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3 HOUSE STATE GOVERNMENT COMMITTEE SUBSTITUTE FOR HB540
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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 for causes
18 provided in writing and supported by sufficient, competent
19 evidence by the Legislative Committee on Public Accounts for
20 willful neglect of duty, corruption in office, incompetence,
21 intemperance in the use of intoxicating liquors or narcotics
22 to the extent that it damages the dignity of the office and
23 importance of its duties and he or she is unfit to perform the
24 duties of the office as determined by a vote of the committee,
25 or for moral turpitude while in office.

26 §41-5A-3.

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

6 (b) The chief examiner is not eligible for
7 appointment or election to any state, county, or municipal
8 office, nor shall he or she be a member of a committee of any
9 political party during the term for which he or she is
10 appointed. Violation of this subsection shall automatically
11 result in removal from the office of chief examiner.

12 §41-5A-4.

13 The chief examiner, before entering upon the duties
14 of his or her office, shall take the oath prescribed by
15 Article XVI, Section 279 of the Constitution of Alabama of
16 1901, and shall give bond for the faithful performance of his
17 or her duties in the amount of one hundred thousand dollars
18 (\$100,000). The oath and the bond, which must be approved by
19 the Legislative Committee on Public Accounts and paid for from
20 funds available to the Department of Examiners of Public
21 Accounts, shall be filed with the Secretary of State.

22 §41-5A-5.

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

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

3 (2) Prescribe uniform rules pertaining to
4 investigations, examinations, audits, and departmental
5 hearings.

6 (3) Supervise the fiscal affairs and
7 responsibilities of the department.

8 (4) Appoint and remove the staff, officers, and
9 employees of the department, subject to the Merit System Act
10 and the rules issued pursuant thereto.

11 (5) Keep an accurate and complete record of all
12 proceedings of the department, record and file all bonds,
13 reports, and other documents and assume responsibility for the
14 custody and preservation of all papers and documents of the
15 department.

16 (6) Make recommendations and an annual report to the
17 Governor and to the Legislative Committee on Public Accounts
18 concerning the condition, operation, functioning, and findings
19 of the department.

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

22 (8) Exercise any other power necessary to expedite
23 the making of thorough and accurate audits of the accounts of
24 all individuals or entities receiving or disbursing public
25 funds.

26 (9) Examine and audit the books, accounts, and
27 records of all state and county offices, officers, bureaus,

1 authorities, boards, commissions, corporations, departments,
2 and agencies.

3 (10) Prepare, except with respect to county boards
4 of education, such bookkeeping, accounting, and reporting
5 systems, procedures, records, and forms as may be necessary to
6 install a uniform system of accounting and reporting in the
7 various state and county offices.

8 (11) Report to the Legislative Committee on Public
9 Accounts, the Governor, and the Contract Review Permanent
10 Legislative Oversight Committee every expenditure or contract
11 found to have been made in violation of law.

12 (12) Prepare, for use by the county boards of
13 education, bookkeeping, accounting, and reporting systems,
14 procedures, records, and forms necessary to the installation
15 of a uniform system of accounting and reporting by the several
16 county boards of education, install the bookkeeping,
17 accounting, and reporting systems for the county boards of
18 education, and exercise and maintain continuing supervision
19 thereof.

20 (13) Prepare and furnish to the chairs of the county
21 commissions of the several counties of the state a fiscal
22 statement of each county, as of the end of each fiscal year,
23 the statement showing receipts, disbursements, outstanding
24 indebtedness, and securities owned of and by each of the
25 several counties.

26 (b) All powers and duties vested in the chief
27 examiner may be delegated to his or her appointed assistants,

1 staff, deputies, and employees, but the chief examiner shall
2 be responsible for their actions.

3 §41-5A-6.

4 (a) For the purposes of this section, the following
5 words have the following meanings:

6 (1) CHIEF EXAMINER. The Chief Examiner of Public
7 Accounts.

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

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

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

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

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

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 performance
2 of the audit or the recovery audit of an overpayment, to the
3 extent the agency is not prohibited from sharing the
4 information under an agreement with another state or the
5 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 applies to any official
15 or 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 to the Department of Examiners of Public Accounts for
8 actual costs of time and effort devoted to the recovery audit
9 as determined by the chief examiner and of any percentages due
10 under the contract to perform the audit. Amounts due a federal
11 agency by a state agency as a result of a recovery audit shall
12 be disbursed from the fund after certification by the agency
13 of the amount due and verification of the amount by the chief
14 examiner. Any amounts recovered that were appropriated for
15 funds constitutionally earmarked shall be appropriated in
16 accordance with law. Any amounts remaining in the fund shall
17 be subject to expenditure for any lawful purpose through
18 appropriation by the Legislature.

