~capacity of the Chief Examiner, shall be the executive and~~
19 ~~administrative head of the Department of Examiners of Public~~
20 ~~Accounts and shall have the power and duty to following powers~~
21 ~~and duties:~~

22 ~~"(1) To exercise general supervision of and make~~
23 ~~regulations for the government of the department7.~~

24 ~~"(2) To prescribe uniform rules pertaining to~~
25 ~~investigations, examinations, audits and departmental~~
26 ~~hearings7.~~

1 "(3) To supervise the fiscal affairs and
2 responsibilities of the department~~7.1~~.

3 "(4) To appoint and remove the officers and
4 employees of the department, subject to the provisions of the
5 Merit System Act and the rules and regulations issued pursuant
6 thereto~~7.1~~.

7 "(5) To keep an accurate and complete record of all
8 departmental proceedings, record and file all bonds, reports
9 and other documents and assume responsibility for the custody
10 and preservation of all papers and documents of the
11 department~~7.1~~.

12 "(6) ~~Make~~ To make recommendations and an annual
13 report to the Governor and to the Legislature ~~and to the~~
14 ~~Legislative Committee on Public Accounts~~ concerning the
15 ~~condition,~~ operations, ~~functioning~~ and findings of the
16 department~~7.1~~.

17 "(7) To invoke any legal, equitable or special
18 remedy for the enforcement of orders or the provisions of this
19 chapter~~7.1~~.

20 "(8) To exercise any other power necessary to
21 expedite the making of thorough and accurate audits of the
22 accounts of all persons receiving or disbursing public funds~~7.1~~.

23 "(9) To examine and audit the books, accounts and
24 records of all state and county offices, officers, bureaus,
25 boards, commissions, corporations, departments and agencies~~7.1~~.

26 "(10) To prepare, except with respect to county
27 boards of education, such bookkeeping, accounting and

1 reporting systems, procedures, records and forms as may be
2 necessary to install a uniform system of accounting and
3 reporting in the various state and county offices~~7.~~

4 "(11) To report to the ~~Legislative Committee on~~
5 ~~Public Accounts and the Governor~~ and to the Legislature every
6 expenditure or contract found to have been made in violation
7 of law~~7.~~

8 "(12) To prepare, for use by the county boards of
9 education, such bookkeeping, accounting and reporting systems,
10 procedures, records and forms as may be necessary to the
11 installation of a uniform system of accounting and reporting
12 by the several county boards of education, install such
13 bookkeeping, accounting and reporting systems in and for such
14 county boards of education and exercise and maintain
15 continuing supervision thereof~~7; and.~~

16 "(13) To prepare and furnish to the ~~chairmen~~ chair
17 of the county commissions of the several counties of the state
18 a fiscal statement of each county, as of the end of each
19 fiscal year, said statement showing receipts, disbursements,
20 outstanding indebtedness~~7~~ and securities owned of and by each
21 of the several counties.

22 "§41-5-6.1.

23 "(a) As used in this section, the following words
24 have the following meanings:

25 "(1) CHIEF EXAMINER. The State Auditor acting as
26 Chief Examiner of the Department of Examiners of Public
27 Accounts.

1 "(2) OVERPAYMENT. Any payment of in excess of
2 amounts due and includes failure to meet eligibility
3 requirements, failure to identify third party liability where
4 applicable, any payment for an ineligible good or service, any
5 payment for a good or service not received, duplicate
6 payments, invoice and pricing errors, failure to apply
7 discounts, rebates or other allowances, failure to comply with
8 contracts or purchasing agreements, or both, failure to
9 provide adequate documentation or necessary signatures, or
10 both, on documents, or any other inadvertent error resulting
11 on overpayment.

12 "(3) RECOVERY AUDIT. A financial management
13 technique used to identify overpayments made by a state agency
14 with respect to individuals, vendors, service providers, and
15 other entities in connection with a payment activity.

16 "(4) RECOVERY AUDITOR. A private contractor with
17 recovery audit expertise.

18 "(5) STATE AGENCY. A department, office, board,
19 authority, commission, bureau, division, institution, state
20 institution of higher education of this state, or any other
21 state entity that makes payments of state funds.

22 "(b) The Chief Examiner may contract with recovery
23 auditors to conduct recovery audits of payments made by state
24 agencies to individuals, vendors, service providers, and other
25 entities. Any audit conducted pursuant to this subsection of
26 any payment made by a state agency to an electric utility
27 regulated by the Public Service Commission is limited to the

1 three-year period following the date of the payment to be
2 audited. Any contract shall be entered into in accordance with
3 the purchasing provisions of the State of Alabama. The
4 contracts may provide for reasonable compensation for services
5 provided under the contract, including compensation determined
6 by the application of a specified percentage of the total
7 amount recovered because of the recovery auditor's audit
8 activities. In no event shall the compensation to a recovery
9 auditor exceed 15 percent of the amount recovered because of
10 the recovery auditor's audit activities. A recovery audit of a
11 payment may not be made within 90 days of the date of the
12 payment. No payment shall be due a recovery auditor from any
13 payment identified as an overpayment until the overpayment has
14 been recovered and credited to the special fund established in
15 this section.

16 "(c) (1) A state agency whose payments are being
17 audited under a recovery contract pursuant to this section
18 shall provide a recovery auditor with any payment related
19 information as determined by the Chief Examiner, including any
20 confidential information, that is necessary for the
21 performance of the audit or the recovery audit of an
22 overpayment, to the extent the agency is not prohibited from
23 sharing the information under an agreement with another state
24 or federal government.

