

**FIRST ENGROSSMENT
with Conference Committee Amendments
ENGROSSED HOUSE BILL NO. 1453**

Introduced by

Representative Pollert

Senator Wardner

1 A BILL for an Act to create and enact a new section to chapter 54-10 and a new section to
2 chapter 54-35 of the North Dakota Century Code, relating to protections for individuals who
3 report potential violations of law and the legislative audit and fiscal review committee; and to
4 amend and reenact subsection 1 of section 34-11.1-04, section 54-10-01, 54-10-26, and section
5 54-35-02.2 of the North Dakota Century Code, relating to protections for public employees who
6 report potential violations of law, the powers and duties of the state auditor, state auditor
7 working papers, and the legislative audit and fiscal review committee.

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

9 **SECTION 1. AMENDMENT.** Subsection 1 of section 34-11.1-04 of the North Dakota
10 Century Code is amended and reenacted as follows:

- 11 1. An employee ~~may~~, without fear of reprisal, may report in writing to the employee's
12 respective agency head, a state's attorney, the attorney general, the state auditor, or
13 an employee organization the existence of:
- 14 a. A job-related violation of local, state, or federal law, rule, regulation, or ordinance.
 - 15 b. The job-related misuse of public resources.

16 **SECTION 2. AMENDMENT.** Section 54-10-01 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **54-10-01. Powers and duties of state auditor.**

19 ~~The state auditor shall:~~

- 20 1. ~~Be vested with the duties, powers, and responsibilities involved in performing the~~
21 ~~postaudit of all financial transactions of the state government, detecting and reporting~~
22 ~~any defaults, and determining that expenditures have been made in accordance with~~
23 ~~law and appropriation acts.~~

- 1 2. ~~Perform or provide for the audit of the general purpose financial statements and a~~
2 ~~review of the material included in the comprehensive annual financial report of the~~
3 ~~state and perform or provide for the audits and reviews of state agencies. Except for~~
4 ~~the annual audit of the North Dakota lottery required by section 53-12.1-03, the state~~
5 ~~auditor shall audit or review each state agency once every two years. The state~~
6 ~~auditor shall determine the contents of the audits and reviews of state agencies. The~~
7 ~~state auditor may conduct any work required by the federal government. The state~~
8 ~~auditor may not contract for work required by the federal government without the prior~~
9 ~~approval of the legislative audit and fiscal review committee. The state auditor shall~~
10 ~~charge an amount equal to the cost of the audit and other services rendered by the~~
11 ~~state auditor to all agencies that receive and expend moneys from other than the~~
12 ~~general fund. This charge may be reduced for any agency that receives and expends~~
13 ~~both general fund and nongeneral fund moneys. State agencies must use nongeneral~~
14 ~~fund moneys to pay for audits performed by the state auditor. If nongeneral fund~~
15 ~~moneys are not available, the agency may, upon approval of the legislative assembly,~~
16 ~~or the budget section if the legislative assembly is not in session, use general fund~~
17 ~~moneys to pay for audits performed by the state auditor. The budget section reviews~~
18 ~~and approvals must comply with section 54-35-02.9. Audits and reviews may be~~
19 ~~conducted at more frequent intervals if requested by the governor or legislative audit~~
20 ~~and fiscal review committee.~~
- 21 3. ~~Be vested with the authority to determine whether to audit the International Peace~~
22 ~~Garden at the request of the board of directors of the International Peace Garden.~~
- 23 4. ~~Perform or provide for performance audits of state agencies, or the agencies' blended~~
24 ~~component units or discreetly presented component units, as determined necessary~~
25 ~~by the legislative assembly; the legislative audit and fiscal review committee; or the~~
26 ~~state auditor, subject to approval by the legislative audit and fiscal review committee. A~~
27 ~~performance audit must be done in accordance with generally accepted auditing~~
28 ~~standards applicable to performance audits. The state auditor may not hire a~~
29 ~~consultant to assist with conducting a performance audit of a state agency without the~~
30 ~~prior approval of the legislative audit and fiscal review committee. The state auditor~~
31 ~~shall notify an agency of the need for a consultant before requesting approval by the~~

