

Fifty-sixth Legislative Assembly, State of North Dakota, begun in the Capitol in the City of Bismarck, on Tuesday, the fifth day of January, one thousand nine hundred and ninety-nine

SENATE BILL NO. 2130
(Government and Veterans Affairs Committee)
(At the request of the State Auditor)

AN ACT to amend and reenact sections 11-14-18, 11-22-04, 11-28.3-11, 16.1-14-15, 18-11-22, 23-30-09, 26.1-21-09, 36-15-09, 36-22-09, 44-09-26, 48-02-07, 49-17.2-27, 54-10-03, 54-10-14, 54-10-19, 61-03-03, and 61-03-18 of the North Dakota Century Code, relating to the duties of the state auditor; and to repeal section 25-07-09 of the North Dakota Century Code, relating to the collection of clothing account at the school for the deaf.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-14-18 of the North Dakota Century Code is amended and reenacted as follows:

11-14-18. Failure of treasurer to make settlement - Auditor to start suit. If a county treasurer fails to make return and settlement, or fails to pay over all money with which the treasurer stands charged, at the time and in the manner prescribed by law, the county auditor, on receiving instructions for that purpose from the ~~state auditor or from the board of county commissioners of the treasurer's county~~, shall cause suit to be instituted against the treasurer and the treasurer's sureties, or any of them.

SECTION 2. AMENDMENT. Section 11-22-04 of the North Dakota Century Code is amended and reenacted as follows:

11-22-04. How special funds are disbursed. Moneys deposited under the provisions of this chapter shall be disbursed only upon the order of the county auditor based upon the order of the officer making the deposit or of that officer's successor in office. ~~If any fund deposited is such as is required to be disbursed by warrant or draft drawn by the state auditor, then disbursement thereof shall be made only on such warrant or draft.~~ If the deposit is made in the form of a check or draft, the county treasurer shall not disburse the fund unless or until such check or draft is paid.

SECTION 3. AMENDMENT. Section 11-28.3-11 of the North Dakota Century Code is amended and reenacted as follows:

11-28.3-11. Funds collected to be deposited. All funds collected on behalf of the district through the levy of taxes, all donations, contributions, bequests, or annuities, and all borrowed money received by or on behalf of the district shall be deposited in a state or national bank to the credit of the district account and shall be drawn out only by warrant.

Claim vouchers shall be authorized by the board of directors and shall bear the signature of the secretary-treasurer and the countersignature of the president. The secretary-treasurer of the district shall, at each annual public meeting of the district, present a financial report concerning the affairs of the district. ~~Once each year at the same time the state auditor examines other county records, the state auditor shall examine the records of the secretary treasurer of the rural ambulance service district, and the cost of such examination shall be paid by the district. The secretary treasurer of the rural ambulance service district shall bring the records of the district to the office of the county auditor for the examination.~~

SECTION 4. AMENDMENT. Section 16.1-14-15 of the North Dakota Century Code is amended and reenacted as follows:

16.1-14-15. Costs - Taxation. The costs of an election contest under the provisions of this chapter must be taxed under the direction of the board. If two or more cases are heard together, the

costs must be apportioned as the board shall direct. In each case in which the petitioners do not prevail, the costs must be paid by them, and in each case in which the petitioners prevail, the costs must be paid by the state. If the costs are required to be paid by the state, the board shall certify the costs to the ~~state auditor~~ office of management and budget, ~~who~~ which shall issue ~~the state auditor's~~ a warrant upon the state treasurer in payment of the same.

SECTION 5. AMENDMENT. Section 18-11-22 of the North Dakota Century Code is amended and reenacted as follows:

18-11-22. Examination of relief association records - Report of unauthorized spending to governor - Duty of governor. The books and accounts of the secretary-treasurer of each firefighters relief association receiving funds under the provisions of this chapter must be examined pursuant to section 54-10-14. If the audit report discloses that the money, or any part of it, has been or is being expended for unauthorized purposes, the state auditor shall report the facts to the governor. Thereupon, the governor shall direct the ~~state auditor~~ office of management and budget to refuse to issue any warrants for the benefit of the fire department or relief association of the municipality in which such association is organized until it appears to the state auditor, who shall report the fact to the governor, that all moneys wrongfully expended have been replaced. The governor may take such further action as the emergency may demand.

SECTION 6. AMENDMENT. Section 23-30-09 of the North Dakota Century Code is amended and reenacted as follows:

23-30-09. Funds collected to be deposited. The following must be deposited in a state or national bank qualified as a depository for public funds to the credit of the district fund and may be drawn out only by warrant:

1. All funds collected on behalf of the district through the levy of taxes.
2. All income and earnings of the district.
3. All donations, contributions, bequests, or annuities.
4. All borrowed money received by or on behalf of the district.

