

1 HB540
2 184139-3
3 By Representative Pringle
4 RFD: State Government
5 First Read: 20-APR-17

8 SYNOPSIS: This bill would substantially revise the
9 provisions governing the operation of the
10 Department of Examiners of Public Accounts.

11 This bill would revise the qualifications of
12 the chief examiner of public accounts, revise the
13 procedures for removal of the chief examiner,
14 revise certain provisions relating to the salary of
15 the chief examiner and certain staff and employees,
16 revise the term of service, and require the chief
17 examiner to appoint chief legal counsel.

18 This bill would also revise and clarify
19 certain duties of the department.

20 This bill would also revise the composition
21 of the Legislative Committee on Public Accounts
22 beginning January 1, 2019.

23 Amendment 621 of the Constitution of Alabama
24 of 1901, now appearing as Section 111.05 of the
25 Official Recompilation of the Constitution of
26 Alabama of 1901, as amended, prohibits a general
27 law whose purpose or effect would be to require a

1 new or increased expenditure of local funds from
2 becoming effective with regard to a local
3 governmental entity without enactment by a 2/3 vote
4 unless: it comes within one of a number of
5 specified exceptions; it is approved by the
6 affected entity; or the Legislature appropriates
7 funds, or provides a local source of revenue, to
8 the entity for the purpose.

9 The purpose or effect of this bill would be
10 to require a new or increased expenditure of local
11 funds within the meaning of the amendment. However,
12 the bill does not require approval of a local
13 governmental entity or enactment by a 2/3 vote to
14 become effective because it comes within one of the
15 specified exceptions contained in the amendment.

16
17 A BILL
18 TO BE ENTITLED
19 AN ACT
20

21 Relating to the Department of Examiners of Public
22 Accounts; to add Chapter 5A to Title 41, Code of Alabama 1975,
23 to substantially revise the provisions governing the operation
24 of the office; to revise the qualifications of the chief
25 examiner of Public Accounts; to revise the procedures for
26 removal of the chief examiner; to revise certain provisions
27 relating to the salary of the chief examiner and certain staff

1 and employees; to revise the term of service of the chief
2 examiner; to require the chief examiner to appoint chief legal
3 counsel; to revise and clarify certain duties of the
4 department; to provide penalties for false statements in
5 audits; and to revise the composition of the Legislative
6 Committee on Public Accounts at a certain time; and to repeal
7 Chapter 5, Title 41, Code of Alabama 1975, the existing law
8 governing the department; and in connection therewith would
9 have as its purpose or effect the requirement of a new or
10 increased expenditure of local funds within the meaning of
11 Amendment 621 of the Constitution of Alabama of 1901, now
12 appearing as Section 111.05 of the Official Recompilation of
13 the Constitution of Alabama of 1901, as amended.

14 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

15 Section 1. Chapter 5A is added to Title 41, Code of
16 Alabama 1975, to read as follows:

17 Chapter 5A. Examiners of Public Accounts.

18 §41-5A-1.

19 (a) There is created the Department of Examiners of
20 Public Accounts, composed of any divisions the chief examiner
21 determines to be necessary.

22 (b) The offices of the department shall be located
23 in Montgomery, but the department may conduct examinations and
24 audits and establish offices throughout the state.

25 §41-5A-2.

26 (a) The affairs of the department shall be
27 administered by a chief examiner, whose actions shall be

1 supervised and controlled by a Legislative Committee on Public
2 Accounts. The chief examiner shall be selected and appointed
3 by the Legislative Committee on Public Accounts to serve for a
4 term of five years and until a qualified successor is
5 appointed.

6 (b) (1) Vacancies in the office of chief examiner
7 arising from any cause shall be filled by the Legislative
8 Committee on Public Accounts, the person so appointed to hold
9 office for the unexpired term of the predecessor.

10 (2) The appointment of the chief examiner shall be
11 subject to confirmation by the Senate at the first regular or
12 special session of the Legislature held thereafter; provided,
13 however, that this subsection does not affect the right or
14 authority of the chief examiner to act pending confirmation or
15 rejection.

16 (c) The chief examiner may be removed from office by
17 joint resolution of the Legislature while in office.

18 §41-5A-3.

19 (a) The chief examiner shall be a certified public
20 accountant licensed in this state and shall be selected with
21 consideration of his or her training, experience, capacity,
22 and fitness for the duties as executive and administrative
23 head of the Department of Examiners of Public Accounts.