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

26 (f) Recovery audit reports shall be public records
27 and released by the Department of Examiners of Public Accounts

1 in accordance with normal report release procedures. Copies
2 shall be available in electronic form on the department's
3 website.

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 §41-5A-7.

14 The Chief Examiner of Public Accounts, with the
15 approval of the Legislative Committee on Public Accounts, may
16 appoint an assistant chief examiner, who shall exercise any
17 and all authority and perform any and all duties as the chief
18 examiner may prescribe. The assistant chief examiner shall be
19 selected because of his or her fitness and capacity and shall
20 be a certified public accountant. The assistant chief examiner
21 shall be exempt from the Merit System.

22 §41-5A-8.

23 (a) The salary of the Chief Examiner of Public
24 Accounts shall be set by the Legislative Committee on Public
25 Accounts.

1 (b) The salary of the assistant chief examiner shall
2 be fixed by the chief examiner, with approval of the
3 Legislative Committee on Public Accounts.

4 (c) The compensation for the chief examiner and the
5 assistant chief examiner shall be paid out of funds
6 appropriated to the Department of Examiners of Public Accounts
7 and in the same manner as salaries of other officers and
8 employees are paid.

9 §41-5A-9.

10 The employees of the department shall be members of
11 the classified service of the Merit System unless otherwise
12 specified by law. The chief examiner shall appoint division
13 and unit heads and such assistants, deputies, and employees as
14 may be necessary for the sufficient operation of the
15 department. Assistants and deputy examiners shall be required
16 to give bond for the faithful performance of their duties in
17 the penal sum of fifty thousand dollars (\$50,000).

18 §41-5A-10.

19 (a) The Attorney General and the district attorneys
20 of the several circuits shall render to the chief examiner,
21 without additional compensation, legal services as he or she
22 may request.

23 (b) Whenever the legality of any payment or shortage
24 is involved in an examination, the chief examiner shall submit
25 the facts in writing to the Attorney General and request his
26 or her opinion as to the applicable law. The Attorney General
27 shall immediately provide a copy of each opinion affecting any

1 state or county officer in the collection or disbursement of
2 public funds to the officer affected, to the chief examiner,
3 and to the Governor.

4 §41-5A-11.

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

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

11 (c) The chief examiner may appoint not more than two
12 assistant legal counsels for the department. The assistant
13 legal counsels for the department shall be commissioned as
14 assistant attorneys general, but shall devote their entire
15 time to the affairs of the department.

16 §41-5A-12.

17 (a) The books, records, vouchers, and accounts of
18 every state and county office, officer, bureau, board,
19 commission, corporation, institution, department, and agency
20 shall be examined and audited at least once in every period of
21 two years and more frequently or continuously if that is
22 deemed necessary by the chief examiner or the Legislative
23 Committee on Public Accounts. The books, records, vouchers,
24 and accounts of municipal boards of education or any state
25 entity holding assets, within or outside, the State Treasury
26 may be examined and audited upon request of the committee.

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

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

7 (d) No state or county office, officer, bureau,
8 board, commission, corporation, institution, or agency subject
9 to audit or examination under this section may contract for or
10 arrange to have an audit or examination unless the audit or
11 examination has been authorized and approved by the chief
12 examiner. Any audit or examination that is authorized by the
13 chief examiner is subject to review by the chief examiner
14 prior to finalization of the audit and public release.

15 §41-5A-13.

16 The chief examiner shall compile and make available
17 for distribution both of the following:

18 (1) The rules of the department.

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

22 §41-5A-14.

23 (a) The chief examiner may issue subpoenas to compel
24 the attendance of witnesses and production of papers necessary
25 as evidence in connection with a dispute, claim, examination,
26 audit, or the administration of this chapter.

1 (b) In case a person refuses to comply with a
2 subpoena, the chief examiner may invoke the aid of any circuit
3 court with jurisdiction in order that the testimony or
4 evidence be produced. Upon proper showing, the court shall
5 issue a subpoena or order requiring the person to appear
6 before the chief examiner or his or her representative and
7 produce all evidence and give all testimony relating to the
8 matter in issue.

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

11 §41-5A-15.

12 The chief examiner, assistant chief examiner, chief
13 legal counsel, and deputy examiner may administer oaths, take
14 depositions, and certify official acts.

15 §41-5A-16.

