

21.0022.01003

Sixty-seventh
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1453

Optional Amendment

Introduced by

Representative Pollert

Senator Wardner

Highlighted Section :
Audit Confidential until
Presented to LAFRC

1 A BILL for an Act to create and enact a new section to chapter 54-35 of the North Dakota
2 Century Code, relating to the legislative audit and fiscal review committee; and to amend and
3 reenact section 54-10-01 and 54-10-26 of the North Dakota Century Code, relating to the
4 powers and duties of the state auditor and state auditor working papers.

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

6 **SECTION 1. AMENDMENT.** Section 54-10-01 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **54-10-01. Powers and duties of state auditor.**

9 The state auditor shall:

- 10 1. ~~Be vested with the duties, powers, and responsibilities involved in performing the~~
11 ~~postaudit of all financial transactions of the state government, detecting and reporting~~
12 ~~any defaults, and determining that expenditures have been made in accordance with~~
13 ~~law and appropriation acts.~~
- 14 2. ~~Perform or provide for the audit of the general purpose financial statements and a~~
15 ~~review of the material included in the comprehensive annual financial report of the~~
16 ~~state and perform or provide for the audits and reviews of state agencies. Except for~~
17 ~~the annual audit of the North Dakota lottery required by section 53-12.1-03, the state~~
18 ~~auditor shall audit or review each state agency once every two years. The state~~
19 ~~auditor shall determine the contents of the audits and reviews of state agencies. The~~
20 ~~state auditor may conduct any work required by the federal government. The state~~
21 ~~auditor may not contract for work required by the federal government without the prior~~
22 ~~approval of the legislative audit and fiscal review committee. The state auditor shall~~
23 ~~charge an amount equal to the cost of the audit and other services rendered by the~~
24 ~~state auditor to all agencies that receive and expend moneys from other than the~~

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- 1 general fund. This charge may be reduced for any agency that receives and expends
2 both general fund and nongeneral fund moneys. State agencies must use nongeneral
3 fund moneys to pay for audits performed by the state auditor. If nongeneral fund
4 moneys are not available, the agency may, upon approval of the legislative assembly,
5 or the budget section if the legislative assembly is not in session, use general fund
6 moneys to pay for audits performed by the state auditor. The budget section reviews
7 and approvals must comply with section 54-35-02.9. Audits and reviews may be
8 conducted at more frequent intervals if requested by the governor or legislative audit
9 and fiscal review committee.
- 10 3. ~~Be vested with the authority to determine whether to audit the International Peace~~
11 ~~Garden at the request of the board of directors of the International Peace Garden.~~
- 12 4. ~~Perform or provide for performance audits of state agencies, or the agencies' blended~~
13 ~~component units or discreetly presented component units, as determined necessary~~
14 ~~by the legislative assembly; the legislative audit and fiscal review committee; or the~~
15 ~~state auditor, subject to approval by the legislative audit and fiscal review committee. A~~
16 ~~performance audit must be done in accordance with generally accepted auditing~~
17 ~~standards applicable to performance audits. The state auditor may not hire a~~
18 ~~consultant to assist with conducting a performance audit of a state agency without the~~
19 ~~prior approval of the legislative audit and fiscal review committee. The state auditor~~
20 ~~shall notify an agency of the need for a consultant before requesting approval by the~~
21 ~~legislative audit and fiscal review committee. The agency that is audited shall pay for~~
22 ~~the cost of any consultant approved.~~
- 23 5. ~~For the audits and reviews the state auditor is authorized to perform or provide for~~
24 ~~under this section, the audit or review may be provided for by contract with a private~~
25 ~~certified or licensed public accountant or other qualified professional. If the state~~
26 ~~auditor determines that the audit or review will be done pursuant to contract, the state~~
27 ~~auditor, except for occupational or professional boards, shall execute the contract, and~~
28 ~~any executive branch agency, including higher education institutions, shall pay the~~
29 ~~fees of the contractor.~~

