
Fwd: Independent Auditor Initiative

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Mon, Mar 13 at 11:48 AM

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From: **Charles Tuttle** <petitionsrights@gmail.com>
Date: Wed, Feb 22, 2023 at 4:30 PM
Subject: Independent Auditor Initiative
To:

Independent Auditor Initiative

The intent of this initiative is to amend the North Dakota Constitution to create a wholly independent office of Auditor to independently conduct audits, investigations, inspections and other reviews in accordance with those professional standards that relate to the fields of auditing and investigation in state government environments.

Full Text of Amendment:

IF MATERIAL IS UNDERSCORED, IT IS NEW MATERIAL WHICH IS BEING ADDED. IF MATERIAL IS OVERSTRUCK BY DASHES, THE MATERIAL IS BEING DELETED. IF MATERIAL IS NOT UNDERSCORED OR OVERSTRUCK, THE MATERIAL IS EXISTING LAW THAT IS NOT BEING CHANGED.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF NORTH DAKOTA:

North Dakota Constitution Article V, Section 13, Entitled Executive Branch is amended and reenacted as follows:

Section 13. State Auditor

1. Creation of the Office of Auditor. There is hereby created for the State of North Dakota an Office of Auditor.
2. Purpose and Intent. The purpose of this section is to establish a full-time program of audit, investigation and performance review to provide increased accountability and oversight of the state and to assist in improving the state's operations and deterring and identifying fraud, abuse and illegal acts. The intent of this Section is to create a wholly independent office of Auditor to conduct audits, investigations, inspections and other reviews in accordance with those professional standards that relate to the fields of investigation and auditing in state government environments.
3. Resources.
 - a. The Office of Auditor will be funded from the General Fund of the state and will receive no less than 0.25 percent of total state spending each year. The Auditor shall establish the organization structure appropriate to carrying out the responsibilities and functions of the office.
 - b. The Auditor shall have the power to appoint, employ, promote, and remove such assistants, employees, and personnel as deemed necessary for the efficient, and effective administration of the office. Within budget limitations, the Auditor may obtain the services of Certified Public Accountants, qualified management consultants, or other professional experts necessary to independently perform the functions of the office.

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4. Organizational Placement. The Auditor is operationally independent from the executive branch and the legislative branch. The Governor or legislature shall not prevent, impair, impede, or prohibit the Auditor from initiating, carrying out, or completing any audit, investigation or review. The Auditor is prohibited from serving on boards, commissions, committees of the state or political subdivisions. The Auditor will not hold other

additional government positions.

5. Records Disclosure. Audit and investigation reports shall be public records to the extent that they do not include information that has been made confidential and exempt from release to the public. During the course of audit and investigation activities, all records will be considered deliberative in process and not available for outside review unless determined otherwise by the Auditor. Names and identities of individuals making complaints and information protected by whistleblower or other section will not be disclosed without the written consent of the individual unless required by law or judicial processes. Similarly, the Auditor shall maintain the confidentiality of any public records that are made confidential by law and shall be subject to the same penalties as the custodian of those public records for violating confidentiality statutes. Overall, efforts will be made to protect the privacy of individuals or employees whenever possible without interfering in the judicial or administrative processes initiated to protect the public

6. Reporting Office Activities. The Auditor will report the findings of the Office's work to the head of the investigated/audited entity, to appropriate elected and appointed leadership and to the public. The Auditor shall also report criminal investigative matters to the appropriate law enforcement agencies.

The Auditor shall immediately report to the Governor whenever he/she becomes aware of particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of programs and operations of the state or interference with Auditor operations. The Governor shall transmit any such report to appropriate representatives of the Executive and Legislative branches within seven calendar days, together with a report by the Governor containing any comments deemed appropriate.

Within 60 days of the end of each fiscal year, the Auditor shall issue an annual report that separately lists audit and review reports and other investigative or assistance efforts completed during the fiscal year. The report shall describe the results of the fiscal year's activities of the Office of Auditor. Copies of the report shall be provided to the Governor and the Legislature. Upon issuance, members of the media and the public shall be promptly advised of the issuance of the report. Such reports will be provided to their representatives upon request.

7. Authority. The Office of Auditor is authorized to engage in the following specific functions:

- a. Audit, inspect, evaluate, investigate and inspect the activities, records and individuals with contracts, procurements, grants, agreements, and other financial arrangements undertaken by the state agencies, political subdivision, and any other function, activity, process or operation conducted by the State of North Dakota or in conjunction with the State of North Dakota.
- b. Conduct criminal, civil and administrative investigations.
- c. Audit the economy, efficiency, ethics, and effectiveness of the state's operations and functions and conduct reviews of the state's performance measurement system.
- d. Audit all aspects of state-wide elections and elections of political subdivision making the results of such audits available to the public.

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- e. Review of the reliability and validity of the information provided by the state's performance measures and standards.
- f. Provide information and evidence that relates to criminal acts to appropriate law enforcement officials.
- g. Initiate such reviews and audits of operations and services of the state as deemed appropriate.
- h. Receive and investigate complaints from any source or upon its own initiative concerning alleged abuses, frauds and service deficiencies including deficiencies in the operation and maintenance of facilities.
- i. Engage in prevention activities, including but not limited to: review of articles and sections of the North Dakota Constitution; review of chapters and sections of the North Dakota Century Code; review of rules, regulations, policies, procedures, and transactions; training and education.
- j. Refer matters for further civil, criminal, and administrative action to appropriate administrative and prosecutorial agencies.
- k. Conduct joint investigations and projects with other oversight or law enforcement agencies as deemed necessary by the Auditor.
- l. Recommend remedial actions to be taken by the state to overcome or correct operating or maintenance deficiencies and inefficiencies that were identified by the Office.
- m. Issue public reports as set forth in section 6.
- n. Monitor implementation of recommendations made by the Office and other audit agencies.
- o. Establish policies and procedures to guide functions and processes conducted by the Office.
- p. Maintain information regarding the cost of investigations and cooperated with appropriate administrative and prosecutorial agencies in recouping such costs from nongovernmental entities involved in willful misconduct.
- q. Do all things necessary to carry out the functions set forth in this section.

8. Powers. The Office of Auditor is provided the following powers to accomplish the intent of this section:

a) The right to obtain full and unrestricted access to all records, information data, reports, plans, projections, matters, contracts, memoranda, correspondence and any other materials, including electronic data of the state, political subdivision, or any other organization that may be involved with the state. This power supersedes any claim of privilege.

b) The authority to subpoena witnesses, administer oaths or affirmations, take testimony and compel the production of such books, papers, records and documents, including electronic data as is deemed to be relevant to any inquiry or investigation undertaken pursuant to this writing. This power may be delegated to a duly authorized deputy Auditor by the Auditor.

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c) Have access to the head of any public entity as well as all employees, when necessary for purposes related to the work of the Office.

d) Require public employees to report to the Office of Auditor information regarding fraud, waste, corruption, illegal acts, and abuse.

9. Quality Review. Audits, investigations, inspections and reviews shall be subject to quality assurance reviews by an appropriate professional non-partisan objective group every three to five years. A copy of the written report resulting from this review shall be furnished to the appointing authority and oversight board. This report shall also be made available to the public.

10. Elections Transparency. The Office of the Auditor shall adopt rules providing for the preservation and scanning of all ballots cast in an election. The rules must require, by January 1, 2024:

1. Each ballot cast in an election to be scanned electronically including rejected and corrected ballots;

2. Each ballot cast in an election to be preserved at least until the ballot is scanned;

3. Electronic versions of the scanned ballots from any election to be made available on the Office of the Auditor's website for 6 years; and

4. A paper copy of a scanned ballot from any election to be made available to any individual upon request and payment of a nominal fee to be set by the Office of the Auditor.

11. Petition for a Grand Jury. In addition to the Auditor's various reports, findings, and investigations, the people reserve the power to empanel a grand jury through a petition at any time. Prior to circulating a petition for a grand jury, the Auditor will approve the petition as to form only. The time period allowed for the circulation of such petitions will not be limited.

No grand jury may be drawn, summoned, or convened in any county within this state unless the district judge thereof shall so direct by a written order filed with the clerk of the court in the county wherein the said grand jury is required to attend. Any judge of the district court for any county must direct, in the manner herein provided, that a grand jury be drawn and summoned to attend whenever:

1. The judge deems the attendance of a grand jury necessary for the due enforcement of the laws of the state;

2. The board of county commissioners of the county where in the court is to be held, in writing, requests the judge to do so or

3. A petition in writing requesting the same is presented to the judge, signed by qualified electors of the county equal in number to at least ten percent of the total vote cast in the county for the office of governor of the state at the last general election, but the number of signatures required may not exceed five thousand. Such a petition may designate any attorney or any citizen to take charge of such prosecution or proceeding. The district judge will fix the attorney fee therefore by an order entered upon the minutes of the court, and the attorney or citizen so designated by the petition shall be vested with the powers of the state attorney for the purposes of that action, but for no other purpose, and shall be the only person authorized to proceed in such action.

Upon presentment of the request of petition, the judge shall promptly summon and convene the grand jury.

The judge shall not deem the petition for a grand jury insufficient unless it is proven with clear and convincing evidence that the minimum number of signatories have not all resided in the county for 30 days or more. Any judge who fails to empanel a grand jury upon presentment of such petition without clear and convincing evidence that the minimum number of signatories have not all resided in the county for 30 days or more shall be permanently removed from office.

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The petition for a grand jury prescribed by this Article must be verified on information and belief by at least three of the petitioners. The formation of a grand jury under this chapter may not be invalidated should it appear or be proven after the grand jury has been summoned that any of the petitioners were not qualified electors or that the petition was not signed by the required number of qualified electors. If any judge of the district court for which a petition for a grand jury meeting the requirements of this section has been submitted fails to promptly summon and convene the grand jury, the judge will be permanently removed from office. The state may not challenge the panel of a grand jury or an individual grand juror at any time before the grand jury is impaneled and sworn.

The grand jury shall inquire into the cause of detention of every person imprisoned in the jail of the county against whom neither a criminal complaint nor information has been filed, or who has not had or waived a preliminary examination, and into all public offenses committed or triable in the county, and if the evidence so warrants, shall present them to the court by written indictment.

As to any offense committed while the grand jury is in session, the state's attorney or prosecutor may proceed with a preliminary examination or the filing of information, as provided for by law, and prosecute the charge, and, under such conditions, the grand jury is not required to inquire into such offense. The presentment of an indictment against a person does not preclude the prosecution of such person for the same offense upon a criminal complaint or information previously filed with the court.

Whenever directed by the district court, the grand jury shall inquire into:

1. The condition and management of the public prisons in the county; and
2. Willful and corrupt misconduct in the office of public officials of every description in the county.

This section is self-executing and all of its provisions are mandatory. Laws may be enacted to facilitate and safeguard, but not to hamper, restrict, or impair these powers.

[Quoted text hidden]