- 1 legislative audit and fiscal review committee. The agency that is audited shall pay for
2 the cost of any consultant approved.
- 3 5. ~~For the audits and reviews the state auditor is authorized to perform or provide for~~
4 ~~under this section, the audit or review may be provided for by contract with a private~~
5 ~~certified or licensed public accountant or other qualified professional. If the state~~
6 ~~auditor determines that the audit or review will be done pursuant to contract, the state~~
7 ~~auditor, except for occupational or professional boards, shall execute the contract, and~~
8 ~~any executive branch agency, including higher education institutions, shall pay the~~
9 ~~fees of the contractor.~~
- 10 6. ~~Be responsible for the above functions and report thereon to the governor and the~~
11 ~~secretary of state in accordance with section 54-06-04 or more often as circumstances~~
12 ~~may require.~~
- 13 7. ~~Perform all other duties as prescribed by law.~~
- 14 8. ~~Perform work on mineral royalties for the federal government in accordance with~~
15 ~~section 1735(a) of the Mineral Lands and Mining Act [30 U.S.C. 1735 et seq.].~~ The
16 state auditor shall:
- 17 a. Be vested with the duties, powers, and responsibilities involved in performing the
18 postaudit of all financial transactions of state government, detecting and reporting
19 any defaults, and determining that expenditures have been made in accordance
20 with law and appropriation acts.
- 21 b. Perform or provide for the audit of the general purpose financial statements and a
22 review of the material included in the comprehensive annual financial report of
23 the state in accordance with government auditing standards.
- 24 c. Perform or provide for audits of state agencies in accordance with government
25 auditing standards and legislative audit and fiscal review committee guidelines
26 developed under section 6 of this Act. Except for the annual audit of the North
27 Dakota lottery required by section 53-12.1-03, the state auditor shall audit each
28 state agency once every two years. Audits may be conducted at more frequent
29 intervals if requested by the governor or the legislative audit and fiscal review
30 committee. The state auditor shall charge an amount equal to the cost of the
31 audit and other services rendered by the state auditor to all agencies that receive

1 and expend moneys from other than the general fund. This charge may be
2 reduced for an agency that receives and expends both general fund and
3 nongeneral fund moneys. State agencies shall use nongeneral fund moneys to
4 pay for the cost of the audit. If nongeneral fund moneys are not available, the
5 agency may, upon approval of the legislative assembly, or the budget section if
6 the legislative assembly is not in session, use general fund moneys to pay for the
7 audit. Any budget section action under this subdivision must comply with section
8 54-35-02.9.

9 d. Perform or provide for performance audits of state agencies, or the agencies'
10 blended component units or discreetly presented component units, as
11 determined necessary by the legislative assembly, or the legislative audit and
12 fiscal review committee if the legislative assembly is not in session. When
13 determining the necessity of a performance audit, the legislative audit and fiscal
14 review committee shall consider:

- 15 (1) The potential cost-savings or efficiencies that may be gained as a result of
16 the performance audit;
17 (2) The staff resources of the state auditor's office and of the state agency
18 being audited which will be required to conduct the audit;
19 (3) The potential for discovery of noncompliance with state law or legislative
20 intent regarding the program or agency; and
21 (4) The potential for the performance audit to identify opportunities for program
22 improvements.

23 e. Report on the functions of the state auditor's office to the governor and the
24 secretary of state in accordance with section 54-06-04 or more often as
25 circumstances may require.

26 f. Perform work on mineral royalties for the federal government in accordance with
27 section 1735(a) of the Mineral Lands and Mining Act [30 U.S.C. 1735 et seq.].

28 g. Perform all other duties as prescribed by law.

29 2. The state auditor may:

30 a. Conduct any work required by the federal government.

- 1 b. Within the resources available to the state auditor, perform or provide for
2 performance audits of state agencies as determined necessary by the state
3 auditor.
- 4 c. Audit the International Peace Garden at the request of the board of directors of
5 the International Peace Garden.
- 6 d. Contract with a private certified public accountant or other qualified professional
7 to conduct or assist with an audit, review, or other work the state auditor is
8 authorized to perform or provide for under this section. Before entering any
9 contract, the state auditor shall present information to the legislative audit and
10 fiscal review committee on the need for the contract and its estimated cost and
11 duration. Except for performance audits conducted under subdivision d of
12 subsection 1 of this section or subdivision b of this subsection and except for
13 audits of occupational or professional boards, the state auditor shall execute the
14 contract and any executive branch agency, including higher education
15 institutions, shall pay the fees of the contractor. For performance audits
16 conducted under subdivision d of subsection 1 of this section or subdivision b of
17 this subsection, the state auditor may charge a state agency for the cost of a
18 contract relating to an audit, subject to approval by the legislative assembly or the
19 legislative audit and fiscal review committee if the legislative assembly is not in
20 session. When considering a request, the legislative audit and fiscal review
21 committee shall consider the effect of the audit cost on the agency being audited,
22 the necessity of the contract, and the potential benefit to the state resulting from
23 the contract. The state auditor shall notify the affected agency of the potential
24 cost before requesting approval from the legislative assembly or the legislative
25 audit and fiscal review committee.

26 **SECTION 3.** A new section to chapter 54-10 of the North Dakota Century Code is created
27 and enacted as follows:

28 **Reporting noncompliance - Confidentiality.**

29 Information that reasonably may be used to identify an individual who reported suspected or
30 potential violations of law or other irregularities to the state auditor is a confidential record under
31 section 44-04-17.1.