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- 1 6. ~~Be responsible for the above functions and report thereon to the governor and the~~
2 ~~secretary of state in accordance with section 54-06-04 or more often as circumstances~~
3 ~~may require.~~
- 4 7. ~~Perform all other duties as prescribed by law.~~
- 5 8. ~~Perform work on mineral royalties for the federal government in accordance with~~
6 ~~section 1735(a) of the Mineral Lands and Mining Act [30 U.S.C. 1735 et seq.].~~ The
7 state auditor shall:
- 8 a. Be vested with the duties, powers, and responsibilities involved in performing the
9 postaudit of all financial transactions of state government, detecting and reporting
10 any defaults, and determining that expenditures have been made in accordance
11 with law and appropriation acts.
- 12 b. Perform or provide for the ~~financial~~ audit of the general purpose financial
13 statements and a review of the material included in the comprehensive annual
14 financial report of the state in accordance with government auditing standards.
- 15 c. Perform or provide for ~~financial~~ audits of state agencies in accordance with
16 government auditing standards and legislative audit and fiscal review committee
17 guidelines. Except for the annual audit of the North Dakota lottery required by
18 section 53-12.1-03, the state auditor shall audit each state agency once every
19 two years. Audits may be conducted at more frequent intervals if requested by
20 the governor or the legislative audit and fiscal review committee. The state
21 auditor shall charge an amount equal to the cost of the audit and other services
22 rendered by the state auditor to all agencies that receive and expend moneys
23 from other than the general fund. This charge may be reduced for an agency that
24 receives and expends both general fund and nongeneral fund moneys. State
25 agencies shall use nongeneral fund moneys to pay for the cost of the audit. If
26 nongeneral fund moneys are not available, the agency may, upon approval of the
27 legislative assembly, or the budget section if the legislative assembly is not in
28 session, use general fund moneys to pay for the audit. Any budget section action
29 under this subdivision must comply with section 54-35-02.9.
- 30 d. Perform or provide for performance audits of state agencies, or the agencies'
31 blended component units or discreetly presented component units, as

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

1 subsection 1 of this section or subdivision b of this subsection and except for
2 audits of occupational or professional boards, the state auditor shall execute the
3 contract and any executive branch agency, including higher education
4 institutions, shall pay the fees of the contractor. For performance audits
5 conducted under subdivision d of subsection 1 of this section or subdivision b of
6 this subsection, the state auditor may charge a state agency for the cost of a
7 contract 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 2. AMENDMENT.** Section 54-10-26 of the North Dakota Century Code is
25 amended and reenacted as follows:

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

27 Working papers of the state auditor are not public records and are exempt from section
28 44-04-18. Working papers include records kept by the auditor of the procedures applied, the
29 tests performed, the information obtained, draft audit reports, and the pertinent conclusions
30 reached in the engagement. Working papers may be, at the discretion of the state auditor and
31 unless otherwise prohibited by law, made available for inspection. A draft audit report

1 associated with an audit completed using government auditing standards applicable to financial
2 audits which is released to the governing body or management of the audited entity is
3 confidential until the final audit report is issued or work ceases on the audit. ~~The issued audit~~
4 ~~report is public information.~~ at which time the audit report becomes public information. Any other
5 draft audit report released to the governing body or management of the audited entity is
6 confidential until the final audit report is presented to the legislative audit and fiscal review
7 committee at which time the audit report becomes public information. The respective working
8 papers of an issued audit report or an audit report presented to the legislative audit and fiscal
9 review committee are public. At the discretion of the state auditor, all or a portion of the working
10 papers of ~~an issued~~ a publicly available audit report may be declared confidential. The
11 declaration of confidentiality must state the reason for the confidentiality and the date, as can
12 best be reasonably determined at the time, when the working papers will be made public.

13 **SECTION 3.** A new section to chapter 54-35 of the North Dakota Century Code is created
14 and enacted as follows:

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

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

- 20 1. Applicable auditing standards;
- 21 2. Sound financial practices;
- 22 3. Compliance with laws and legislative intent;
- 23 4. Data analyses; and
- 24 5. The opportunity to improve the efficient and effective operations of state agencies.