Such claim voucher must be authorized by the board of directors and must bear the signature of the treasurer and the countersignature of the president of such district. The secretary-treasurer of the district shall, at each annual public meeting of the district, present a financial report concerning the affairs of the district. ~~Once each year at the same time the state auditor examines other county records he shall examine the records of the secretary treasurer of the district, and the cost of such examination must be paid by such district. The secretary treasurer of the district shall bring his records to the office of the county auditor for such examination.~~

SECTION 7. AMENDMENT. Section 26.1-21-09 of the North Dakota Century Code is amended and reenacted as follows:

26.1-21-09. Premiums - Amount to whom paid - Minimum. The premium for a blanket bond must be determined by the commissioner. Premiums must be paid in advance by the proper authority of the state, or of the political subdivision of the state, from its treasury, to the state treasurer who shall keep the same in the fund. The state treasurer shall issue ~~quadruple~~ receipts therefor in triplicate. The treasurer shall file one of such receipts in the treasurer's office, and shall mail one to the official making such payment; and one to the commissioner, ~~and one to the state auditor.~~ The minimum premium for each bond must be two dollars and fifty cents per year. Payments must be made for one year or for such longer terms as the commissioner may prescribe. From and after July 1, 1953, the premiums referred to in this section must be waived until the reserve fund of the state bonding fund has been depleted below the sum of two and one-half million dollars. The collection of premiums must be resumed on the bonds, at the rates herein set forth, whenever the reserve fund is depleted below the sum of two and one-half million dollars. The premiums must continue to be collected until the reserve fund reaches a total of three million dollars, at which time all premiums must again be waived until the reserve fund has been depleted below the sum of two and one-half million dollars.

SECTION 8. AMENDMENT. Section 36-15-09 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-15-09. Return of appraisal - Payment of claims for diseased animals. The return of an appraisal made under this chapter must be in writing and signed by the board or by the agent thereof which made the appraisal, or by the members of the board of appraisers if a reappraisal is made after a protest, and by the owner of the condemned animal. The return must be certified by the commissioner of agriculture to the ~~state auditor~~ office of management and budget, ~~who~~ which shall draw a warrant upon the state treasurer in favor of the owner of the animal. The amount of indemnity paid by this state, however, must be, in the case of an animal condemned because it is infected with tuberculosis or paratuberculosis, one-third of the difference between the appraised value of the animal and the net value of the salvage received by the owner, however, the indemnity payments may not exceed twenty-five dollars for each grade animal or fifty dollars for each registered purebred animal, except, that if the federal government fails to provide an amount of indemnity equal to that provided by the state, the owner must be paid one-half of the difference between the appraised value of the animal and the net value of the salvage thereof. Before any indemnity payment is made for such registered purebred animals, a certificate of registration in a recognized herdbook must be submitted to the state veterinarian prior to the date set for slaughter of said animal. This state is not liable for indemnity under this chapter in excess of the amount appropriated for the payment of such indemnity by the legislative assembly and the state is not liable for indemnity for any animal killed during a biennium after the appropriation for such biennium has been exhausted.

SECTION 9. AMENDMENT. Section 36-22-09 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-22-09. Audit of stockmen's association. It is the duty of the board of directors of the North Dakota stockmen's association to provide for an audit at least once every two years by a certified public accountant or licensed public accountant. Two copies of each audit report must be submitted to the ~~state auditor's office~~ legislative council.

SECTION 10. AMENDMENT. Section 44-09-26 of the North Dakota Century Code is amended and reenacted as follows:

44-09-26. Court of impeachment - Compensation - Members - Counsel - Payment. The presiding officer, except the chief justice when presiding, and members of the senate, while sitting as a court of impeachment, and members of the house of representatives, ~~each shall~~ are entitled to receive ~~his regular per diem compensation and expense reimbursement as provided in section 54-03-20 and mileage, plus five dollars per day as reimbursement for expenses as provided in section 54-06-09,~~ while attending the court of impeachment. The compensation of the secretary of the senate, sergeant at arms, and all subordinate officers, clerks, stenographers, and reporters of the court and counsel employed to assist the managers and counsel selected and employed by accused with respect to ~~his~~ the accused's defense in his ~~the~~ the impeachment trial, must be such amount as must be determined upon by a vote of the members of such court; provided, however, that the amount paid to the counsel employed to assist the managers and the amount paid to the counsel employed to assist the accused must be equal. The ~~state auditor~~ office of management and budget, upon presentation of a certificate signed by the presiding officer and secretary of the senate, shall ~~draw his warrants upon the state treasurer to pay from the general fund~~ the expense of the senate, and the compensation of the officers, clerks, stenographers, and reporters and counsel under the provisions of this chapter.

