



Legislative Assembly

North Dakota House of Representatives

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COMMITTEES:
Appropriations

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House Bill 1508

Senate State and Local Government Committee, Chairman Kirsten Roers

Chairman Roers and members of the Senate State and Local Government Committee:

I am Representative Emily O'Brien, from District 42, in Grand Forks, North Dakota.

I served as the Vice Chair for Legislative Audit and Fiscal Review Committee (LAFRC). It was brought to my attention several times by many individuals their concerns about their audit fees being charged by the State Auditor's Office (SAO). Hence why I have introduced HB 1508.

I have only been the Vice Chair for LAFRC for only a small portion of my legislative service, so I have been able to look at these concerns with an objective eye and without emotional attachment and determine what could be learned.

Before I go through the bill and the new proposed amendments, I want to go through several situations I have discovered. Since, this bill was introduced in the House, I have had 49 entities contact me with similar "me too" stories. Many, if not all, did not want to come forward with serious concerns of retaliation, so initially I did a random sampling of state agencies, political subdivisions, and boards. I then compared this information that I received to the Summary of Invoice Amounts Spreadsheet that the SAO provided to the Legislative Council. That will be discussed later in my testimony.

It is unfortunate that it has gotten to this point, but it must be resolved. It has been quite exhausting to have to double check the facts and information that is provided by an individual from the Executive Branch to the public via several radio and podcast programs, an OpEd, Facebook Posts, TV interviews and press releases. According to the SAO website, "The State Auditor's Office works to maintain accountability and increase transparency for

the citizens of North Dakota through independent audits. In the spirit of providing transparency for the benefit of North Dakota's citizens", it provides further information regarding the agency's operations.

For one to pride themselves and the operations of their agency on "transparent, effective, and responsive government". The pleas, stories, and turmoil these individuals and entities have gone through are concerning. I wish all of them were here today to share their side of the story. Some are here. Some provided written testimony and couldn't travel due to the weather. Some won't ever share their story because they live in fear. Fear of intimidation. Fear of retaliation.

The State Auditor's Office is responsible for evaluating departments' administration and management of public funds and programs to ensure proper checks and balances are in place.

To begin, I'd like to address a couple of remarks made in an OpEd sent to every North Dakota news outlet and state agency except the Legislature by our State Auditor after HB 1508 passed the House Floor. The OpEd is enclosed in your packet, on official "Office of the State Auditor" letterhead, titled "OP-ED HB 1508". I know you are all very aware of the processes, but I believe it is important to address this on the record – what legislators are accused of because of HB 1508 being introduced. *Attachment.*

1. "It wouldn't be a new legislative session with another attack from our Legislature on the North Dakota State Auditor's Office."

Attack? When constituents bring forward problems and concerns, it is our job as Legislators to address those concerns. The only way to change those concerns and problems is through legislation. If the Auditor feels that this is an attack on the State Auditor's Office or him personally – that is a personal problem. Not a legislative problem.

2. "Clearly, our legislature believes more in shooting the messenger than holding the government accountable. The citizens of this state should be concerned with what these legislators have to hide since they're trying to undermine our office"

I would like to know what the State Auditor is accusing Legislators of hiding. Who is specifically trying to undermine the State Auditor's Office? To use the word "undermine" is as if we, as legislators are trying to weaken the SAO insidiously or secretly. To make blanket statements about elected officials without supporting information is alarming. I believe that the State Auditor is confused about how the legislative process works. The legislature drafts and passes the laws that are then signed by the Governor. The respective entities, individuals

and citizens of North Dakota then uphold what is put into the law. When the law is not followed, penalties may arise. That is not undermining. That is doing the job we were elected to do.

3. "My first year with the office came with the legislature targeting one of our employees to be terminated in their role."

It was determined that was false. Our State Auditor requested the removal of that FTE and attempted to point fingers at the Legislature. *Attachment.*

4. "Our office is the only office that receives scrutiny when other people do something wrong."

This could not be further from the truth. Look at every single bill that receives opposition testimony. It does not matter if it is a state agency, local division, board, or a singled-out group. To make a blanket statement that they are the only ones that receive scrutiny when other people do something wrong is disingenuous. Look at all the entities that received criticism when they didn't know they were doing something wrong, and the SAO does a press release about it.

5. "The legislature is coming after our office yet again. House Bill 1508 was introduced as a way of eliminating funding to our office."

As stated earlier – HB 1508 was a solution to address concerns brought forward. The initial bill draft had a formula that was simply not feasible. There was no intention to eliminate the funding to the SAO office – but to address the concerns about the severe audit fee increases.

6. "Under this bill, I would be required to add three letters to my title, of CPA. Nationally, this is an unusual request, with less than half of State Auditor's having such credentials."

We will get to this in the bill – but nowhere in the original bill draft or amendments does it require the State Auditor to be a CPA. Nationally, this is NOT an unusual request. Many states require their State Auditor to have a CPA, if they don't, their Deputy State Auditor has a CPA. Some states are legislative-appointed auditors, some are called Comptrollers, etc. In North Dakota, our State Auditor does not have a CPA. Our Deputy State Auditor does not have a CPA, let alone an accounting background.

7. "The most insulting part of this bill is that several bill sponsors – including the person who introduced this bill – refused to meet with our office to discuss any of their concerns. We reached out on numerous occasions, asking the bill sponsors to meet with our team. Rather than have a productive conversation

helping answer their questions, they'd rather splash out a bill that essentially eliminates an entire section of our office who is responsible for being a watchdog in government."

The most insulting part. The State Auditor reprimanded me in front of the House Political Subdivisions, claiming that several bill sponsors and I refused to meet with their office to discuss our concerns. The State Auditor stated that he reached out on several occasions and I refused. Again, could not be further from the truth. On January 11, I was in the middle of a Zoom meeting that was scheduled from 3:30 PM – 5:00 PM. An intern, from the SAO came to visit at 4:10 PM to see if I received his email about a meeting with our State Auditor. I had not received that email. I located the email in my 'Junk email box'. I read the email and said, let me quickly check my calendar. I showed the calendar to the intern that I had three overlapping meetings. The following day, we were scheduled to be in Committee hearings which is my first obligation as a Legislator. I was going to be gone on January 13, for my daughter two month shots, so that was not going to work either. After being accused of 'refusing' to meet with the State Auditor during the bill hearing on February 2, I went back to check my emails, and I located another request from the intern in my 'Junk' mailbox dated January 18. It stated, "I am again emailing you requesting that you and Auditor Gallion meet concerning legislature this session. I will provide three times at which Auditor Gallion can visit with you.' The representative that carried this bill on the floor, learned from an executive branch official that it is acceptable and professional decorum to attack when they feel threatened. That type of temper tantrum behavior is unacceptable of elected officials. As far as I am aware, the only co-sponsor of the bill that has had a requested meeting by our State Auditor himself is the House Majority Leader. No other co-sponsors have been asked to meet. Yesterday, March 9, I received an email from State Auditor Gallion, requesting to meet to discuss any government auditing concerns I have to avoid these issues continuing to play out in public hearings and the media. While I'd be happy to oblige, and I'm happy that he's decided to try dialogue instead of wild accusations of corruption made in a letter to the news media, he only offered the invitation a day before this hearing, and my schedule precluded it. *Attachment.*

8. "Before our legislative members accuse a State Office of criminal offenses, they should know what those words mean."

I find this ironic, the State Auditor has requested from LAFRC that some entity's audit findings be referred for criminal investigation. Has insinuated on several recorded interviews that there MAY BE illegal activity occurring in entities that the SAO has performed audits on. That certain issues are against our constitution. He should know what those words mean.

9. "I'm asking you to not let corrupt government officials stand in the way of accountability. I'm asking you to contact your elected legislators today, tell them to vote do not pass for House Bill 1508. You deserve

to know where your tax dollars are going. Don't let bureaucrats push freedom aside for more backdoor corrupt deals."

To make another blanket statement calling government officials corrupt – and insinuate that backdoor corrupt deals are occurring is offensive and disturbing. The North Dakota Legislature is filled with many outstanding public servants who want to do the right thing for the people of North Dakota.

I apologize I took so much time to review those items before even getting to how I got to HB 1508 – but I believe those statements in the Op-Ed show the true colors of the situation we have at hand. How words and scenarios are twisted and people are misguided about the severity of the situation.

Please feel free to stop me at any point in my testimony to ask questions, as I understand this is a lot to digest. I will do my best to explain what I have discovered. I will clarify the examples I used in the House Committee Hearing. The State Auditor's Office, Quality Assurance Audit Manager, responded to the Majority Leader and House Appropriations Chair with the concerns listed in my testimony and the State Auditor's Office corresponding facts for each of them. Again, I found discrepancies in some of their "FACTS."

CONCERN 1

Press Releases – I have received numerous complaints from several entities about the State Auditor's Office doing a press release before they are made aware of the audit report. In my testimony to the House, I used the example of the Department of Human Services' final audit report. That seemed more of a media parade, albeit the department corrected those audit findings. There are several entities that have found out about their audit findings through the media, one example is the Gwinner Fire Department.

CONCERN 2

Some North Dakota Counties are delinquent in Audits due to backlog with independent audits. The State Auditor's Office has rejected audits from one company; in addition, the State Auditor's Office is no longer accepting audits by one company that conducted audits for 14 counties. These counties then have to pay for the rejected independent audits and then pay again for another audit to be in compliance.

In 2021, 27 school districts received notifications from the State Auditor's Office regarding audits being conducted by auditor Harold Rotunda, which were being rejected due to required work paper documentation not being submitted by Rotunda. The SAO's working papers are protected in North Dakota Century Code, why wouldn't a third-party entity working papers be protected as well?

According to the SAO - FACT = *audit reports from all private firms are reviewed to ensure they meet generally accepted government audit standards (GAGAS) as required by NDCC 54-10-14. If they do not meet the standards and required form and content, they are rejected until the firm fixes it to the point where it is acceptable under the standards.*

When I looked into this initially – Mr. Rotunda has his CPA, and he meets all of the generally accepted accounting standards. But, our State Auditor questioned the methodology of former school auditor Harold Rotunda and then advised several school districts not to pay the fees to Mr. Rotunda for both audits. I am concerned if we have a private industry willing to aid in conducting the audits – why are we rejecting them, advising agencies not to pay, and putting these entities in delinquent status for not having the audits completed?

CONCERN 3

One of my random samplings was the City of Parshall. The State Auditor's Office audited the City of Parshall for reviewing a Petition. I have provided a printout of their testimony for your review. When I first reached out to the City of Parshall – this is the information that I received:

We have paid a partial sum of the total billing from the State Auditor's Office. We believe that, based upon NDCC provisions, the Auditor's fees are not valid.

SEE:

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

2. The state auditor shall charge the political subdivision an amount equal to the fair value of the audit and any other services rendered.

The City of Parshall requested an Attorney General's Opinion – on Section 2. Language, but they refused to give an opinion.

The total billing for services, in our opinion, is not in compliance with the statute, as our annual costs for auditor services were a lot less. Private accounting businesses set the fair value.

