

Introduced by

Representative Pollert

Senator Wardner

Highlighted sections make tips  
Confidential and expand  
whistleblower protections.

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 protections for individuals who report potential violations of law; and to  
3 amend and reenact subsection 1 of section 34-11.1-04 and section 54-10-01 of the North  
4 Dakota Century Code, relating to protections for public employees who report potential  
5 violations of law and the powers and duties of the state auditor.

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

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

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

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

16 **54-10-01. Powers and duties of state auditor.**

17 ~~The state auditor shall:~~

- 18 1. ~~Be vested with the duties, powers, and responsibilities involved in performing the~~  
19 ~~postaudit of all financial transactions of the state government, detecting and reporting~~  
20 ~~any defaults, and determining that expenditures have been made in accordance with~~  
21 ~~law and appropriation acts.~~
- 22 2. ~~Perform or provide for the audit of the general purpose financial statements and a~~  
23 ~~review of the material included in the comprehensive annual financial report of the~~  
24 ~~state and perform or provide for the audits and reviews of state agencies. Except for~~

Sixty-seventh  
Legislative Assembly

1       ~~the annual audit of the North Dakota lottery required by section 53-12.1-03, the state~~  
2       ~~auditor shall audit or review each state agency once every two years. The state~~  
3       ~~auditor shall determine the contents of the audits and reviews of state agencies. The~~  
4       ~~state auditor may conduct any work required by the federal government. The state~~  
5       ~~auditor may not contract for work required by the federal government without the prior~~  
6       ~~approval of the legislative audit and fiscal review committee. The state auditor shall~~  
7       ~~charge an amount equal to the cost of the audit and other services rendered by the~~  
8       ~~state auditor to all agencies that receive and expend moneys from other than the~~  
9       ~~general fund. This charge may be reduced for any agency that receives and expends~~  
10       ~~both general fund and nongeneral fund moneys. State agencies must use nongeneral~~  
11       ~~fund moneys to pay for audits performed by the state auditor. If nongeneral fund~~  
12       ~~moneys are not available, the agency may, upon approval of the legislative assembly,~~  
13       ~~or the budget section if the legislative assembly is not in session, use general fund~~  
14       ~~moneys to pay for audits performed by the state auditor. The budget section reviews~~  
15       ~~and approvals must comply with section 54-35-02.9. Audits and reviews may be~~  
16       ~~conducted at more frequent intervals if requested by the governor or legislative audit~~  
17       ~~and fiscal review committee.~~

18       ~~3. Be vested with the authority to determine whether to audit the International Peace~~  
19       ~~Garden at the request of the board of directors of the International Peace Garden.~~

20       ~~4. Perform or provide for performance audits of state agencies, or the agencies' blended~~  
21       ~~component units or discreetly presented component units, as determined necessary~~  
22       ~~by the legislative assembly; the legislative audit and fiscal review committee; or the~~  
23       ~~state auditor, subject to approval by the legislative audit and fiscal review committee. A~~  
24       ~~performance audit must be done in accordance with generally accepted auditing~~  
25       ~~standards applicable to performance audits. The state auditor may not hire a~~  
26       ~~consultant to assist with conducting a performance audit of a state agency without the~~  
27       ~~prior approval of the legislative audit and fiscal review committee. The state auditor~~  
28       ~~shall notify an agency of the need for a consultant before requesting approval by the~~  
29       ~~legislative audit and fiscal review committee. The agency that is audited shall pay for~~  
30       ~~the cost of any consultant approved.~~



