

PROPOSED AMENDMENTS TO REENGROSSED SENATE BILL NO. 2004

Page 1, line 1, after the semicolon insert "to create and enact section 54-10-31 of the North Dakota Century Code, relating to audits of the department of financial institutions;"

Page 1, line 2, after "sections" insert "54-10-01,"

Page 1, line 2, after "54-10-10" insert ", and 54-10-14"

Page 1, line 2, after "to" insert "the duties of the state auditor,"

Page 1, line 3, after "auditor" insert ", and fees charged by the state auditor; to provide for a legislative management study; to provide for a legislative management report"

Page 1, line 3, after the semicolon insert "to provide for retroactive application;"

Page 2, line 15, replace "\$24,358" with "\$120,000"

Page 2, line 16, remove "local governments whose audit fees"

Page 2, line 17, replace "exceeded one percent of their revenues" with "a firefighters relief association, rural fire protection districts, and rural ambulance service districts"

Page 2, after line 18, insert:

**"SECTION 4. AMENDMENT.** Section 54-10-01 of the North Dakota Century Code is amended and reenacted as follows:

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

1. The state auditor shall:
  - a. Be vested with the duties, powers, and responsibilities involved in performing the postaudit of all financial transactions of state government, detecting and reporting any defaults, and determining that expenditures have been made in accordance with law and appropriation acts.
  - b. Perform or provide for the audit of the general purpose financial statements and a review of the material included in the comprehensive annual financial report of the state in accordance with government auditing standards.
  - c. ~~Perform~~Except for the audit of the department of financial institutions as outlined in section 54-10-31, perform or provide for audits of state agencies in accordance with government auditing standards and legislative audit and fiscal review committee guidelines developed under section 54-35-02.10. Except for the annual audit of the North Dakota lottery required by section 53-12.1-03, the state auditor shall audit each state agency once every two years. Audits may be conducted at more frequent intervals if requested by the governor or the legislative audit and fiscal review committee. The state auditor shall charge an amount equal to the cost of the audit and other services rendered by the state auditor to all agencies that receive and

expend moneys from other than the general fund. This charge may be reduced for an agency that receives and expends both general fund and nongeneral fund moneys. State agencies shall use nongeneral fund moneys to pay for the cost of the audit. If nongeneral fund moneys are not available, the agency may, upon approval of the legislative assembly, or the budget section if the legislative assembly is not in session, use general fund moneys to pay for the audit. If the lead auditor on an agency audit has less than two years of experience with the state auditor or has not previously audited the agency, the agency may not be charged for the audit. Any budget section action under this subdivision must comply with section 54-35-02.9.

- d. Perform Except for the audit of the department of financial institutions as outlined in section 54-10-31, perform or provide for performance audits of state agencies, or the agencies' blended component units or discreetly presented component units, as determined necessary by the legislative assembly, or the legislative audit and fiscal review committee if the legislative assembly is not in session. When determining the necessity of a performance audit, the legislative audit and fiscal review committee shall consider:
    - (1) The potential cost-savings or efficiencies that may be gained as a result of the performance audit;
    - (2) The staff resources of the state auditor's office and of the state agency being audited which will be required to conduct the audit;
    - (3) The potential for discovery of noncompliance with state law or legislative intent regarding the program or agency; and
    - (4) The potential for the performance audit to identify opportunities for program improvements.
  - e. Report on the functions of the state auditor's office to the governor and the secretary of state in accordance with section 54-06-04 or more often as circumstances may require.
  - f. Perform work on mineral royalties for the federal government in accordance with section 1735(a) of the Mineral Lands and Mining Act [30 U.S.C. 1735 et seq.].
  - g. Provide quarterly reports to the legislative management of all audits performed and fees charged.
  - h. Perform all other duties as prescribed by law.
2. The state auditor may:
- a. Conduct any work required by the federal government.
  - b. Within the resources available to the state auditor, perform or provide for performance audits of state agencies as determined necessary by the state auditor.
  - c. Audit the International Peace Garden at the request of the board of directors of the International Peace Garden.