16 (a) There shall be a Legislative Committee on Public
17 Accounts to exercise general supervision and control over the
18 actions of the chief examiner and the Department of Examiners
19 of Public Accounts.

20 (b) (1) The Legislative Committee on Public Accounts
21 shall have 12 members. Five members shall be elected by the
22 House of Representatives from its membership and five members
23 shall be elected by the Senate from its membership. The
24 President of the Senate shall be a member of the committee and
25 the chairman of the committee. The Speaker of the House of
26 Representatives shall be a member of the committee and the
27 vice-chairman of the committee. Members of the committee shall

1 be elected at the first regular session of each quadrennium
2 and shall hold office, as long as they remain legislators,
3 until their successors are elected.

4 (2) Beginning on January 1, 2019, the President Pro
5 Tempore of the Senate shall replace the President of the
6 Senate as a member of the committee. The President Pro
7 Tempore of the Senate shall serve as chair of the committee.

8 (c) Vacancies shall be filled by the remaining
9 members of the committee from members of the House of
10 Representatives or the Senate, depending upon in which
11 representation the vacancy occurs, until the next session of
12 the Legislature, organizational, regular or special, at which
13 time they shall be filled by the proper house.

14 §41-5A-17.

15 (a) The Legislative Committee on Public Accounts
16 shall meet annually at the capital, at a time which it shall
17 set by resolution for the purpose of receiving the report and
18 recommendations of the chief examiner. The chief examiner
19 shall attend the meetings and give evidence, make reports and
20 perform duties as the committee may direct.

21 (b) Annual meetings of the committee may not be held
22 for more than 10 days. Special meetings not exceeding 10 days
23 in total during any year may be called by the chairman and
24 must be called by him within 10 days after receipt of a
25 written request by the chief examiner, a majority of the
26 committee, or the Governor.

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

5 §41-5A-18.

6 The Legislative Committee on Public Accounts shall
7 report its findings and recommendations and concerning the
8 work of the Department of Examiners of Public Accounts to the
9 Senate and House of Representatives at each session of the
10 Legislature and to the Governor.

11 §41-5A-19.

12 The department shall make a sworn report of its
13 findings within a reasonable time after an audit is completed.
14 The chief examiner shall certify one copy of each report to
15 the circuit judge of the county in which the office examined
16 is located. The judge shall refer to the report in his or her
17 next oral charge to the grand jury. The report shall be
18 entered in full upon the minutes of the court. The reports
19 shall be public records and prima facie evidence of what they
20 charge. Working papers used in the preparation of the reports
21 shall be subject to and treated as being under Section
22 12-16-216, and shall be subject to review by a court of
23 competent jurisdiction only. One copy of each report shall be
24 certified to the Governor.

25 §41-5A-20.

26 The chief examiner shall keep a docket in which
27 shall be entered, in favor of the state, county or

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

21 §41-5A-21.

22 Every state and county officer shall keep the books,
23 records, and accounts and make the reports of his or her
24 office in accordance with such systems, procedures, and forms
25 as may be prescribed by the chief examiner pursuant to this
26 chapter. Any officer who fails or willfully refuses to comply
27 with this section shall be liable for a penalty of up to two

1 hundred fifty dollars (\$250) for each week the failure or
2 refusal continues. Penalties imposed and collected under this
3 section shall be paid into the General Fund of the State
4 Treasury.

5 §41-5A-22.

6 All moneys or funds received or collected by the
7 Department of Examiners of Public Accounts in the form of
8 fees, receipts, or income as a result of services rendered in
9 connection with municipal audits shall be transferred by the
10 department into the State Treasury to the credit of the
11 General Fund. All moneys or funds received or collected by the
12 Department of Examiners of Public Accounts from the federal
13 government shall be deposited into a special fund in the State
14 Treasury and these moneys and funds are hereby appropriated or
15 reappropriated as necessary for the sole use of the Department
16 of Examiners of Public Accounts.

17 Section 2. (a) Chapter 5 of Title 41, Code of
18 Alabama 1975, relating to the Department of Examiners of
19 Public Accounts, is repealed.

20 (b) The Code Commissioner shall conform references
21 in the Code of Alabama 1975, to reflect the changes made by
22 this act. Code changes, including the renumbering of
23 references to Chapter 5, Title 41, to reflect the appropriate
24 code sections in Chapter 5A, Title 41, as created by this act,
25 shall be made at a time determined to be appropriate by the
26 Code Commissioner.

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

9 Section 4. This act shall become effective on
10 October 1, 2017, following its passage and approval by the
11 Governor, or its otherwise becoming law.