Sixty-seventh  
Legislative Assembly

- 1       5. ~~For the audits and reviews the state auditor is authorized to perform or provide for~~  
2       ~~under this section, the audit or review may be provided for by contract with a private-~~  
3       ~~certified or licensed public accountant or other qualified professional. If the state-~~  
4       ~~auditor determines that the audit or review will be done pursuant to contract, the state-~~  
5       ~~auditor, except for occupational or professional boards, shall execute the contract, and~~  
6       ~~any executive branch agency, including higher education institutions, shall pay the~~  
7       ~~fees of the contractor.~~
- 8       6. ~~Be responsible for the above functions and report thereon to the governor and the~~  
9       ~~secretary of state in accordance with section 54-06-04 or more often as circumstances-~~  
10      ~~may require.~~
- 11      7. ~~Perform all other duties as prescribed by law.~~
- 12      8. ~~Perform work on mineral royalties for the federal government in accordance with~~  
13      ~~section 1735(a) of the Mineral Lands and Mining Act [30 U.S.C. 1735 et seq.].~~ The  
14      ~~state auditor shall:~~
  - 15      a. Be vested with the duties, powers, and responsibilities involved in performing the  
16      postaudit of all financial transactions of state government, detecting and reporting  
17      any defaults, and determining that expenditures have been made in accordance  
18      with law and appropriation acts.
  - 19      b. Perform or provide for the financial audit of the general purpose financial  
20      statements and a review of the material included in the comprehensive annual  
21      financial report of the state.
  - 22      c. Perform or provide for financial audits of state agencies. Except for the annual  
23      audit of the North Dakota lottery required by section 53-12.1-03, the state auditor  
24      shall audit each state agency once every two years. Audits may be conducted at  
25      more frequent intervals if requested by the governor or the legislative audit and  
26      fiscal review committee. The state auditor shall charge an amount equal to the  
27      cost of the audit and other services rendered by the state auditor to all agencies  
28      that receive and expend moneys from other than the general fund. This charge  
29      may be reduced for an agency that receives and expends both general fund and  
30      nongeneral fund moneys. State agencies shall use nongeneral fund moneys to  
31      pay for the cost of the audit. If nongeneral fund moneys are not available, the

- 1           agency may, upon approval of the legislative assembly, or the budget section if  
2           the legislative assembly is not in session, use general fund moneys to pay for the  
3           audit. Any budget section action under this subdivision must comply with section  
4           54-35-02.9.
- 5           d. Perform or provide for performance audits of state agencies, or the agencies'  
6           blended component units or discreetly presented component units, as  
7           determined necessary by the legislative assembly, or the legislative audit and  
8           fiscal review committee if the legislative assembly is not in session. When  
9           determining the necessity of a performance audit, the legislative audit and fiscal  
10           review committee shall consider:
- 11           (1) The potential cost-savings or efficiencies that may be gained as a result of  
12           the performance audit;
- 13           (2) The staff resources of the state auditor's office and of the state agency  
14           being audited which will be required to conduct the audit;
- 15           (3) The potential for discovery of noncompliance with state law or legislative  
16           intent regarding the program or agency; and
- 17           (4) The potential for the performance audit to identify opportunities for program  
18           improvements.
- 19           e. Report on the functions of the state auditor's office to the governor and the  
20           secretary of state in accordance with section 54-06-04 or more often as  
21           circumstances may require.
- 22           f. Perform work on mineral royalties for the federal government in accordance with  
23           section 1735(a) of the Mineral Lands and Mining Act [30 U.S.C. 1735 et seq.].
- 24           g. Perform all other duties as prescribed by law.
- 25           2. The state auditor may:
- 26           a. Conduct any work required by the federal government.
- 27           b. Within the resources available to the state auditor, perform or provide for  
28           performance audits of state agencies as determined necessary by the state  
29           auditor.
- 30           c. Audit the International Peace Garden at the request of the board of directors of  
31           the International Peace Garden.



1           d. Contract with a private certified public accountant or other qualified professional  
2           to conduct or assist with an audit, review, or other work the state auditor is  
3           authorized to perform or provide for under this section. Before entering any  
4           contract, the state auditor shall present information to the legislative audit and  
5           fiscal review committee on the need for the contract and its estimated cost and  
6           duration. The state auditor may charge a state agency for the cost of a contract  
7           relating to an audit, subject to approval by the legislative assembly or the  
8           legislative audit and fiscal review committee if the legislative assembly is not in  
9           session. When considering a request, the legislative audit and fiscal review  
10          committee shall consider the effect of the audit cost on the agency being audited,  
11          the necessity of the contract, and the potential benefit to the state resulting from  
12          the contract. The state auditor shall notify the affected agency of the potential  
13          cost before requesting approval from the legislative assembly or the legislative  
14          audit and fiscal review committee.

15          3. For purposes of this section:

16          a. A financial audit means an audit completed in accordance with auditing standards  
17          generally accepted in the United States of America and the standards applicable  
18          to financial audits contained in government auditing standards issued by the  
19          comptroller general of the United States; and

20          b. A performance audit means an audit completed in accordance with performance  
21          auditing standards contained in government auditing standards issued by the  
22          comptroller general of the United States to provide an independent assessment  
23          of the performance and management of a program.

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

26          **Reporting noncompliance - Confidentiality.**

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