SECTION 11. AMENDMENT. Section 48-02-07 of the North Dakota Century Code is amended and reenacted as follows:

48-02-07. Allowance and payment of estimates - Investment of retainage. At least once in each calendar month during the continuance of work upon any public building or erection begun and carried on under the provisions of this chapter, the governing board, or a committee thereof duly authorized by the board for that purpose, shall meet and receive and consider estimates furnished by the supervising architect or the superintendent of construction of such building or erection, and shall allow such estimates in an amount of the estimated value of the labor and material furnished upon such contract, and of the material then upon the ground for use in the construction thereof, subject to

retentions as follows: ten percent of each estimate presented until such time as the project is fifty percent completed, with no further retainage on estimates during the continuance of the contract. The governing board may, however, upon completion of ninety-five percent of the contract according to the estimates, pay to the contractor ninety-five percent of the amount retained from previous estimates. The remaining amount retained shall be paid to the contractor in such amounts and at such times as are approved by the supervising architect or superintendent of construction, with final payment of all moneys due to the contractor to be made immediately following completion and acceptance of the project. If no supervising architect and no superintendent of construction is employed upon such contract, the contractor, at the end of each calendar month during the continuance of work under any such contract, may furnish to such board or public body in charge of such work like estimates which shall be allowed in like manner. Said board or committee thereof, immediately after considering and allowing any such estimate, shall certify and forward the same to the ~~state auditor~~, county auditor, city auditor, or other official having the power to draw warrants, who forthwith shall draw ~~his~~ that official's warrant upon the proper fund and transmit the same promptly to the contractor entitled thereto. On the amounts of estimates retained, as provided herein, the governing board, authorized committee, or public body in charge of such work may invest or deposit said retained amounts in any financial association or institution in North Dakota, so that the contractor's money will be earning interest or dividends for the benefit of the contractor. Any amounts so invested or deposited shall remain in the name of the governing board, authorized committee, or public body in charge of such work until final payment of all money due to the contractor is to be made. Further, no contractor shall use such account in any manner whatsoever until released and received by ~~him~~ the contractor upon completion of the contract.

SECTION 12. AMENDMENT. Section 49-17.2-27 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

49-17.2-27. Designation of director of department of transportation as agent of authority - Funds held in separate account - ~~Vouchers and warrants.~~ An authority may designate the director of the department of transportation as its agent to accept, receive, receipt for, and disburse federal and state moneys, and other moneys, public or private, made available by grant or loan or both, to accomplish in whole or in part, any of the purposes of this chapter. It may designate the director of the department of transportation as its agent to contract for and supervise the planning, acquisition, development, construction, improvement, maintenance, equipping, or operation of any railroad or railroad facility.

All funds received by the director of the department of transportation pursuant to this section shall be deposited in the state treasury. Unless otherwise prescribed by the agency from which such funds were received, the funds shall be kept in separate accounts according to the purposes for which the funds were made available. Such funds shall be held by the state in trust for such purposes, and paid ~~on warrants drawn by the state auditor on vouchers~~ out only when approved by the director of the department of transportation.

SECTION 13. AMENDMENT. Section 54-10-03 of the North Dakota Century Code is amended and reenacted as follows:

54-10-03. Official bond. The state auditor shall ~~execute an official~~ be covered by a fidelity bond in the sum of at not less than twenty thousand dollars.

SECTION 14. AMENDMENT. Section 54-10-14 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-10-14. Political subdivisions - Audits - Fees - Alternative audits and reports. The state auditor shall audit the following political subdivisions once every two years, except as provided in this section or otherwise by law:

1. Counties.
2. Cities.
3. Park districts.

4. School districts.
5. Firefighters relief associations.
6. Airport authorities.
7. Public libraries.
8. Water resource districts.
9. Garrison diversion conservancy district.
10. Rural fire protection districts.
11. Special education districts.
12. Area vocational and technology centers.
13. Correction centers.
14. Recreation service districts.
15. Weed boards.
16. Irrigation districts.
17. Rural ambulance service districts.
18. Southwest water authority.
19. Regional planning councils.
20. Soil conservation districts.

The state auditor shall charge the political subdivision an amount equal to the fair value of the audit and any other services rendered. The political subdivision audited shall pay to the state treasurer the fees for the audit performed by the state auditor. The state treasurer shall deposit the fees in the state auditor operating account. The state treasurer shall credit the state auditor operating account with the amount of interest earnings attributable to the deposits in that account. Expenses relating to political subdivision audits must be paid from the state auditor operating account, within the limits of legislative appropriation.

In lieu of conducting an audit every two years, the state auditor may require annual reports from school districts with less than one hundred enrolled students, cities with less than three hundred population, and other political subdivisions subject to this section, or otherwise provided by law, with less than one hundred thousand dollars of annual receipts. The reports must contain the financial information required by the state auditor. The state auditor also may make any additional examination or audit determined necessary in addition to the annual report. When a report is not filed, the state auditor may charge the political subdivision an amount equal to the fair value of the additional examination or audit and any other services rendered. The state auditor may charge a political subdivision a fee not to exceed fifty dollars an hour for the costs of reviewing the annual report.

A political subdivision, at the option of its governing body, may be audited by a certified public accountant or licensed public accountant rather than by the state auditor. The public accountant shall comply with generally accepted government auditing standards for audits of political subdivisions. The report must be in the form and content required by the state auditor. The number of copies of the audit report requested by the state auditor must be filed with the state auditor when the public accountant delivers the audit report to the political subdivision. The state auditor shall review the audit report to determine if the report is in the required form and has the required content, and if the audit meets generally accepted government auditing standards. The state auditor also may periodically review the public accountant's workpapers to determine if the audit meets generally accepted government auditing standards. If the report is in the required form and has the required content, and the report and

workpapers comply with generally accepted government auditing standards, the state auditor shall accept the audit report. The state auditor may charge the political subdivision a fee of up to fifty dollars an hour, but not to exceed five hundred dollars per review, for the related costs of reviewing the audit report and workpapers.

A political subdivision may not pay a public accountant for an audit until the state auditor has accepted the audit. However, a political subdivision may make progress payments to the public accountant. A political subdivision shall retain twenty percent of any progress payment until the audit report is accepted by the state auditor.

The state auditor may require the correction of any irregularities, objectionable accounting procedures, or illegal actions on the part of the governing board, officers, or employees of the political subdivision disclosed by the audit report or workpapers, and failure to make the corrections shall result in audits being resumed by the state auditor until the irregularities, objectionable accounting procedures, or illegal actions are corrected.

SECTION 15. AMENDMENT. Section 54-10-19 of the North Dakota Century Code is amended and reenacted as follows:

54-10-19. Supervision of books and accounts of public institutions and private institutions with which state has dealings. The state auditor shall assume and exercise constant supervision over the books and financial accounts of the several public offices and institutions which ~~he~~ the state auditor is authorized to examine. ~~He shall prescribe and enforce a correct and uniform method of keeping financial accounts in such offices and institutions, shall recommend a form for warrants or for order checks of all local units of government except school districts which shall conform so far as consistent with statutory requirements and shall instruct the proper officer of each of said institutions in the due performance of his duties concerning the same. He shall have authority to~~ The state auditor may examine the books and accounts of all private institutions with which the state has any dealings so far only as the same relate to such dealings. If any public officer having control of any such office or institutions fails or refuses to comply with the directions of the state auditor, the auditor shall report the facts to the governor and to the manager of the state bonding fund, and such refusal constitutes grounds for removal from office and cancellation of the bond of such officer.

SECTION 16. AMENDMENT. Section 61-03-03 of the North Dakota Century Code is amended and reenacted as follows:

61-03-03. Auditing of claims. All claims for services rendered, expenses incurred, or materials or supplies furnished under direction of the state engineer and which are payable from the funds appropriated for the prosecution of the work under the state engineer's direction and supervision, shall be approved by the state engineer ~~and properly vouchered and filed in the office of the state auditor.~~

SECTION 17. AMENDMENT. Section 61-03-18 of the North Dakota Century Code is amended and reenacted as follows:

61-03-18. Hydrographic survey fund - Use - Payments. The hydrographic survey fund, a permanent fund, shall be used only for the payment of the expenses of the surveys ordered by the court as provided in section 61-03-17. All claims for services rendered, expenses incurred, or materials or supplies furnished under the direction of the state engineer in the prosecution of such surveys shall be approved by the state engineer ~~and properly vouchered and filed in the office of the state auditor.~~ The amounts paid by the parties to such suits, on account of such surveys, shall be paid to the state treasurer, who shall credit the same to such fund, which shall continue to be available for advancing the expenses of such surveys, as ordered by the court from time to time.

SECTION 18. REPEAL. Section 25-07-09 of the North Dakota Century Code is repealed.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-sixth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2130.

Senate Vote: Yeas 49 Nays 0 Absent 0

House Vote: Yeas 94 Nays 0 Absent 4

Secretary of the Senate

Received by the Governor at _____ M. on _____, 1999.

Approved at _____ M. on _____, 1999.

Governor

Filed in this office this _____ day of _____, 1999,

at _____ o'clock _____ M.

Secretary of State