

Sixty-second
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1448

Introduced by

Representatives Thoreson, Headland, Kasper, S. Meyer

Senators Grindberg, Klein

1 A BILL for an Act to create and enact a new section to chapter 54-10 of the North Dakota
2 Century Code, relating to requiring the state auditor to contract for recovery audits; and to
3 declare an emergency.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** A new section to chapter 54-10 of the North Dakota Century Code is created
6 and enacted as follows:

7 **State auditor to contract for recovery audits.**

8 1. By July 1, 2011, the state auditor shall contract on behalf of the state with a single
9 qualified and experienced recovery audit consultant firm to conduct a recovery audit of
10 payments made to vendors during the previous four fiscal years by or through state
11 agencies that have an annual budget exceeding five hundred thousand dollars
12 regardless of whether the agencies have had internal or third-party auditors perform
13 similar audits in the past. Any specific improper payment identified by a previous audit
14 is not eligible for identification or recovery under this section. Payments audited may
15 include state or federal funds of any character, including grants. The audit must
16 comply with applicable state and federal laws and must be designed to detect and
17 recover improper payments to the state's vendors and to recommend improvements to
18 accounting and payment policies and procedures of state agencies. Beginning on
19 July 1, 2013, and each biennium thereafter, the state auditor shall contract on behalf of
20 the state for audits to be performed on the payments made by the state to vendors
21 during the previous two fiscal years in accordance with this subsection.

22 2. A contract issued under this section:

23 a. Must provide for reasonable compensation paid by the state to the consultant on
24 a contingency basis as a specified percentage of the total amount of improper

1 payments recovered, either in cash, rebates, credits, or otherwise, by the state in
2 connection with the audit;

3 b. Must allow the consultant or the state to pursue recovery of any improper
4 payment detected by the consultant, including recovery through setoffs against
5 future payments to vendors that previously received improper payments;

6 c. Must allow for the consultant to reaudit payments that have been previously
7 audited or reviewed by internal or external auditors and found to be correct or
8 proper, if the state auditor determines the consultant is reasonably likely to find
9 and recover a material amount of improper payments among those previously
10 audited or reviewed payments;

11 d. Must include reasonable safeguards and penalties to prevent the wrongful
12 disclosure of confidential information by the contractor or its employees or agents
13 in accordance with all applicable laws; and

14 e. May not allow a recovery audit of:

15 (1) A payment to a vendor until at least one hundred eighty days after the date
16 the payment was made;

17 (2) State employee payroll payments;

18 (3) Retirement plan payments to former or current state employees;

19 (4) Loans, bond debt service, and related interest; or

20 (5) Unemployment compensation payments, judgments, and settlements.

21 3. Notwithstanding any other provision of law, each state agency with payments being
22 audited shall provide the consultant with prompt cooperation with the audit and
23 recovery process, as reasonably requested by the consultant, including providing the
24 consultant with access to any information in the custody of the state that is necessary
25 or desirable to achieve optimal performance of the audit or the recovery of improper
26 payments. An agency may not provide access to any record if disclosure of the record
27 is otherwise prohibited by law or contractual obligation.

28 4. Within thirty days after presentment by a consultant of a claim regarding improper
29 payment, the state auditor shall notify the consultant in writing if the consultant is not
30 authorized to pursue the improper payment for recovery. The notice must contain an
31 explanation for the determination. The state auditor shall base the determination on

1 the reasonable unlikelihood of recovering the improper payment, whether due to an
2 erroneous finding by the consultant, the vendor being insolvent, or other substantially
3 similar circumstances. If the consultant identifies a pattern of improper payments to a
4 specific vendor, the state auditor may authorize the consultant to conduct an audit of
5 up to one additional prior biennium of payments to the vendor. Upon the request of the
6 state auditor, the attorney general shall consider initiating any legal action necessary
7 to recover an improper payment.

8 5. For the purposes of this section, "improper payment" means any payment made in an
9 incorrect amount; to an incorrect payee; or for an incorrect reason or purpose,
10 including:

11 a. Duplicate payments;

12 b. Payments of fraudulent or erroneous invoices or bills;

13 c. Payments based on a failure to apply an applicable discount, rebate, allowance,
14 or price reduction;

15 d. Payments for goods or services not provided or rendered in whole or in part;

16 e. Payments for incorrect or unauthorized goods or services; and

17 f. Payments made in violation of contractual provisions.

18 **SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure.