

Sixty-eighth  
Legislative Assembly  
of North Dakota

## ENGROSSED HOUSE BILL NO. 1508

Introduced by

Representatives O'Brien, Lefor, Nathe, Sanford, Schreiber-Beck

Senators Kreun, Meyer

1 A BILL for an Act to create and enact a new subdivision to subsection 2 of section 12-60-24, a  
 2 new subsection to section 54-10-26, and four new sections to chapter 54-10 of the North  
 3 Dakota Century Code, relating to criminal history background checks of employees of the state  
 4 auditor and audits of state agencies, political subdivisions, and occupation and professional  
 5 boards; to amend and reenact ~~section~~sections 16.1-01-10, 54-10-01, and 54-10-13,  
 6 subsection 5 of section 54-10-14, and sections 54-10-15 and 54-10-25 of the North Dakota  
 7 Century Code, relating to duties of the state auditor; and to provide a penalty.

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

9 **SECTION 1.** A new subdivision to subsection 2 of section 12-60-24 of the North Dakota  
 10 Century Code is created and enacted as follows:

11 The state auditor for all employees, as required by section 10 of this Act.

12 **SECTION 2. AMENDMENT.** Section 16.1-01-10 of the North Dakota Century Code is  
 13 amended and reenacted as follows:

14 **16.1-01-10. Secretary of state to pass upon sufficiency of petitions - Method - Time**  
 15 **limit.**

16 The secretary of state shall have a reasonable period, not to exceed thirty-five days, in  
 17 which to pass upon the sufficiency of any petition mentioned in ~~section~~sections 16.1-01-09 and  
 18 54-10-15. The secretary of state shall conduct a representative random sampling of the  
 19 signatures contained in the petitions by the use of questionnaires, postcards, telephone calls,  
 20 personal interviews, or other accepted information-gathering techniques, or any combinations  
 21 thereof, to determine the validity of the signatures. Signatures determined by the secretary of  
 22 state to be invalid may not be counted and all violations of law discovered by the secretary of  
 23 state must be reported to the attorney general for prosecution.

1       **SECTION 3. AMENDMENT.** Section 54-10-01 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3       **54-10-01. Powers and duties of state auditor.**

4       1. The state auditor shall:

5           a. Be vested with the duties, powers, and responsibilities involved in performing the  
6           postaudit of all financial transactions of state government, detecting and reporting  
7           any defaults, and determining that expenditures have been made in accordance  
8           with law and appropriation acts.

9           b. Perform or provide for the audit of the general purpose financial statements and a  
10          review of the material included in the comprehensive annual financial report of  
11          the state in accordance with government auditing standards.

12          c. Perform or provide for audits of state agencies in accordance with government  
13          auditing standards and legislative audit and fiscal review committee guidelines  
14          developed under section 54-35-02.10. Except for the annual audit of the North  
15          Dakota lottery required by section 53-12.1-03, the state auditor shall audit each  
16          state agency once every two years. Audits may be conducted at more frequent  
17          intervals if requested by the governor or the legislative audit and fiscal review  
18          committee. The state auditor shall charge an amount equal to the cost of the  
19          audit and other services rendered by the state auditor to all agencies that receive  
20          and expend moneys from other than the general fund. This charge may be  
21          reduced for an agency that receives and expends both general fund and  
22          nongeneral fund moneys. State agencies shall use nongeneral fund moneys to  
23          pay for the cost of the audit. If nongeneral fund moneys are not available, the  
24          agency may, upon approval of the legislative assembly, or the budget section if  
25          the legislative assembly is not in session, use general fund moneys to pay for the  
26          audit. If the lead auditor on an agency audit has less than two years of  
27          experience with the state auditor or has not previously audited the agency, the  
28          agency may not be charged for the audit. Any budget section action under this  
29          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 ~~e.~~ Audit the International Peace Garden at the request of the board of directors of  
25 the International Peace Garden.

26 ~~d.c.~~ 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. Except for performance audits conducted under subdivision d of

1 subsection 1 ~~or subdivision b of this subsection~~ and except for audits of  
2 occupational or professional boards, the state auditor shall execute the contract  
3 and any executive branch agency, including higher education institutions, shall  
4 pay the fees of the contractor. For performance audits conducted under  
5 subdivision d of subsection 1 ~~or subdivision b of this subsection~~, the state auditor  
6 may charge a state agency for the cost of a contract relating to an audit, subject  
7 to approval by the legislative assembly or the legislative audit and fiscal review  
8 committee if the legislative assembly is not in session. When considering a  
9 request, the legislative audit and fiscal review committee shall consider the effect  
10 of the audit cost on the agency being audited, the necessity of the contract, and  
11 the potential benefit to the state resulting from the contract. The state auditor  
12 shall notify the affected agency of the potential cost before requesting approval  
13 from the legislative assembly or the legislative audit and fiscal review committee.

14 3. All audits performed by the state auditor must be reviewed and approved by a certified  
15 public accountant.

16 4. The state auditor may not reject an audit report of an audit performed by a certified  
17 public accountant or licensed public accountant which meets generally accepted  
18 auditing standards.

19 5. The state auditor shall provide an audit template that meets generally accepted  
20 government auditing standards to be used by a certified public accountant or licensed  
21 public accountant who is contracted to complete an audit on behalf of a political  
22 subdivision or state entity.

23 6. In the audit reports provided to the legislative audit and fiscal review committee under  
24 subsection 1 of this section, the state auditor's report for each audit must include:

25 a. A summary of the audit conducted.

26 b. Disclosure of any disagreements with management.

27 c. Any findings and whether the findings were addressed or corrected.

28 d. A copy of the engagement letter, number of staff hours worked to complete the  
29 audit, and the final cost of the audit.

30 **SECTION 4. AMENDMENT.** Section 54-10-13 of the North Dakota Century Code is  
31 amended and reenacted as follows:

1        **54-10-13. Political subdivisions - Audits—~~State auditor powers.~~**

2        The state auditor shall perform audits of political subdivisions pursuant to section 54-10-14  
3 unless otherwise requested by the governing board, ordered by the governor or the legislative  
4 audit and fiscal review committee, or on petition pursuant to section 54-10-15, ~~or at the~~  
5 ~~discretion of the state auditor for alleged improprieties.~~

6        **SECTION 5. AMENDMENT.** Subsection 5 of section 54-10-14 of the North Dakota Century  
7 Code is amended and reenacted as follows:

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

12        **SECTION 6. AMENDMENT.** Section 54-10-15 of the North Dakota Century Code is  
13 amended and reenacted as follows:

14        **54-10-15. Audits of political subdivisions by order of governor or the legislative audit**  
15 **and fiscal review committee, upon petition, or upon request of the state court**  
16 **administrator.**

- 17        1. The state auditor, by duly appointed deputy auditors or other authorized agents, shall  
18 audit or review the books, records, and financial accounts of any political subdivision  
19 when ordered by the governor or the legislative audit and fiscal review committee,  
20 requested by the governing board, or upon petition of at least thirty-five percent of the  
21 qualified electors of any political subdivision enumerated in section 54-10-14 voting for  
22 the office of governor at the preceding general election or, in the case of school  
23 districts, upon petition of at least thirty-five percent of the qualified electors voting at  
24 the preceding school board election, or upon the request of the state court  
25 administrator with respect to clerk of district court services provided by a county in  
26 accordance with chapter 27-05.2. Fees for the audits must be paid in accordance with  
27 the provisions of section 54-10-14.
- 28        2. If an audit is ordered due to financial irregularities or allegations of embezzlement, the  
29 governor may suspend an elected or appointed school board member from the  
30 individual's duties if the governor determines suspension is in the best interest of the  
31 state pending the results of the audit. If the governor suspends an elected or

1 appointed school board member, the governor immediately shall provide notice to the  
2 school board with which the suspended member serves. Within five days of receiving  
3 notice, the school board shall appoint an individual to replace the suspended member  
4 to serve during the pendency of the audit. The governor shall consult with the  
5 superintendent of public instruction in determining whether suspension of a member of  
6 a school board is in the best interest of the state.

7 3. Upon review of a petition for an audit by the secretary of state under section  
8 16.1-01-10, the secretary of state shall forward a valid petition for an audit under  
9 subsection 1 to the state auditor. Within fourteen days of determining the sufficiency of  
10 a petition under this section, the secretary of state shall provide notice of any  
11 approved petition to the legislative audit and fiscal review committee.

12 **SECTION 7. AMENDMENT.** Section 54-10-25 of the North Dakota Century Code is  
13 amended and reenacted as follows:

14 **54-10-25. Divulging of certain secret information prohibited - Penalty.**

- 15 1. The state auditor and the auditor's employees, including any person employed by the  
16 auditor to perform the examination of any return, report, or other information filed and  
17 in the possession of the tax commissioner which is made confidential by law, may not  
18 divulge the contents of any return, report, or other information examined or any listing  
19 made therefrom by the state auditor or the auditor's employees except when otherwise  
20 directed by judicial order, or as is otherwise provided by law.
- 21 2. The state auditor, the auditor's employees, or an agent of the auditor may not divulge  
22 any information relating to a matter forwarded to the attorney general or a state's  
23 attorney for further investigation until the attorney general or state's attorney has made  
24 a determination as to whether there is probable cause to believe a violation of law has  
25 occurred.

26 3. An individual who violates this section is guilty of a class C felony.

27 **SECTION 8.** A new subsection to section 54-10-26 of the North Dakota Century Code is  
28 created and enacted as follows:

29 The state auditor may not request the working papers of any entity.

30 **SECTION 9.** A new section to chapter 54-10 of the North Dakota Century Code is created  
31 and enacted as follows:

1     **Audit findings - Review period.**

2     The state auditor shall provide any audit findings to the audited state entity, political  
3 subdivision, or occupational or professional board thirty days before the state auditor publishes  
4 the audit findings. The state auditor shall provide all audit findings to the legislative audit and  
5 fiscal review committee.

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

8     **Criminal history background checks - Employees.**

9     Each employee of the state auditor hired after June 30, 2001, shall complete a statewide  
10 and nationwide criminal history record check as provided under section 12-60-24. The state  
11 auditor is responsible for all costs associated with a statewide and nationwide criminal history  
12 record check.

13     **SECTION 11.** A new section to chapter 54-10 of the North Dakota Century Code is created  
14 and enacted as follows:

15     **Engagement letters - Prohibition.**

16     Upon completion of an audit, the state auditor may not increase the cost of the audit beyond  
17 the estimated cost proposed in the initial engagement letter.

18     **SECTION 12.** A new section to chapter 54-10 of the North Dakota Century Code is created  
19 and enacted as follows:

20     **Special state auditor.**

21     If the governor considers it in the best interests of the state, the governor may appoint a  
22 special state auditor to examine any state institution, state industry, state department, or public  
23 office. The special state auditor has all the powers and authority granted to the state auditor in  
24 making audits and shall examine and report upon any other matters connected with the state  
25 institutions and public offices as the governor may direct.