

1 HB350
2 158307-9
3 By Representatives Henry, Johnson (K), Collins, Chesteen,
4 Roberts, Buttram, Williams (D), Butler, Long, Baughn, Hubbard
5 (M), Weaver and Harper
6 RFD: Ways and Means General Fund
7 First Read: 22-JAN-14

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

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

4 "(3) If the Treasurer, in the event of his or her
5 resignation or removal, fails to comply with ~~the provisions of~~
6 this code, or if he or she dies or absconds, the stating of
7 his or her account in the presence of any person attending on
8 the part of such late Treasurer and the delivering of the
9 books, papers and moneys belonging to the Treasury to his or
10 her successor, taking ~~his~~ a receipt for the same, and
11 recording and filing such receipts and statement and reporting
12 the same to the next Legislature~~7.~~

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

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

17 "(6) The making of a full and complete report to the
18 Governor at the close of each fiscal year showing the audited
19 receipts and disbursements of the government for the last
20 completed fiscal year, as required by the constitution and as
21 shown by the records and documents in the office of the
22 Department of Finance~~, which records shall be audited by him.~~
23 The report shall ~~also~~ include the results of ~~his~~ the Auditor's
24 audit of all taxes and revenues collected and paid into the
25 Treasury and shall give the results of all other audits made
26 by ~~him~~ the Auditor. The report shall be printed and bound
27 with, and as a part of, the annual financial report of the

1 state prepared by the Department of Finance. The Auditor shall
2 make reports oftener upon, and matters pertaining to, ~~his~~ the
3 Auditor's office if required by the Governor or the
4 Legislature.

5 "(c) On and after October 1, 2014, the State Auditor
6 shall perform all duties and assume all responsibilities and
7 authority previously prescribed by law regarding the Chief
8 Examiner of the Department of Examiners of Public Accounts and
9 the operation of the department.

10 "(d) On and after October 1, 2014, the Department of
11 Examiners of Public Accounts, as constituted in Chapter 5,
12 Title 41 (commencing with Section 41-5-1), shall be operated
13 as a part of the Office of the State Auditor, as directed by
14 the State Auditor acting as the Chief Examiner. All funds,
15 papers and property of the Department of Examiners of Public
16 Accounts shall be transferred to the ownership and control of
17 the Office of State Auditor to maintain and use in continuance
18 of the Department of Examiners of Public Accounts. The
19 employees of the Department of Examiners of Public Accounts,
20 excluding the Chief Examiner, on the effective date of this
21 act shall retain the rights and privileges granted by the
22 rules and laws applicable to the Department under Chapter 5 of
23 Title 41 and shall continue thereafter until any such
24 alteration should occur in accordance with the rules and laws
25 applicable to the Department."

1 Section 2. Sections 41-5-1, 41-5-3, 41-5-6,
2 41-5-6.1, 41-5-7, and 41-5-10 of the Code of Alabama 1975, are
3 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.~~

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.~~

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.~~

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.~~

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

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.~~

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.~~

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,~~
6 including but not limited to the Contract Review Permanent
7 Legislative Oversight Committee, every expenditure or contract
8 found to have been made in violation of law~~7~~.

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

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

23 "§41-5-6.1.

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

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

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

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

19 "(4) RECOVERY AUDITOR. A private contractor with
20 recovery audit expertise.

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

25 "(b) The Chief Examiner may contract with recovery
26 auditors to conduct recovery audits of payments made by state
27 agencies to individuals, vendors, service providers, and other

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

21 Any audit conducted pursuant to this subsection
22 shall be completed within a 12-month period following
23 commencement of the audit.

24 "(c) (1) A state agency whose payments are being
25 audited under a recovery contract pursuant to this section
26 shall provide a recovery auditor with any payment related
27 information as determined by the Chief Examiner, including any

1 confidential information, that is necessary for the
2 performance of the audit or the recovery audit of an
3 overpayment, to the extent the agency is not prohibited from
4 sharing the information under an agreement with another state
5 or federal government.

6 "(2) A recovery audit shall be complementary to any
7 other financial management process and shall not supplant any
8 existing or future state audit or program integrity activity
9 by a state agency.

