

**2021 HOUSE APPROPRIATIONS**

**HB 1453**

# 2021 HOUSE STANDING COMMITTEE MINUTES

## Appropriations - Government Operations Division Brynhild Haugland Room, State Capitol

HB1453  
2/4/2021

A BILL for an Act to amend and reenact section 54-10-01 of the North Dakota Century Code, relating to the powers and duties of the state auditor.

08:30 **Chairman Vigesaa** brought the committee to order. Members present: Chairman Vigesaa, Vice Chairman Brandenburg, Representative Meier, Representative Bellew, Representative Mock, Representative Kempenich, Representative Howe.

### Discussion Topics:

- Duties of the state auditor.
- Audits conducted by the state auditor.
- Financial audits.

08:32 **Representative Pollert** explained the bill as the primary sponsor. Testimony #5443.

08:45 **Allan Knudson, Fiscal Analyst, ND Legislative Council** answered questions concerning audits.

08:51 **Joshua Gallion, State Auditor, ND Office of State Auditor** testified in opposition to the bill. Testimony #5444.

09:31 **Chairman Vigesaa** adjourned the meeting.

*Sheri Lewis, Committee Clerk*



State Auditor

## Auditor bill summary and background

The bill provides the Legislative Assembly the opportunity to set its policy for state agency audits and its expectations of the State Auditor when conducting the audits.

The bill requires the State Auditor to conduct financial audits of every agency. About 20 years ago, the State Auditor, with the approval of LAFRC (Legislative Audit and Fiscal Review Committee), changed the way many state agency biennial audits are done. Before this change, every state agency had a financial audit, meaning a review of the agency's financial transactions and financial statements. The change made at the request of the State Auditor in 1999 allowed the State Auditor more flexibility to do what became known as operational audits rather than financial audits. The rationale given by the State Auditor at the time was that because the State Auditor conducts a financial audit on the state's CAFR (Comprehensive Annual Financial Report), it was no longer as necessary to conduct a financial audit on every agency. The change was to allow the State Auditor more flexibility to review the efficiency of agency operations. LAFRC approved the change in 1999, **subject to the State Auditor continuing to provide reliable audited financial statements in the agencies' biennial audit reports.**

Over the years, the State Auditor has been including less and less financial information in the agency biennial audits (See the sample audit report of what the State Auditor told LAFRC in 1999 would be included in the audits to what is included in a 2019 audit report). This bill will ensure more financial information is again included in the audit reports.

The second area the bill addresses is defining the audits. There has been confusion in recent years about what kind of audits the State Auditor is doing. Like I mentioned above, 20 years ago the auditor was conducting financial audits and performance audits. Financial audits focus on the financial information. Performance audits focus on the performance and efficiency of an agency. After the 1999 LAFRC approved change, the State Auditor began doing operational audits which was a hybrid of a financial audit and a performance audit. However, during a LAFRC meeting last interim, when asked about the operational audits, the State Auditor indicated the office now refers to those as performance audits. So what kind of audits is the State Auditor doing? The answer may depend on who you ask. This bill provides a definition section for the audits which should eliminate any confusion going forward.

Although the bill appears to make numerous changes to the State Auditor's duties, there are really only a few changes, but those are very important. The bill takes the Auditor's current duties and categorizes them into a "shall do" category and a "may do" category. Subsection 1 at the top of page 3 includes the "shalls":

- A is the same as current law
- B is the same as current law, just included in its own subdivision
- C clarifies that the State Auditor is to conduct financial audits of state agencies every two years (not operational audits or performance audits)
- D requires the State Auditor to conduct performance audits as directed by the Legislative Assembly or LAFRC, the same as current law except criteria is added for LAFRC to consider when directing a performance audit
- E, F, and G are the same as current law

Subsection 2 includes the "mays":

- A is the same as current law
- B allows the State Auditor to conduct performance audits as determined necessary by the State Auditor - The same as current law except the provision added in 2019 requiring LAFRC approval is removed and a provision is added that performance audits be conducted within available resources.
- C is the same as current law
- D combines current law authorizing the State Auditor to contract for outside consulting services into one subdivision but removes the LAFRC approval requirement added in 2019 and instead requires the State Auditor to report to LAFRC on the need for a contract and the estimated cost, and includes criteria for LAFRC to consider when it receives a request from the State Auditor to charge an agency for the cost of a contract.

Subsection 3 includes the definitions of audits to be conducted by the State Auditor

As mentioned earlier, the bill allows the Legislative Assembly to set policy for state agency audits. Although the change made in 1999 was approved by LAFRC, the entire Legislative Assembly has never addressed the issue. This bill allows for that to occur.



Office of the  
State Auditor

## TESTIMONY TO HOUSE APPROPRIATIONS – GOVERNMENT OPERATIONS DIVISION

HB 1453

2/4/2021

Good morning, Chairman Vigesaa, members of the committee, my name is Joshua Gallion, and I serve as North Dakota's State Auditor.

As you are aware, the State Auditor is a constitutional state official elected by North Dakota citizens. My job is to lead the way in providing truthful, objective, and independent information to you and the citizens of North Dakota and because of that, I am here today to provide testimony opposing House Bill 1453.

### Impact on Other State Agencies

I would like to begin by explaining the direct workload and financial impact this bill will have on every single state agency. This bill would require every state agency to have its own financial statement audit conducted by our staff. While it sounds simple in theory, I assure you it is anything but that. This bill will have a ripple effect across every area of state and even local government in North Dakota.

For us to do a financial statement audit at each agency, the agency's own accounting staff must prepare financial statements for us to audit. This bill assumes that every single agency has staff with the skills, expertise, and capacity to create financial statements that follow the National General Accepted Accounting Principles (GAAP). This is a very detailed process and requires a significant amount of effort and time. The guidelines are expansive, and many small agencies do not have the time or training to properly prepare these statements by following all [show books] of the guidelines.

The reality is most — if not all — state agencies would rely on the Office of Management and Budget (OMB) and private sector Independent Public Accountant (IPA) firms to prepare these financial statements. Because agencies may have to hire out for this type of work, this could result in unnecessary expenses to the state in contracting these financial statements to private IPA firms. OMB contracts out some of the preparation of the Comprehensive Annual Financial Report (CAFR) because of the complexity it requires — and the amount of human resources it takes to complete this incredibly expansive financial report on time.

If passed, this bill will compound the current problem local governments are experiencing when trying to find a quality auditor to complete their required audits. Currently, we are aware of 40 local governments who need an auditor. In 2008, 128 audit firms were licensed to do government audits in North Dakota. Today, only 14 are conducting government audits. Local governments that currently use an accounting firm may be dropped as clients for larger audits and less travel time compared to these rural local government audit clients. Additionally, there will be a considerable lack of experience and a significant learning curve to prepare financial statements at the agency level. This will result in added



audit costs to the agencies because of errors in reporting and the additional time that will go into the audit. The costs to other state agencies to prepare GASB financial statements and notes disclosures cannot be determined but would be significant. Costs could include additional FTE, intensive training, or outsourcing to accounting firms (if there is capacity). If you haven't already, I encourage this committee to send a fiscal note to the 54 agencies that would be switching to a financial statement audit should this bill pass.

### **Impact on the Comprehensive Annual Financial Report (CAFR)**

The CAFR audit is conducted during a three-month window using 6,100 hours of staff time each year — or 12,200 hours a biennium. If this bill would pass, our team would not have time to conduct an audit of this integral report.

The State, through OMB, would need to contract that report out every year to make additional time available for this statewide financial statement audit. The estimated additional cost to the state would be \$1.9 million per biennium.

### **Impact on the State Auditor's Office**

Our staff at the Auditor's Office are a responsive and flexible team. They can shift our focus to financial statement audits if that is the desire of the legislative assembly. However, there will be a learning curve for our staff if we shift our training to GAAP and possibly reorganize the office structure. Financial statement audits at the individual agencies would result in considerably more audit work than our current process. This is because financial statement auditing standards have more stringent requirements than performance auditing standards, which we currently follow for our operational audits. Additionally, these audits would take longer because of the materiality threshold. To understand materiality and its impact on the length of an audit, please see the example graphic on page 3.

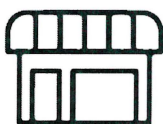
### **Estimated Financial Impact on the State Auditor's Office**

	<b>21-23 Biennium</b>	<b>23-25 Biennium</b>
<b>CAFR Cost</b>	1,927,600	1,985,428
<b>Contracted Audit Costs</b>	1,590,241	1,637,948
<b>4 Additional FTE</b>	703,558	712,966
<b>Total</b>	<b>\$4,221,399</b>	<b>\$4,336,342</b>

<b>FTE Cost</b>	
Avg. Monthly Cost	\$4900
Variable Benefits	20.27%
Fixed Benefits	1435.5
Est. Raise	2%

# What is Materiality?

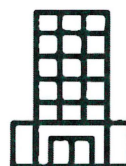
## Example Agency



This Example Agency has \$1,000 in total funding.  
If they have four, \$100 purchases, those are **significant to that agency** and those purchases would require additional review by our auditors.