24 (b) The chief examiner is not eligible for
25 appointment or election to any state, county, or municipal
26 office, nor shall he or she be a member of a committee of any
27 political party during the term for which he or she is

1 appointed. Violation of this subsection shall automatically
2 result in removal from the office of chief examiner.

3 §41-5A-4.

4 The chief examiner, before entering upon the duties
5 of his or her office, shall take the oath prescribed by
6 Article XVI, Section 279 of the Constitution of Alabama of
7 1901, and shall give bond for the faithful performance of his
8 or her duties in the amount of one hundred thousand dollars
9 (\$100,000). The oath and the bond, which must be approved by
10 the Legislative Committee on Public Accounts and paid for from
11 funds available to the Department of Examiners of Public
12 Accounts, shall be filed with the Secretary of State.

13 §41-5A-5.

14 (a) The chief examiner shall be the executive and
15 administrative head of the department and shall have the power
16 and duty to do all of the following subject to review and
17 oversight by the Legislative Committee on Public Accounts:

18 (1) Exercise general supervision of and make
19 regulations for the governance of the department.

20 (2) Prescribe uniform rules pertaining to
21 investigations, examinations, audits, and departmental
22 hearings.

23 (3) Supervise the fiscal affairs and
24 responsibilities of the department.

25 (4) Appoint and remove the staff, officers, and
26 employees of the department, subject to the Merit System Act
27 and the rules issued pursuant thereto.

1 (5) Keep an accurate and complete record of all
2 proceedings of the department, record and file all bonds,
3 reports, and other documents and assume responsibility for the
4 custody and preservation of all papers and documents of the
5 department.

6 (6) Make recommendations and an annual report to the
7 Governor and to the Legislative Committee on Public Accounts
8 concerning the condition, operation, functioning, and findings
9 of the department.

10 (7) Invoke any legal, equitable, or special remedy
11 for the enforcement of orders or this chapter.

12 (8) Exercise any other power necessary to expedite
13 the making of thorough and accurate audits of the accounts of
14 all individuals or entities receiving or disbursing public
15 funds.

16 (9) Examine and audit the books, accounts, and
17 records of all state and county offices, officers, bureaus,
18 authorities, boards, commissions, corporations, departments,
19 and agencies.

20 (10) Prepare, except with respect to county boards
21 of education, such bookkeeping, accounting, and reporting
22 systems, procedures, records, and forms as may be necessary to
23 install a uniform system of accounting and reporting in the
24 various state and county offices.

25 (11) Report to the Legislative Committee on Public
26 Accounts, the Governor, and the Contract Review Permanent

1 Legislative Oversight Committee every expenditure or contract
2 found to have been made in violation of law.

3 (12) Prepare, for use by the county boards of
4 education, bookkeeping, accounting, and reporting systems,
5 procedures, records, and forms necessary to the installation
6 of a uniform system of accounting and reporting by the several
7 county boards of education, install the bookkeeping,
8 accounting, and reporting systems for the county boards of
9 education, and exercise and maintain continuing supervision
10 thereof.

11 (13) Prepare and furnish to the chairs of the county
12 commissions of the several counties of the state a fiscal
13 statement of each county, as of the end of each fiscal year,
14 the statement showing receipts, disbursements, outstanding
15 indebtedness, and securities owned of and by each of the
16 several counties.

17 (b) All powers and duties vested in the chief
18 examiner may be delegated to his or her appointed assistants,
19 staff, deputies, and employees, but the chief examiner shall
20 be responsible for their actions.

21 §41-5A-6.

22 (a) For the purposes of this section, the following
23 words have the following meanings:

24 (1) CHIEF EXAMINER. The Chief Examiner of Public
25 Accounts.

26 (2) OVERPAYMENT. Any payment of in excess of amounts
27 due and includes failure to meet eligibility requirements,

1 failure to identify third party liability where applicable,
2 any payment for an ineligible good or service, any payment for
3 a good or service not received, duplicate payments, invoice
4 and pricing errors, failure to apply discounts, rebates or
5 other allowances, failure to comply with contracts or
6 purchasing agreements, or both, failure to provide adequate
7 documentation or necessary signatures, or both, on documents,
8 or any other inadvertent error resulting on overpayment.

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

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

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

19 (b) The chief examiner may contract with recovery
20 auditors to conduct and perform recovery audits of payments
21 made by state agencies to individuals, vendors, service
22 providers, and other entities. Any audit conducted pursuant to
23 this subsection of any payment made by a state agency to an
24 electric utility regulated by the Public Service Commission is
25 limited to the three-year period following the date of the
26 payment to be audited. Overpayments between one state agency
27 and another state agency are not subject to recovery under

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

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

24 (2) A recovery audit shall be complementary to any
25 other financial management process and shall not supplant any
26 existing or future state audit or program integrity activity
27 by a state agency.