- d. Contract with a private certified public accountant or other qualified professional to conduct or assist with an audit, review, or other work the state auditor is authorized to perform or provide for under this section. Before entering any contract, the state auditor shall present information to the legislative audit and fiscal review committee on the need for the contract and its estimated cost and duration. Except for performance audits conducted under subdivision d of subsection 1 or subdivision b of this subsection and except for audits of occupational or professional boards, the state auditor shall execute the contract and any executive branch agency, including higher education institutions, shall pay the fees of the contractor. For performance audits conducted under subdivision d of subsection 1 or subdivision b of this subsection, the state auditor may charge a state agency for the cost of a contract relating to an audit, subject to approval by the legislative assembly or the legislative audit and fiscal review committee if the legislative assembly is not in session. When considering a request, the legislative audit and fiscal review committee shall consider the effect of the audit cost on the agency being audited, the necessity of the contract, and the potential benefit to the state resulting from the contract. The state auditor shall notify the affected agency of the potential cost before requesting approval from the legislative assembly or the legislative audit and fiscal review committee.

3. Notwithstanding subdivision c of subsection 1 and subdivision d of subsection 2, the state auditor may not charge audit fees to an institution of higher education, agency, or office under the control of the state board of higher education, including passthrough grants, except for a proportional share of audit fees on federal programs or grants to the extent those audited federal programs or grants provide for allowable cost recovery. Institutions without an approved indirect cost recovery fund may not be assessed audit fees on closed federal programs."

Page 2, after line 24, insert:

**"SECTION 6. AMENDMENT.** Section 54-10-14 of the North Dakota Century Code is amended and reenacted as follows:

**54-10-14. Political subdivisions - Audits - Fees - Alternative audits and reports.**

1. The state auditor shall audit the following political subdivisions once every two years, except as provided in this section or otherwise by law:
  - a. Counties.
  - b. Cities, and when a city is audited, to include any political subdivision that was created by the city and has bonding authority.
  - c. Park districts.
  - d. School districts.
  - e. Firefighters relief associations.
  - f. Airport authorities.

- g. Public libraries.
  - h. Water resource districts.
  - i. Garrison Diversion Conservancy District.
  - j. Rural fire protection districts.
  - k. Special education districts.
  - l. Area career and technology centers.
  - m. Correction centers.
  - n. Recreation service districts.
  - o. Weed boards.
  - p. Irrigation districts.
  - q. Rural ambulance service districts.
  - r. Southwest water authority.
  - s. Regional planning councils.
  - t. Soil conservation districts.
  - u. Western area water supply authority industrial water sales on an annual basis.
2. The~~Except as provided in subsection 7,~~ the state auditor shall charge the political subdivision an amount equal to the fair value of the audit and any other services rendered. The fees must be deposited 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.
3. In lieu of conducting an audit every two years, the state auditor may require annual reports from political subdivisions subject to this section, or otherwise provided by law, with less than seven hundred fifty thousand dollars of annual receipts, excluding any federal funds passed through the political subdivision to another entity. If any federal agency performs or requires an audit of a political subdivision that receives federal funds to pass through to another entity, the political subdivision shall provide a copy to the state auditor upon request by the state auditor. 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. Except as provided under subsection 7:
- a. 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.

- b. The state auditor may charge a political subdivision a fee not to exceed eighty-six dollars an hour for the costs of reviewing the annual report.
4. 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 Except as provided in subsection 7, the state auditor may charge the political subdivision a fee of up to eighty-six dollars an hour, but not to exceed seven hundred fifty dollars per review, for the related costs of reviewing the audit report and workpapers.
5. 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.
6. 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 must result in audits being resumed by the state auditor until the irregularities, objectionable accounting procedures, or illegal actions are corrected.
7. Notwithstanding any other provision of law, the state auditor may not charge or collect any fee from a firefighters relief association, rural fire protection district, or rural ambulance service district related to the cost or value of an audit, review or examination of audit reports, workpapers, or annual reports, or any other services rendered.

**SECTION 7.** Section 54-10-31 of the North Dakota Century Code is created and enacted as follows:

**Department of financial institutions - Audit and reports.**

Once every two years, the state banking board shall provide for an audit of the department of financial institutions by a certified public accountant. The state banking board may request the state auditor to conduct the audit. If the state auditor agrees to conduct the audit, the state auditor shall deposit any fees assessed for completion of the audit to the state auditor operating account.

**SECTION 8. LEGISLATIVE MANAGEMENT STUDY - LOCAL GOVERNMENT AUDIT SERVICES.** During the 2023-24 interim, the legislative management shall consider studying local government audit services and the challenges political subdivisions face in securing audit services. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-ninth legislative assembly.

**SECTION 9. RETROACTIVE APPLICATION.** Section 6 of this Act applies retroactively to audits conducted after December 31, 2017."

Renumber accordingly