## State of ND



Example Agency is a part of the State of ND. If the State as a whole has \$10,000 in funding (including the funding from Example Agency) those four purchases from the Example Agency are insignificant to the state as a whole.



**Graphic Explanation:** Example Agency has \$1,000 in total funding. If they have four, \$100 purchases, those are significant to that agency and would require additional review by our auditors. If the State as a whole has \$10,000, these four purchases from Example Agency are insignificant to the state as a whole but are still relevant to that Example Agency. As a whole state, those four \$100 purchases may never be looked at or considered.

In our current process, by following performance auditing standards, we have the flexibility during our biennial operational audits to define the audit breadth, known as the scope. When a performance audit is conducted, there are many additional factors besides materiality that are used in defining scope, such as risk. In financial statement audits, the standards require materiality to drive the entire scope of the audit. This would remove the flexibility that performance audits allow and would require us to do more work, which would ultimately lead to longer audits.

This would result in a higher audit bill, because of a longer audit and an increase in workload for our team. Because these financial statement audits do take more time than some of our operational audits, 4 additional FTE would be needed in the SAO, at an estimated cost of \$703,558 for 21-23 and \$712,966 for 23-25.



### Impact on Contracting Audits

The proposed bill states, "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. The state auditor may charge a state agency for the cost of a contract related 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."

This is a change in the current process. All the audits that are contracted now are paid directly by the agencies as it is built into their budgets. An estimated continuing appropriation of \$1.6 million with a minimum 3% increase each biennium, would be required to pay for contracted audits of the SAO. These audits are outsourced due to lack of capacity or expertise needed to complete them.

Also, we will not have actual costs for approval until after the request for proposal (RFP) process is complete. This would require more frequent LAFRC meetings in order to meet audit deadlines.

### Closing Comments

Mr. Chairman, members of the committee, this bill would cause a systemic change for nearly every single agency. It could also negatively affect the state's bond rating. If an agency cannot prepare their own financial statements, and cannot find a private firm to assist them, we may have to issue a modified opinion. This could result in a modified opinion of the statewide CAFR which directly impacts our bond rating.

It is incorrect to think we can flip a dial and go back to the way audits were done twenty years ago. The complexity of auditing, accounting, and reporting standards have increased over the past twenty years. Also, twenty years ago, the state's budget was not where it is today. DHS's budget alone grew by 300% since 2000 and we have nearly the same amount of staff as we did 20 years ago. Twenty years ago, was before the implementation of GASB 34 (2009) which made significant changes to financial reporting requirements.

To put this into perspective for you, we would still have found the issues at Commerce during a financial statement audit. Procurement and contract issues would still be found in financial statement audits, and they do on our local government side. The difference you would see in our audits would be in some of our operational areas such as the crime lab audit at the Attorney General's office where we looked at turnaround time on the lab testing or the DOCR audit where we looked at best practices, efficiency and effectiveness of their collection of supervision fees.

I ask that you consider the main points I've shared with you today and I'm happy to stand for any questions you may have.

STATE AUDITOR  
Joshua C. Gallion



PHONE  
701-328-2241

FAX  
701-328-2345

[www.nd.gov/auditor](http://www.nd.gov/auditor)

STATE OF NORTH DAKOTA  
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STATE CAPITOL  
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Bismarck, North Dakota, 58505

[ndsao@nd.gov](mailto:ndsao@nd.gov)

February 2, 2021

Representative Kasper,

Per your request, below is a timeline of the Belcourt Public School District audit completed by our team in April of 2020.