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

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

22 (e) (1) A special fund is established within the
23 State Treasury for the deposit of all funds generated from
24 recovery audits conducted pursuant to this section after
25 payment to the Department of Examiners of Public Accounts for
26 actual costs of time and effort devoted to the recovery audit
27 as determined by the chief examiner and of any percentages due

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

22 (g) If the entity audited by the recovery auditor
23 disagrees with the results or report of the recovery audit,
24 the entity may request arbitration of the dispute pursuant to
25 Division 1 of Article 1 of Chapter 6 of Title 6. The
26 compensation of the arbitrators and the cost of the
27 arbitration shall be paid by the entity audited and the

1 recovery auditor in amounts that are in proportion to the
2 ruling of the arbitrators regarding the correctness of the
3 recovery auditor's report on an overpayment.

4 §41-5A-7.

5 The Chief Examiner of Public Accounts, with the
6 approval of the Legislative Committee on Public Accounts, may
7 appoint an assistant chief examiner, who shall exercise any
8 and all authority and perform any and all duties as the chief
9 examiner may prescribe. The assistant chief examiner shall be
10 selected because of his or her fitness and capacity and shall
11 be a certified public accountant. The assistant chief examiner
12 shall be exempt from the Merit System.

13 §41-5A-8.

14 (a) The salary of the Chief Examiner of Public
15 Accounts shall be set by the Legislative Committee on Public
16 Accounts.

17 (b) The salary of the assistant chief examiner shall
18 be fixed by the chief examiner, with approval of the
19 Legislative Committee on Public Accounts.

20 (c) The compensation for the chief examiner and the
21 assistant chief examiner shall be paid out of funds
22 appropriated to the Department of Examiners of Public Accounts
23 and in the same manner as salaries of other officers and
24 employees are paid.

25 §41-5A-9.

1 The employees of the department shall be members of
2 the classified service of the Merit System unless otherwise
3 specified by law.

4 §41-5A-10.

5 (a) The Attorney General and the district attorneys
6 of the several circuits shall render to the chief examiner,
7 without additional compensation, legal services as he or she
8 may request.

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

17 §41-5A-11.

18 (a) The Chief Examiner of Public Accounts, shall
19 appoint a Chief Legal Counsel for the Department of Examiners
20 of Public Accounts pursuant to Section 36-15-5.1(b).

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

24 (c) The chief examiner may appoint not more than two
25 assistant legal counsels for the department.

26 §41-5A-12.

1 (a) The books, records, vouchers, and accounts of
2 every state and county office, officer, bureau, board,
3 commission, corporation, institution, department, and agency
4 shall be examined and audited at least once in every period of
5 two years and more frequently or continuously if that is
6 deemed necessary by the chief examiner or the Legislative
7 Committee on Public Accounts. The books, records, vouchers,
8 and accounts of municipal boards of education may be examined
9 and audited upon request of the committee.

10 (b) Examinations and audits required under this
11 chapter shall be made at the expense of the state.

12 (c) A person who knowingly makes any materially
13 false, fictitious, or fraudulent statement or representation
14 in any audit under this chapter shall be guilty of a Class C
15 felony.

16 (d) No state or county office, officer, bureau,
17 board, commission, corporation, institution, or agency subject
18 to audit or examination under this section may contract for or
19 arrange to have an audit or examination unless the audit or
20 examination has been authorized and approved by the chief
21 examiner. Any audit or examination that is authorized by the
22 chief examiner is subject to review by the chief examiner
23 prior to finalization of the audit and public release.

24 §41-5A-13.

25 The chief examiner shall compile and make available
26 for distribution both of the following:

27 (1) The rules of the department.

1 (2) Other materials as the chief examiner deems
2 relevant and suitable for the effective administration of this
3 chapter.

4 §41-5A-14.

5 (a) The chief examiner 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 chapter.

9 (b) In case a person refuses to comply with a
10 subpoena, the chief examiner 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 chief examiner or his or her representative and
15 produce all evidence and give all testimony relating to the
16 matter in issue.

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

19 §41-5A-15.

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

23 §41-5A-16.

24 (a) There shall be a Legislative Committee on Public
25 Accounts to exercise general supervision and control over the
26 actions of the chief examiner and the Department of Examiners
27 of Public Accounts.