1 **SECTION 4. AMENDMENT.** Section 54-10-26 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **54-10-26. State auditor's working papers.**

4 ~~Working~~

- 5 1. ~~Except as provided in this section, working~~ papers of the state auditor are not public
6 records and are exempt from section 44-04-18. Working papers include records kept
7 by the auditor of the procedures applied, the tests performed, the information
8 obtained, draft audit reports, and the pertinent conclusions reached in the
9 engagement. Working papers may be, at the discretion of the state auditor and unless
10 otherwise prohibited by law, made available for inspection. A
- 11 2. ~~Except as provided in subsection 3, a draft audit report released to the governing body~~
12 or management of the audited entity is confidential until the final audit report is issued
13 or work ceases on the audit. ~~The issued audit report is public information at which time~~
14 ~~the audit report becomes an open record.~~
- 15 3. ~~Except as provided in this subsection, a draft audit report for an audit completed in~~
16 ~~accordance with performance auditing standards contained in government auditing~~
17 ~~standards issued by the comptroller general of the United States to provide an~~
18 ~~independent assessment of the performance and management of a program released~~
19 ~~to the governing body or management of the audited entity is confidential until the final~~
20 ~~version of the audit report is an open record. After the auditor receives the audited~~
21 ~~entity's response to the draft report, the auditor shall complete the audit report, which~~
22 ~~is then deemed a preliminary audit report. The auditor shall provide the preliminary~~
23 ~~audit report and the audited entity's response to the legislative audit and fiscal review~~
24 ~~committee for a seven-day review period, except the auditor may not provide any~~
25 ~~information that is confidential under subsection 2 of section 54-10-25. During the~~
26 ~~review period, the preliminary audit report and the response may not be provided to~~
27 ~~any other person except by the legislative audit and fiscal review committee as~~
28 ~~necessary to perform the committee's duties as described in section 54-35-02.2. At the~~
29 ~~end of the review period, the preliminary audit report is deemed a final audit report,~~
30 ~~and the final audit report and the audited entity's response are open records. Reports~~

1 for audits performed under subdivision f of subsection 1 of section 54-10-01 or
2 subdivision a of subsection 2 of section 54-10-01 are not subject to this subsection.

3 4. The respective working papers of an issued audit report or an audit report presented
4 to the legislative audit and fiscal review committee are public. At the discretion of the
5 state auditor, open records unless the state auditor declares all or a portion of the
6 working papers of an issued audit report may be declared confidential. The declaration
7 of confidentiality must state the reason for the confidentiality and the date, as can best
8 be reasonably determined at the time, when the working papers will be made public.

9 **SECTION 5. AMENDMENT.** Section 54-35-02.2 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **54-35-02.2. Powers and duties of the legislative audit and fiscal review committee.**

12 The legislative audit and fiscal review committee shall study and review audit reports as
13 selected by the committee from those submitted by the state auditor, confer with the auditor and
14 deputy auditors in regard to such reports, and when necessary, confer with representatives of
15 the department, agency, or institution audited in order to obtain full and complete information in
16 regard to any and all fiscal transactions and governmental operations of any department,
17 agency, or institution of the state. The committee shall meet at least once each calendar quarter
18 during each interim. Each department, agency, or institution shall furnish to the committee such
19 aid, information, and assistance in regard to fiscal transactions and governmental operations as
20 it may from time to time request. Whenever the committee may determine or have reason to
21 believe that there may have been a violation of law relating to the receipt, custody, or
22 expenditure of public funds by any state officer or employee, the committee shall present such
23 evidence or information as may be in its possession to the attorney general. The attorney
24 general shall receive and accept such evidence or information and shall immediately
25 commence such additional investigation as the attorney general determines necessary. Upon
26 completion of the investigation, if the evidence supplied by the committee and through the
27 investigation indicates the probability of a violation of law by any state official or employee, the
28 attorney general immediately shall prosecute such official or employee as provided by law.
29 Whenever the committee may determine that a state agency, department, or institution has
30 failed to correct an audit finding within two bienniums which the committee determines critically
31 important, the committee may recommend the legislative assembly reduce the state agency,

1 department, or institution's appropriation as compared with the amount appropriated to the
2 agency, department, or institution for the previous biennium. The legislative management,
3 through its committee on legislative audit and fiscal review, or such persons as may be directed
4 or employed by the legislative council, is authorized, within the limits of legislative
5 appropriations, to make such audits, examinations, or studies of the fiscal transactions or
6 governmental operations of departments, agencies, or institutions of the state as the legislative
7 management may determine necessary.

8 **SECTION 6.** A new section to chapter 54-35 of the North Dakota Century Code is created
9 and enacted as follows:

10 **Legislative audit and fiscal review committee - Auditing guidelines.**

11 Each biennium, the legislative audit and fiscal review committee, in consultation with the
12 state auditor, shall review updates to government auditing standards and develop guidelines for
13 the contents of state agency audit reports. The legislative audit and fiscal review committee
14 shall consider the following when developing the guidelines:

- 15 1. Applicable auditing standards;
- 16 2. Sound financial practices;
- 17 3. Compliance with laws and legislative intent;
- 18 4. Data analyses; and
- 19 5. The opportunity to improve the efficient and effective operations of state agencies.