25 "(2) A recovery audit shall be complementary to any
26 other financial management process and shall not supplant any

1 existing or future state audit or program integrity activity
2 by a state agency.

3 "(3) A recovery auditor acting under a contract
4 authorized by this section, and each employee or agent of the
5 recovery auditor, is subject to all prohibitions against the
6 disclosure of confidential information obtained from the state
7 in connection with the contract that apply to any official or
8 employee of the applicable state agency. A recovery auditor
9 acting under a contract authorized by this section or an
10 employee or agent of the recovery auditor who discloses
11 confidential information in violation of a prohibition made
12 applicable to the recovery auditor under this section is
13 subject to prosecution by the Attorney General in any court
14 within this state.

15 "(d) Recovery audits shall be performed on payments
16 to individuals, vendors, service providers, and other entities
17 made by each state agency as determined by the Chief Examiner.
18 Notwithstanding the foregoing, the recovery audits provided
19 for in this section shall not be performed on any entity,
20 vendor, or service provider that is subject to audits under
21 the federally mandated Recovery Audit Contractor Program
22 adopted by the Alabama Medicaid Agency under Section 1902(a)
23 (42) of the Social Security Act, as amended.

24 "(e) (1) A special fund is established within the
25 State Treasury for the deposit of all funds generated from
26 recovery audits conducted pursuant to this section after
27 payment of any percentages due under the contract to perform

1 the audit. Amounts due a federal agency by a state agency as a
2 result of a recovery audit shall be disbursed from the fund
3 after certification by the agency of the amount due and
4 verification of the amount by the Chief Examiner. Any amounts
5 recovered that were appropriated for funds constitutionally
6 earmarked shall be appropriated in accordance with law. Any
7 amounts remaining in the fund shall be subject to expenditure
8 for any lawful purpose through appropriation by the
9 Legislature.

10 "(2) A state agency shall compute the amount of
11 federal money due to be returned to the federal government
12 from any federal money that is recovered through a recovery
13 audit conducted under this section. The state agency shall
14 compute the amount due in accordance with the rules of the
15 federal program through which the agency received the federal
16 money.

17 "(f) Recovery audit reports shall be public records
18 and released by the Department of Examiners of Public Accounts
19 in accordance with normal report release procedures. Copies
20 shall be available in electronic form on the department's
21 website, if independently maintained, or as made part of the
22 State Auditor's website and identified as a report of the
23 Department of Examiners of Public Accounts.

24 "(g) If the entity audited by the recovery auditor
25 disagrees with the results or report of the recovery audit,
26 the entity may request arbitration of the dispute pursuant to
27 Division 1 of Article 1 of Chapter 6 of Title 6. The

1 compensation of the arbitrators and the cost of the
2 arbitration shall be paid by the entity audited and the
3 recovery auditor in amounts that are in proportion to the
4 ruling of the arbitrators regarding the correctness of the
5 recovery auditor's report on an overpayment.

6 "§41-5-7.

7 "All powers and duties vested in the State Auditor,
8 serving as the Chief Examiner, may be delegated by him the
9 State Auditor to his or her appointed assistants, deputies,
10 and employees, but the ~~Chief Examiner~~ State Auditor shall be
11 responsible for their acts.

12 "§41-5-8.

13 "The State Auditor, acting as the Chief Examiner of
14 the Department of Examiners of Public Accounts, may, ~~with the~~
15 ~~approval of the Legislative Committee on Public Accounts~~
16 appoint an assistant chief examiner, who shall exercise such
17 authority and perform such duties as ~~the Chief Examiner may~~
18 ~~prescribe~~ prescribed. The assistant chief examiner shall be
19 selected because of his or her fitness and capacity for the
20 position. ~~He must be some person who is eligible for~~
21 ~~appointment to, or holds the position of, public accounts~~
22 ~~examiner II in the classified service of the state; and he~~
23 ~~must have had not less than eight years, actual experience as~~
24 ~~an examiner of public accounts; provided, however, that the~~
25 ~~Chief Examiner may, at his discretion, have the employee so~~
26 ~~appointed revert to the classification previously held by him~~
27 ~~under the classified service and appoint some other employee,~~

1 ~~qualified under the provisions of this section, as assistant~~
2 ~~chief examiner.~~ The assistant chief examiner shall be in the
3 unclassified service of the state as defined in the Merit
4 System Act.

5 "§41-5-10.

6 "(a) Upon a ~~nonpartisan~~ merit basis and subject to
7 the Merit System Act, the State Auditor ~~Chief Examiner~~ shall
8 appoint division and unit heads and such assistants, deputies,
9 and employees as may be necessary to the efficient operation
10 of the department. ~~Assistant and deputy examiners shall be~~
11 ~~required to give bond for the faithful performance of their~~
12 ~~duties in the penal sum of \$3,000.00.~~

13 "(b) Subject to the Merit System Act, the State
14 Auditor ~~Chief Examiner~~ shall establish regulations governing
15 dismissals, terminations, layoffs, and suspensions. Severance
16 of an employee's relationship with the department shall be in
17 accordance with these regulations. All severances shall be for
18 good cause. Failure to maintain technical or professional
19 qualifications shall be good cause for severance."

20 Section 3. Sections 41-5-4, 41-5-5, 41-5-9, 41-5-18,
21 41-5-19, and 41-5-20 are repealed, and all other laws or part
22 of laws in conflict with this act are repealed and replaced by
23 this act.

24 Section 4. This act shall become effective
25 immediately following its passage and approval by the
26 Governor, or its otherwise becoming law.