1 (b) (1) The Legislative Committee on Public Accounts
2 shall have 12 members. Five members shall be elected by the
3 House of Representatives from its membership and five members
4 shall be elected by the Senate from its membership. The
5 President of the Senate shall be a member of the committee and
6 the chairman of the committee. The Speaker of the House of
7 Representatives shall be a member of the committee and the
8 vice-chairman of the committee. Members of the committee shall
9 be elected at the first regular session of each quadrennium
10 and shall hold office, as long as they remain legislators,
11 until their successors are elected.

12 (2) Beginning on January 1, 2019, the President Pro
13 Tempore of the Senate shall replace the President of the
14 Senate as a member of the committee. The President Pro
15 Tempore of the Senate shall serve as chair of the committee.

16 (c) Vacancies shall be filled by the remaining
17 members of the committee from members of the House of
18 Representatives or the Senate, depending upon in which
19 representation the vacancy occurs, until the next session of
20 the Legislature, organizational, regular or special, at which
21 time they shall be filled by the proper house.

22 §41-5A-17.

23 (a) The Legislative Committee on Public Accounts
24 shall meet annually at the capital, at a time which it shall
25 set by resolution for the purpose of receiving the report and
26 recommendations of the chief examiner. The chief examiner

1 shall attend the meetings and give evidence, make reports and
2 perform duties as the committee may direct.

3 (b) Annual meetings of the committee may not be held
4 for more than 10 days. Special meetings not exceeding 10 days
5 in total during any year may be called by the chairman and
6 must be called by him within 10 days after receipt of a
7 written request by the chief examiner, a majority of the
8 committee, or the Governor.

9 (c) Members of the committee shall be entitled to
10 their legislative per diem, and travel expenses for each day
11 they attend a meeting of the committee in accordance with
12 Amendment 871 of the Constitution of Alabama of 1901.

13 §41-5A-18.

14 The Legislative Committee on Public Accounts shall
15 report its findings and recommendations and concerning the
16 work of the Department of Examiners of Public Accounts to the
17 Senate and House of Representatives at each session of the
18 Legislature and to the Governor.

19 §41-5A-19.

20 The department shall make a sworn report of its
21 findings within a reasonable time after an audit is completed.
22 The chief examiner shall certify one copy of each report to
23 the circuit judge of the county in which the office examined
24 is located. The judge shall refer to the report in his or her
25 next oral charge to the grand jury. The report shall be
26 entered in full upon the minutes of the court. The reports
27 shall be public records and prima facie evidence of what they

1 charge. Working papers used in the preparation of the reports
2 shall be subject to and treated as being under Section
3 12-16-216, and shall be subject to review by a court of
4 competent jurisdiction only. One copy of each report shall be
5 certified to the Governor.

6 §41-5A-20.

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

1 attorney shall proceed to collect the amount by a civil action
2 against the officer and his or her bondsmen.

3 §41-5A-21.

4 Every state and county officer shall keep the books,
5 records, and accounts and make the reports of his or her
6 office in accordance with such systems, procedures, and forms
7 as may be prescribed by the chief examiner pursuant to this
8 chapter. Any officer who fails or willfully refuses to comply
9 with this section shall be liable for a penalty of up to two
10 hundred fifty dollars (\$250) for each week the failure or
11 refusal continues. Penalties imposed and collected under this
12 section shall be paid into the General Fund of the State
13 Treasury.

14 §41-5A-22.

15 All moneys or funds received or collected by the
16 Department of Examiners of Public Accounts in the form of
17 fees, receipts, or income as a result of services rendered in
18 connection with municipal audits shall be transferred by the
19 department into the State Treasury to the credit of the
20 General Fund. All moneys or funds received or collected by the
21 Department of Examiners of Public Accounts from the federal
22 government shall be deposited into a special fund in the State
23 Treasury and these moneys and funds are hereby appropriated or
24 reappropriated as necessary for the sole use of the Department
25 of Examiners of Public Accounts.

1 Section 2. Chapter 5 of Title 41, Code of Alabama
2 1975, relating to the Department of Examiners of Public
3 Accounts, is repealed.

4 Section 3. Although this bill would have as its
5 purpose or effect the requirement of a new or increased
6 expenditure of local funds, the bill is excluded from further
7 requirements and application under Amendment 621, now
8 appearing as Section 111.05 of the Official Recompilation of
9 the Constitution of Alabama of 1901, as amended, because the
10 bill defines a new crime or amends the definition of an
11 existing crime.

12 Section 4. This act shall become effective on the
13 first day of the third month following its passage and
14 approval by the Governor, or its otherwise becoming law.