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

22 "(d) Recovery audits shall be performed on payments
23 to individuals, vendors, service providers, and other entities
24 made by each state agency as determined by the Chief Examiner.
25 Notwithstanding the foregoing, the recovery audits provided
26 for in this section shall not be performed on any entity,
27 vendor, or service provider that is subject to audits under

1 the federally mandated Recovery Audit Contractor Program
2 adopted by the Alabama Medicaid Agency under Section 1902(a)
3 (42) of the Social Security Act, as amended.

4 "(e) (1) A special fund is established within the
5 State Treasury for the deposit of all funds generated from
6 recovery audits conducted pursuant to this section after
7 payment of any percentages due under the contract to perform
8 the audit. Amounts due a federal agency by a state agency as a
9 result of a recovery audit shall be disbursed from the fund
10 after certification by the agency of the amount due and
11 verification of the amount by the Chief Examiner. Any amounts
12 recovered that were appropriated for funds constitutionally
13 earmarked shall be appropriated in accordance with law. Any
14 amounts remaining in the fund shall be subject to expenditure
15 for any lawful purpose through appropriation by the
16 Legislature.

17 "(2) A state agency shall compute the amount of
18 federal money due to be returned to the federal government
19 from any federal money that is recovered through a recovery
20 audit conducted under this section. The state agency shall
21 compute the amount due in accordance with the rules of the
22 federal program through which the agency received the federal
23 money.

24 "(f) Recovery audit reports shall be public records
25 and released by the Department of Examiners of Public Accounts
26 in accordance with normal report release procedures. Copies
27 shall be available in electronic form on the department's

1 website, if independently maintained, or as made part of the
2 State Auditor's website and identified as a report of the
3 Department of Examiners of Public Accounts.

4 "(g) If the entity audited by the recovery auditor
5 disagrees with the results or report of the recovery audit,
6 the entity may request arbitration of the dispute pursuant to
7 Division 1 of Article 1 of Chapter 6 of Title 6. The
8 compensation of the arbitrators and the cost of the
9 arbitration shall be paid by the entity audited and the
10 recovery auditor in amounts that are in proportion to the
11 ruling of the arbitrators regarding the correctness of the
12 recovery auditor's report on an overpayment.

13 "§41-5-7.

14 "All powers and duties vested in the State Auditor,
15 servng as the Chief Examiner, may be delegated by ~~him~~ the
16 State Auditor to the State Auditor's administrative officer or
17 the deputy chief examiner ~~to his appointed assistants,~~
18 ~~deputies, and employees as deemed appropriate or necessary by~~
19 ~~the State Auditor serving as the Chief Examiner,~~ but the Chief
20 ~~Examiner~~ State Auditor shall be responsible for their acts.

21 The deputy chief examiner shall be a Merit System
22 employee and, as minimum qualifications, shall have no less
23 than eight years as a certified public accountant or shall
24 have no less than eight years actual experience as an examiner
25 of public accounts.

26 "§41-5-10.

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

8 "(b) Subject to and not in conflict with the Merit
9 System Act, the State Auditor ~~Chief Examiner~~ shall establish
10 regulations governing dismissals, terminations, layoffs, and
11 suspensions. Severance of an employee's relationship with the
12 department shall be in accordance with these regulations. All
13 severances shall be for good cause. Failure to maintain
14 technical or professional qualifications shall be good cause
15 for severance."

16 Section 3. Sections 41-5-4, 41-5-5, 41-5-8, 41-5-9,
17 41-5-18, 41-5-19, and 41-5-20 are repealed, and all other laws
18 or part of laws in conflict with this act are repealed and
19 replaced by this act.

20 Section 4. This act shall become effective on
21 October 1, 2014, following its passage and approval by the
22 Governor, or its otherwise becoming law.

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House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on Ways and Means
General Fund..... 22-JAN-14

Read for the second time and placed
on the calendar with 1 substitute
and 3 amendments..... 20-FEB-14

Read for the third time and passed
as amended..... 13-MAR-14
Yeas 65, Nays 23, Abstains 4

Jeff Woodard
Clerk