The City regularly has annual audits performed each year and the State Auditor approves each of these audits. Costs of the audits for the past five years is as follows:

2016 - \$5,800.00
2017 - \$9,300.00
2018 - \$7,000.00
2019 - \$8,300.00

2020 - \$8,800.00

TOTAL: \$39,200.00

We paid the sum of \$12,500.00 to date on the State Auditor's bill. Their bill was \$39,205.00, which is 5 times the sum we have paid for audits they approved each year in the past. This audit found virtually nothing wrong, just a couple of differing interpretations of where money (all totally accounted for) should be recorded and kept. They should have been able to wrap up their audit in no time at all.

We think the audit should have never happened, if Auditor's Office did its due diligence in reviewing the Petition. It was an improperly circulated petition they relied upon, and such did not meet state law, and should have been rejected.

We have told the Auditors office, that we have no intention to pay any additional funds, and they are free to bring suit against our City in District Court.

I have spoken to other cities and school districts, that have had dreadful loss of needed funds, paid toward State Auditor's fees from audits stemming from persons circulating petitions with no basis for the same.

Finally, Why is State Auditor billing anyway? Their department is fully budgeted, the employees are paid from their budget, and isn't this equivocal to double dipping, by charging the citizens of North Dakota basically two times. Once through state funds, once through municipal funds.

I would like to note that the City of Parshall has Rath & Mehrer CPA issue their audit report. As you will see in the State Auditor's Office spreadsheet, they have \$39,250.00 listed for the Audit Fees, but they have only received \$12,500. Why is there a discrepancy there? Does the chart show what the State Auditor's Office charged? Not what was received?

According to SAO – FACT = a) you cannot compare the cost of a financial audit to the cost of a petition audit as a petition audit must complete a financial audit PLUS address each valid concern from the petitioners, b) market value cannot be determined by what one firm charges but the average of what all firms in the market charge, c) amounts didn't match our spreadsheet sent to Legislative Council because Parshall has not paid all of their bill despite being told by the Attorney General's Office they need to, & d) the staff doing the audit are not paid from the general fund budget but from their own special operating fund which derives its monies from audit fees billed to clients

See testimony provided by Kelly Woessner, City Auditor, City of Parshall.

CONCERN 4

Another one of my random samplings was Morton County.

MORTON COUNTY AUDIT FEES		
	MORTON COUNTY	STATE AUDITOR
2015	\$19,250.00	
2016	\$19,950.00	
2017	\$20,950.00	
2018	\$22,150.00	\$12,500.00
2019	\$21,650.00	\$13,000.00
2020	\$21,650.00	\$50,000.00
2021	\$22,250.00	\$13,000.00
2022	\$25,450.00	\$19,750.00
	\$173,300.00	\$108,250.00

As you will see in the table – there are several inconsistencies each year. Even if we only compared the data the Auditor’s Office provided for 2018-2022 Morton County’s total would be \$113,150 versus the \$108,250.00 the State Auditor’s Office provided. I obtained this information from the following resources: on the State Auditor Office’s website – they are listed as the issuing entity of Morton Counties Audit. The email provided to me by the Morton County Auditor lists their audit fees. You will find the audit fees provided by the State Auditor’s Office to Legislative Council on the legal-size spreadsheet. To ensure, I had not missed anything, I requested the invoices from Morton County to check and verify my information. Listed on the invoices is the Lower Heart Water Resource District. The county auditor explained to me that Morton County is the governing body for the Lower Heart Water Resource District and Morton County covers the audit fees for the Lower Heart Water Resource District. There are still discrepancies.

According to the SAO – FACT = Morton County and their component unit (Lower Heart Water Resource District) were done under one audit but the county only paid their portion of the audit bill while the water resource district separately paid for their own portion

When I went to verify the FACT from the SAO regarding Morton County and Lower Heart Water Resource District, the Lower Heart Water Resource District is not listed on the spreadsheet, which they wouldn’t because they are invoiced under Morton County. So the payment should have been applied to the Morton County Invoice. The numbers still do not equal. Why is the SAO missing 2016 and 2017? Is the spreadsheet that the SAO provided to Legislative Council incomplete? This document is considered an official state document – I am concerned that there is misinformation or skewed data that was provided.

CONCERN 5

Looking at the spreadsheet the State Auditor’s Office provided to Legislative Council – you will observe audit fees gradually increasing. I have highlighted those for your information.

When reaching out to a random sampling of entities – several stated that they did not know why their audit fees increased and were shocked that they doubled or in some cases tripled, and several stated that they were told it was from COVID/ARPA dollars they received. One example – is I contacted the Wahpeton Airport Authority. Their audit fees were the following:

WAHPETON AIRPORT AUTHORITY	
2015	
2016	
2017	
2018	\$6,250.00
2019	
2020	\$8,450.00
2021	
2022	\$15,750.00

They did not know why their audit fees increased by \$2,200 from 2018 to 2020. They did not know why their audit fees increased by \$7,300 from 2020 to 2022 – they had received \$1.7 million in federal dollars – but did not feel it should result in a significant increase in audit fees.

According to the SAO – FACT = as the bill sponsor's own testimony points out, the airport received \$1.7 million in federal money the next year which also triggers the requirement a federal single audit (receiving federal dollars of \$750K or more) in addition to their regular financial audit

Was this disclosed in the engagement letter to the Wahpeton Airport Authority that their bill would be almost double from receiving federal dollars?

CONCERN 6

City of Williston – I inquired about the fees they were charged in 2018. This is the information that I received: This was before my time, but the City of Williston entered into a three-year contract with the State 2018 to perform the audit services in. Upon review of the findings, the State auditors reached out to the media to share the findings without our knowledge. Typically, media covers serious fraud charges so we were a very surprised the State even did that.

Additionally, after further discussion and explanation with the auditors, the State retracted some of the findings they shared with the media. However, the media damaged was already done.

When I took the finance director position in 2020, I reached out to them and we both mutually agreed to pull out of the contract and depart ways. We sent a bid out and awarded Brady Martz.

According to the SAO – FACT = the audit was signed off by the city representative as being complete & he agreed with all the findings

CONCERN 7

I received an email from another Representative in our Chamber with concerns about the Cavalier County Job Development Authority and its audit fees.

Our 2021 audit done in 2022 was \$4,600. I had only budgeted \$2,200. I budgeted that because the previous year we were charged \$1950 and I wanted small cushion in the event of a small increase. Having the audit more than double with NO WARNING and after budgets for the year are already set and approved by the commission is a huge burden on a small budget.

We a small component unit of local government. We should not have that dramatic of a price increase. Limiting what the state auditors can charge and having that amount based on budget so we can accurately predict the cost is a much needed change that I would support.

When I went to verify their audit fees – they were not listed on the spreadsheet I received from the Auditor's Office. I discussed this with the Representative. He mentioned that it was signed off by the Department of Commerce Audit Fees. I went back to the spreadsheet and again – those numbers do not align with what is listed under the Department of Commerce – why were their audit fees left out of the report?

According to the SAO – FACT = we discovered they had an unreported capital asset (it was the missile site) that had to be looked into – that takes additional staff hours which does increase our audit bill because their fees do go back into a special operating fund to cover salaries.

The SAO FACT is confusing. It does not address my question or concern. This would be considered a political subdivision. All other subdivisions are listed on the spreadsheet, where those audit fees are accounted for in the special operating fund. Why is Cavalier County JDA not listed on the spreadsheet?

CONCERN 8

A bill was introduced to address the concerns about the audit fees issued to the Gwinner Rural Fire District and Rural Killdeer Area Ambulance District. That is House Bill 1129. This bill would not have allowed the State Auditor to charge audit fees from a firefighter's relief association, rural fire protection district, or a rural ambulance service district related to the cost or value of an audit, review or examination of audit reports, work papers, or annual

reports, or any other services rendered. Additionally, provide a retroactive application to audits conducted after December 31, 2017.

Instead of the bill being heard in this committee, it was announced at 10:30 AM that the hearing would be postponed. Constituents had traveled to come and testify in support of this bill. A few hours later, the rumors were that the Auditor wanted to make a deal and would pay the audit fees back if the sponsor withdrew the bill. We have heard other conversations that this is being taken care of in the Senate – items such as the \$250,000 threshold will be increased to \$2,000,000 to perform audits, changing “shall” audit to “may” audit, audit fees will be paid back to Rural Killdeer Ambulance District and Gwinner Rural Fire District OR only going to charge \$1,000 or so, start an “audit fund” to cover audit fees paid for by the State to Rural Fire Departments and Rural Ambulance Districts, and lastly provide some sort of educational information seminar to comply with audits.

Gwinner stated that they never met their auditor face to face- everything was provided to the assigned auditor via email and through conversations on the phone. Since there is no travel from the auditor based out of Fargo for this specific audit, and total bill of \$17,000. Gwinner Rural Fire District only had 40 checks to review.

Gwinner Rural Fire District had to borrow money from the bank to do a fundraiser because the State Auditor advised that they needed a separate tax account. The Auditor advised that he would help with how to properly set this up with the Fire Associations – but never followed through.

Gwinner Rural Fire District asked why the Auditor’s Office was so compelled to do a press release. They were told by the Auditor that the taxpayers deserve to know where their dollars are being spent.

As mentioned above, Gwinner Rural Fire District received a bill for \$17,000. The bill was reduced to \$11,000. The community, surrounding communities and constituents that Gwinner Rural Fire District serves made several comments that the State Auditors Office should not be profiting off the backs of a volunteer group of individuals. Lastly, Gwinner Rural Fire District heard they would get their money back but have not heard anything since.

According to SAO – **FACT** = a) this is the first audit they’ve ever had and conducting an audit is much more than just testing expenses which is why SB 2180 was introduced, b) we bill for our costs so there is no profit, & c) since SB 2180 has a retroactive application and issues like this will cease to exist the bill sponsors agreed to withdraw the bill

SB 2180 does not have anything to do with a retroactive application or addressing the issues that were drafted in HB 1129. On SB 2004, there is a retroactive amendment, “Audits conducted during the 2021-23 biennium whereby the audit cost was > 1% of the annual revenue amount audited will be refunded the difference between

the audit cost & their billing amount up to the full billing amount.” I have provided a copy of the document listing the refund amounts. The SAO has Gwinner RFPD Audit Cost listed at \$17,000 but the bill was reduced to \$11,000. Again, this is misleading information. When Auditor Gallion was asked why adjust or decrease the audit fees, his response was, “because I can.”

CONCERN 9

Rural Killdeer Area Ambulance District

Had a similar situation to the Gwinner Rural Fire District. The Rural Killdeer Area Ambulance District was here in person on January 12 to come and testify in support of House Bill 1129 to this committee. They were then told that the hearing would not be held – with no other details.

I had several conversations with a representative from the Rural Killdeer Area Ambulance District – they were unaware that the bill was withdrawn. They did not know there was any potential for their audit fees to be reimbursed without HB 1129.

On the same document listing the refund amounts, you will see that Killdeer Ambulance’s audit cost was \$48,650, and their refund amount is \$2,021.00.

She is here today to tell her side of the story.

I would like to bring up a few of my concerns–

I observed on social media – comments on a Facebook thread that a public citizen from the Killdeer area had received confidential information from an employee of the State Auditor’s Office before the audit was complete. When I inquired more about this, the Rural Killdeer Ambulance District was told that this individual had nothing to do with their audit and should not have access to the information. The individual from the Rural Killdeer Ambulance District provided me with those documents. I have attached those documents from the Facebook thread and the email the individual from the Auditor’s Office sent to the citizen.

The public citizen, stated in a letter to the KAAS Directors and Dunn County Commission “.... And there is an email attached that he sent yesterday stating the status of the audit. He also told me in a phone call that the audit was being performed due to serious delinquency of reporting by KAAS and that he had been in contact with...”

The email from the employee at the State Auditor's Office stated, "... it has taken way longer than it ever should have to receive the records from them in order to prepare their financial statements from 2017 thru 2020. Normally, when we request financial records it takes less than a month (from much larger clients) & they have taken almost 7 months." The email went on to say. "If you or any board member wants to know whether they should get additional money thru an increased mill levy then 1st determine how good of a job they're doing with the money they're currently receiving. Since the audit isn't completed yet you can't rely on that but what you can do is to ask for the December 31st, 2021 bank statement & see if it ties to their 2021 year-end financial reports. If it doesn't, or they can't provide it then you know all that you need to know."

These types of comments can damage any community – large or small. The Rural Killdeer Ambulance District had an employee resign because of the rumors from these emails.

According to the SAO – FACT = the communication from our office was to a Dunn County Commissioner who was being asked to provide funding to the Killdeer Area Ambulance with no financial statements. That email provided standards questions we give any citizen that has concerns about their local government's finances

This is false. The individual that inquired was not a Dunn County Commissioner. The individual that inquired was the spouse of an individual that was running to be a Dunn County Commissioner. They were not elected yet. The SAO has repeatedly told their clients that their working papers are confidential. But, when asked about this specific situation – they state that this is "comparing apples and oranges".

CONCERN 10

Napoleon School District

Napoleon School paid the State Auditor's Office:

NAPOLEON SCHOOL DISTRICT		
	NAPOLEON	STATE AUDITOR
2019	\$29,950.00	
2020		
2021	\$26,500.00	\$20,000.00
2022	\$27,950.00	\$36,450.00
	<u>\$84,400.00</u>	<u>\$56,450.00</u>

Why was the audit in 2022 (1 year audit) roughly the same amount as the audit in 2018 and 2019? Audit in 2020 and 2021 which were both 2 year audits.

You will also observe the discrepancies in the numbers that were provided for the fees.

According to the SAO – FACT = 1) Based on how the Legislative Council request came in, the numbers were not going to match due to progress billings being paid over different fiscal years. & 2) going from a 2-year to a 1-year doesn't save much money on audit costs as all of the planning, testing & reporting still have to be done plus the previous audit

Even with how the progress billings being paid over different fiscal years came in – the totals for all of the audit fees should be equal. There should not be discrepancies between the two entities.

CONCERN 11

The North Dakota University System reviewed the systemwide audit fees charged to each institution by the State Auditor's Office over the last several fiscal years and the funding sources utilized by each institution to pay for the audit fees. All institutions are using tuition revenues to pay for the audits conducted by the State Auditor's Office.

Currently, if the North Dakota University System Institutions need to use General Fund dollars to pay their audit fees, they must present to the Budget Section to request that the fees be covered by General Fund dollars. In addition, the State Auditor's Office is funded by General Fund dollars.

According to the SAO – FACT =We're following NDCC 54-10-01(c). We do not need to be the Legislator's tax collector for either the NDUS or the state agencies. We do not directly benefit from charging for these audits as it all goes into the general fund for future appropriation by the legislature.

Other things the bill does:

- Require the taxpayers of ND to subsidize the audit requirements by the federal government which are currently charged back to the federal government based on actual cost (section 1 amendment)
- Require audits to be reviewed by a CPA when our own Generally Accepted Government Audit Standards don't require such &, in point of fact, all financial audits are already reviewed by audit managers who are CPAs (section 1 amendment)
- Require the taxpayers of ND to subsidize only 15% of the local governments statewide, while the rest would either have to pay full audit fees (\$20,000 compared to our being able to only charge \$20) to the private sector or they would all drop their private auditors to go on our waiting list & all transparency provided by the audit & review process would cease to exist (section 2 & 3 amendments)

The NDUS conversation will be moved to SB 2004 as it has to do with fiscal.

With all that being said. We need to make changes. It has been requested of this legislative body several times to address these concerns. I have provided amendments to HB 1508 that were not taken up in the House and further suggestions from industry professionals and auditors.

Section 1 & Section 10 – Requires criminal history background checks. Employees in the SAO have access to tax documents thru the Tax Department.

Section 2 – is the process of validating petition signatures. Currently, there is no process in code to validate signatures for petitions circulated for audits. There have been 6 petition audits completed by the SAO. When I inquired with the SOS and the respective Counties, they had not validated any of the signatures for the petitions. I am unaware if the SAO has an individual with the credentials to validate signatures.

Section 3 – Page 2, lines 26-28 – 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.

Page 3, lines 21-23 – Remove – Within the resources available to the state auditor, perform or provide for performance audits of state agencies as determined necessary by the state auditor.

Page 4 – line 1 and line 5 – Removes subdivision b of this section – performance audits

Page 4 – subsection 3 – all audits performed by the state auditor must be reviewed and approved by a certified public accountant. The SAO has 18 CPAs currently in the office that can sign off on the financial audits.

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

Page 4 – subsection 5 – The state auditor shall provide an audit template that meets generally accepted government auditing standards to be used by a certified public accountant or licensed public accountant who is contracted to complete an audit on behalf of a political subdivision or state entity.

Page 4 – subsection 6 – In the audit reports provided to the legislative audit and fiscal review committee under subsection 1 of this section, the state auditor’s report for each audit must include:

- a. A summary of the audit conducted,
- b. Disclosure of any disagreements with management,
- c. Any findings and whether the findings were addressed or corrected,
- d. A copy of the engagement letter, number of staff hours worked to complete the audit, and the final cost of the audit.

Section 4 – Removes “or at the discretion of the state auditor for alleged improprieties”

Section 5 – Removes “A political subdivision shall retain twenty percent of any progress payment until the audit report is accepted by the state auditor.”

Section 6 – subsection 3 – upon review of a petition for an audit by the secretary of state, the secretary of state shall forward a valid petition for an audit under subsection 1 to the state auditor. Within fourteen days of determining the sufficiency of a petition under this section, the secretary of state shall provide notice of any approved petition to the legislative audit and fiscal review committee

Section 7 – Provides a penalty for the divulging of certain secret information – class C felony. This is consistent in code

Section 8 – The state auditor may not request the working papers of any entity.

Section 9 – Provides an audit finding review period – The state auditor shall provide any audit findings to the audited state entity, political subdivision, or occupational or professional board thirty days before the state auditor publishes the audit findings. The state auditor shall provide all audit findings to the legislative audit and fiscal review committee.

Section 11 – Engagement letters – upon completion of an audit, the state auditor may not increase the cost of the audit beyond the estimated cost proposed in the initial engagement letter. Should read – Upon execution of the initial engagement letter.

Section 12 – Special state auditor – the governor may appoint a special state auditor to examine any state institution, state industry, state department, or public office.

Thank you Chairman Roers and members of the committee. I will stand for any questions.



OP-ED HB 1508

I always thought bad things were limited to happening in three, but I was wrong. It wouldn't be a new legislative session without another attack from our Legislature on the North Dakota State Auditor's Office. This is my fourth session as State Auditor and each session has presented attempts by certain legislators to harm this office and our ability to share transparent audit reports with the citizens of North Dakota. These attacks have continued to ramp up and are getting worse as we identify more and more issues across all levels of government.

Clearly, our legislature believes more in shooting the messenger than holding government accountable. The citizens of this state should be concerned with what these legislators have to hide since they're trying to undermine our office.

Since I came into office, we have been under constant attack from the legislature. My first year with the office came with the legislature targeting one of our employees to be terminated in their role. During my time in the second legislative assembly, the legislature was outraged that we were sending out press releases informing the public of how the government was spending their money. The legislature passed a bill that made the legislature approve audit reports before they were released publicly. This is a law that passed in the legislature; however, the Attorney General issued an opinion that it was likely unconstitutional.

Our office is the only office that receives scrutiny when other people do something wrong. We follow state law and federal standards, and we have a duty to report what we found to the people we serve – the people I work for - the citizens of North Dakota. Our office saves the state *millions* of dollars every year by discovering waste, abuse, and fraud from state and local government agencies.

In addition to the significant financial benefit, we also conduct performance audits. These audits look at procedures and recommend opportunities for improvement. One example of this is our audit last year of the Department of Human Services, which found that for the sixth straight year, DHS was not removing children from extremely abusive situations such as sexual abuse, inappropriate discipline, and death for 13 days. The mandated response time for a child in that situation is 24 hours. Because of our work, there are now eight bills to help address this critical issue and help our most vulnerable population.

The legislature is coming after our office yet again. House Bill 1508 was introduced as a way of eliminating funding to our office.

This is the worst bill our office has ever encountered. These are the reasons why:

- For local government audits, we could only charge 1/1,000th of 1%. To be clear, that is a ridiculously small number. An organization with a \$1,000,000 operating budget would be charged \$10 for an audit. The person who introduced this bill said she conducted her own market research to find a fair number to charge for an audit. It is impossible to conduct an audit of an organization for \$10.

The Auditor's Office only audits 15% of local government agencies in North Dakota. The remaining 85% of local government agencies that use a private firm would still be paying a firm the full cost for an audit. 15% of local government entities would have a few dollars for an audit bill, the rest would be charged the full amount from a private firm. Our office's average billing rate is \$112 per hour. The average bill rate for a private firm to conduct an audit is \$157 per hour. We cannot pay our auditors pennies per hour to work, and the entire local government branch of our office would be forced to close. This is the branch that conducts petition audits, with the most recent petition audit being the Williston Public School District which identified 21 different major areas for improvement and impacted hundreds of millions of dollars. Eliminating an entire division of our office will negatively impact every single taxpayer in this state who deserves to know how their money is being spent.

- North Dakota taxpayers will be subsidizing the Federal Government for three different audit areas that we receive Federal funds to the approximate tune of \$1.3 million biennially.
- One of the shots fired in this bill is at me directly. My background is serving our country in the Air Force, I also hold an Associate Degree, a Bachelor of Science degree in Accounting, have a Masters' degree, and prior work experience as the Accounting Manager for the Public Service Commission. Apparently, this isn't enough. Under this bill, I would also be required to add three letters to my title, of CPA. Nationally, this is an unusual request, with less than half of State Auditor's having such credentials.
- The most insulting part of this bill is that several bill sponsors — including the person who introduced this bill — refused to meet with our office to discuss any of their concerns. We reached out on numerous occasions, asking the bill sponsors to meet with our team. Rather than have a productive conversation helping answer their questions, they'd rather splash out a bill that essentially eliminates an entire section of our office who is responsible for being a watchdog in government.

This is not just misinformed legislation, this is bad legislation that is targeting myself and our office from doing our job. We are here to serve the public, to make sure your taxpayer dollars are being used the way they should. No one should be afraid of our office if you're doing the right thing.

This is not meant to paint a broad brushstroke across every legislative member. There are legislators who are champions of our office, and we deeply appreciate their support and goal of bringing transparency to government.

During committee work on this bill, every single committee member, other than one recommended to the House a "Do Not Pass" recommendation on this bill. Our office had the opportunity to share during committee meetings, and we explained how detrimental this bill would be to North Dakotans everywhere for the reasons outlined above. During the House floor session, no one other than legislators are able to share anything. During that floor session, we had a legislative member say on record that "the Auditor's Office is laundering money and double dipping." Before our legislative members accuse a State Office of criminal offenses, they should know what those words mean. To throw around an accusation like money laundering, especially when it's aimed at the organization that serves as the watchdog for government, is irresponsible.

I'm asking you to not let corrupt government officials stand in the way of accountability. I'm asking you to contact your elected legislators today, tell them to vote do not pass for House Bill 1508. You deserve to know where your tax dollars are going. Don't let bureaucrats push freedom aside for more backdoor corrupt deals.

-Joshua Gallion
North Dakota State Auditor

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2017 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee – Government Operations Division
Medora Room, State Capitol

HB1004
4/17/2017
Recording Job# 30165

Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide an appropriation for defraying the expenses of the state auditor.

Minutes:

Attachment A

Chairman Nathe: Opened the conference committee on HB1004.

Chairman Nathe: Explained amendment 17.0489.02003 and attachment A.

Senator Dever: This is not what we discussed as a conference committee; but what has been discussed between you and the auditor since. Am I correct?

Chairman Nathe: Correct. I had also shared our discussions with Senator Oehlke and included him in as far as what we've been talking about and where we're going.

Representative Boehning: Made a motion to recede from Senate amendments and amend with 17.0489.02003.

Senator Oehlke: Seconded the motion.

Senator Mathern: The House version cut general funds \$340,000.00. The Senate cut \$22,000.00; and now this conference committee is \$582,000.00. So this conference committee is going beyond the House and Senate in the cutting of general funds. Am I reading this right?

Senator Mathern: I'm wondering why the auditor comes into conference committee and leaves in a private conversation with even more cuts than the House or the Senate.

Sheila Sandness, Fiscal Auditor, ND Legislative Council: The difference would be the position. The House added back the underfunding.

Chairman Nathe: From talking to the auditor, he had also realized that they could find some efficiencies. They had some other needs that they wanted to do. They wanted to have four higher ed auditors and then four auditors; versus having the five and four. They

could eliminate this position to take care of any of the other FTE needs that they need to do to increase those areas.

Senator Mathern: So I am reading this correctly, that there are more cuts in conference committee.

Sheila Sandness: That's correct. The difference would be the difference between the \$582,340.00.

Roll Call Vote: 5 Yeas 1 Nay 0 Absent.

Motion Carried.

Chairman Nathe: Closed the conference committee.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1004

That the Senate recede from its amendments as printed on pages 1277 and 1278 of the House Journal and pages 994 and 995 of the Senate Journal and that Engrossed House Bill No. 1004 be amended as follows:

Page 1, replace lines 10 through 18 with:

"Salaries and wages	\$11,655,646	\$111,666	\$11,767,312
Operating expenses	1,176,806	(34,023)	1,142,783
North Dakota university system information technology security audits	200,000	(200,000)	0
Information technology consultants	<u>250,000</u>	<u>(250,000)</u>	<u>0</u>
Total all funds	\$13,282,452	(\$372,357)	\$12,910,095
Less estimated income	<u>3,505,870</u>	<u>(94,383)</u>	<u>3,411,487</u>
Total general fund	\$9,776,582	(\$277,974)	\$9,498,608
Full-time equivalent positions	59.80	(3.80)	56.00"

Page 1, line 20, replace "\$163,134" with "\$140,696"

Page 1, line 20, replace "\$123,788" with "\$104,201"

Page 1, line 21, replace "\$1,249" with "\$1,241"

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

House Bill No. 1004 - State Auditor - Conference Committee Action

	Base Budget	House Version	Conference Committee Changes	Conference Committee Version	Senate Version	Comparison to Senate
Salaries and wages	\$11,655,646	\$11,714,840	\$52,472	\$11,767,312	\$12,002,621	(\$235,309)
Operating expenses	1,176,806	1,136,039	6,744	1,142,783	1,162,783	(20,000)
University system IT security audits	200,000					
Information technology consultants	250,000					
Total all funds	\$13,282,452	\$12,850,879	\$59,216	\$12,910,095	\$13,165,404	(\$255,309)
Less estimated income	<u>3,505,870</u>	<u>3,414,338</u>	<u>(2,851)</u>	<u>3,411,487</u>	<u>3,411,487</u>	<u>0</u>
General fund	\$9,776,582	\$9,436,541	\$62,067	\$9,498,608	\$9,753,917	(\$255,309)
FTE	59.80	57.80	(1.80)	56.00	57.80	(1.80)

Department No. 117 - State Auditor - Detail of Conference Committee Changes

	Adjusts Funding for Health Insurance Increases ¹	Removes .8 FTE Position ²	Removes 1 FTE Performance Audit Manager Position ³	Restores Funding for Salaries and Wages ⁴	Restores Funding for Operating Expenses ⁵	Total Conference Committee Changes
Salaries and wages	(\$22,438)		(\$277,191)	\$352,101		\$52,472
Operating expenses					6,744	6,744
University system IT security audits						

Information technology consultants						
Total all funds	(\$22,438)	\$0	(\$277,191)	\$352,101	\$6,744	\$59,216
Less estimated income	(2,851)	0	0	0	0	(2,851)
General fund	(\$19,587)	\$0	(\$277,191)	\$352,101	\$6,744	\$62,067
FTE	0.00	(0.80)	(1.00)	0.00	0.00	(1.80)

¹ Funding for employee health insurance is adjusted to reflect the updated premium amount of \$1,241 per month. Section 2 of the bill is also changed to reflect the revised premium rate, the same as the Senate version.

² Full-time equivalent positions are reduced as a result of underfunding salaries and wages. This change was not included in the House or Senate version.

³ One FTE performance audit manager position (Position No. 00000510-1) and related funding for salaries and wages are removed. This change was not included in the House or Senate version.

⁴ Funding for salaries and wages is restored agencywide, the same as the Senate version. The House underfunded salaries and wages by an additional \$373,869.

⁵ Funding for operating expenses is partially restored to provide for a reduction of \$20,000 agencywide. The House reduced operating expenses agencywide by \$26,744. The Senate version restored the House reduction.

O'Brien, Emily

From: Koep, Andrew S. <askoep@nd.gov>
Sent: Wednesday, January 11, 2023 3:55 PM
To: O'Brien, Emily
Subject: Meet with State Auditor Josh Gallion

Hello Representative B'Brien,

My name is Andrew Koep, I am currently working as the legislative intern for the North Dakota State Auditor's office. Auditor Josh Gallion would like to meet with you concerning potential legislation this session. Please pick one of the following times at which you can meet with Auditor Gallion.

Wednesday the 11th (today) @4:45pm
Thursday the 12th @12:00noon
Thursday the 12th @4:00pm

If you are unable to make any of these times please propose a time that does work for you. Please also provide a place/method of contact so that Auditor Gallion can get in contact with you at the time of your meeting.

Feel free to email me if you have any questions.

Andrew Koep
Legislative Assistant



Office of the
State Auditor

Email: askoep@nd.gov

600 E. Boulevard Ave Dept 117, Bismarck, ND 58505

Phone: 701-328-2971 Website: nd.gov/auditor



O'Brien, Emily

From: Koep, Andrew S. <askoep@nd.gov>
Sent: Wednesday, January 18, 2023 10:25 AM
To: O'Brien, Emily
Subject: Visit with Auditor Gallion

Hello Representative O'Brien,

I am again emailing you requesting that you and Auditor Gallion meet concerning legislature this session. I will provide three times at which Auditor Gallion can visit with you.

Wednesday the 18th @4:30pm

Thursday the 19th @12:15

Thursday the 19th @3:00pm

Please select the time that works best for you. If none of these times work, please email me back and provide a time that does work for you.

Feel free to email me if you have any questions

Andrew Koep
Legislative Assistant



Office of the
State Auditor

Email: askoep@nd.gov

600 E. Boulevard Ave Dept 117, Bismarck, ND 58505

Phone: 701-328-2971 Website: nd.gov/auditor



O'Brien, Emily

From: Gallion, Joshua C. <jcgallion@nd.gov>
Sent: Thursday, March 9, 2023 10:29 AM
To: O'Brien, Emily
Cc: Lefor, Mike; Ludwig, Brianna S.
Subject: Meet to Discuss Legislation and Auditing Concerns

Rep. O'Brien,

Would you be available to visit regarding legislation? I would like to discuss any government auditing concerns you have to avoid these issues continuing to play out in public hearings and in the media. I've also CC'd Rep. Lefor on this email to inform and invite to the conversation.



I'm hopeful that we can find a time and place to talk in person.

Thanks,
Josh

Joshua C. Gallion
State Auditor



Office of the
State Auditor

600 E. Boulevard Ave Dept 117, Bismarck, ND 58505
  **Phone:** 701.328.4780 **Website:** nd.gov/auditor



O'Brien, Emily

From: Dawn Rhone <Dawn.Rhone@mortonnd.org>
Sent: Friday, January 27, 2023 3:22 PM
To: O'Brien, Emily
Subject: RE: Audit Fees Inquiry

Hi Emily

Here is the information you requested. We have just had fiscal audits.

2022	25,450
2021	22,250
2020	21,650
2019	21,650
2018	22,150
2017	20,950
2016	19,950
2015	19,250



DAWN R. RHONE, CPA

MORTON COUNTY AUDITOR

📍 210 2nd Ave NW, Mandan, ND 58554

✉️ dawn.rhone@mortonnd.org

☎️ 701.667.3300

🌐 www.mortonnd.org

From: O'Brien, Emily <eobrien@ndlegis.gov>
Sent: Thursday, January 26, 2023 9:07 AM
To: Dawn Rhone <Dawn.Rhone@mortonnd.org>
Subject: Audit Fees Inquiry

Hi Dawn,

This is Representative Emily O'Brien from Grand Forks; I am wondering if you could help provide me with some information on the audit fees charged to Morton County by the State Auditor's Office for audits that have been performed. I am looking for any audit fees charged between 2015-2023 and what type of audit was performed – fiscal or performance audit. Is this something that you could help me with? Or point me in the direction of the appropriate individual with this information.

Thanks so much!

Emily O'Brien

Representative Emily O'Brien