State Auditor's Office Timeline of Belcourt PSD Audit

- January 19<sup>th</sup>, 2019 – Petition Notarized.
- Week of January 21<sup>st</sup>, 2019 – Petition received by State Auditor's Office.
- January 30<sup>th</sup>, 2019 – Attorney General issues letter in consultation with Secretary of State that petition is valid, and that audit may proceed.
- February 7<sup>th</sup>, 2019 – Met with petitioners over concerns.
- February 22<sup>nd</sup>, 2019 – Engagement letter sent.
- Beginning of April 2019 – Interim fieldwork completed.
- The Belcourt PSD had a June 30, 2019, audit period so nothing further could be done until after that date. The federal fiscal cycle ended September 30, 2019. Because of the Single Audit (federal) component, we had to wait until the end of that period as well.
- October 2019 – Belcourt PSD ready for us to come back to finish field work.
- October 2019-March 2020 – This period was used to finish the audit. Due to number of significant findings (15) and the work that goes into each one and that we had to wait on the prior auditor getting information to the client for us to complete necessary portions of our audit work.
- March 23<sup>rd</sup>, 2020 – Client requested extension for action plan. We granted it and extended it to April 10<sup>th</sup>.
- April 13<sup>th</sup>, 2020 – Audit report issue date.

If you have any questions about the timeline, please feel free to call me at 701-595-2069.

Respectfully,



Joshua C. Gallion  
North Dakota State Auditor

# 2021 HOUSE STANDING COMMITTEE MINUTES

## Appropriations - Government Operations Division

Brynhild Haugland Room, State Capitol

HB1453  
2/8/2021  
11:08 AM  
Subcommittee

A BILL for an Act to amend and reenact section 54-10-01 of the North Dakota Century Code, relating to the powers and duties of the state auditor.

11:08 **Chairman Mock** opened the meeting. Members present: Chairman Mock, Representative Howe, Representative Bellew, Representative Kempenich.

### Discussion Topics:

- Operational audits.
- Comparison of LAFRC audits vs agency audits.

11:08 **Chairman Mock** explained testimony #5900.

11:45 **Joshua Gallion, State Auditor, Office of State Auditor** testified to answer questions.

11:56 **Chairman Mock** adjourned the meeting.

*Sheri Lewis, Committee Clerk*





# North Dakota Legislative Council

Prepared for Representative Mock  
LC# 21.9639.01000  
February 2021

## COMPARISON OF INFORMATION INCLUDED IN AUDIT REPORTS

The schedule below lists categories of information included in audit reports, and provides a comparison of the categories included in selected audit reports.

Category	LAFRC Sample Audit <sup>1</sup>	2015 Arts Council Audit	2017 Arts Council Audit	2019 Arts Council Audit
Report highlights			✓	
Executive summary	✓	✓	✓	
Responses to Legislative Audit and Fiscal Review Committee (LAFRC) questions	✓	✓	✓	
Audit objectives, scope, and methodology	✓	✓		✓
Background information	✓			
Financial summary		✓		
Noteworthy accomplishments	✓			
Management's discussion and analysis	✓	✓		
Comparison of current to prior year's results	✓			
Analysis of significant changes in operations	✓			
Analysis of significant budgeted to actual variances	✓			
Statement of assets, liabilities, and fund equity	✓			
Statement of revenues and expenditures	✓	✓	✓	✓
Statement of appropriations	✓	✓	✓	✓
Appropriation adjustments		✓		
Expenditures without appropriations of specific amounts		✓	✓	
Analysis of internal control	✓	✓	✓	✓
Compliance with legislative intent	✓	✓	✓	
Findings and recommendations	✓	N/A	N/A	N/A
Operational improvements	✓	✓	✓	
Issues needing further study	✓			
Status of prior audit recommendations	✓	N/A	N/A	N/A

<sup>1</sup> The Legislative Audit and Fiscal Review Committee sample audit identifies information to be included in operational audit reports provided by the State Auditor to LAFRC when the change was made to begin conducting operational audits in 2000.

"Financial audit" means an audit completed in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in government auditing standards issued by the comptroller general of the United States;

"Operational audit" means an audit completed using nationally recognized standards, methods, and procedures as determined by the state auditor to:

- (1) Provide an independent assessment of the agency's internal control and compliance with laws, regulations, and legislative intent;
- (2) Provide an opinion on whether the agency's financial statements, including a condensed statement of assets and liabilities, statement of revenues and expenditures, and statement of appropriations are presented fairly in all material respects in accordance with the budgeting basis of accounting consistent with the appropriations acts;
- (3) Provide explanations of significant variances between budgeted and actual amounts and between fiscal years; and
- (4) Address other areas as determined by the state auditor.

"Performance audit" means an audit completed in accordance with performance auditing standards contained in government auditing standards issued by the comptroller general of the United States to provide an independent assessment of the performance and management of a program.

# 2021 HOUSE STANDING COMMITTEE MINUTES

## Appropriations - Government Operations Division

Brynhild Haugland Room, State Capitol

HB1453

2/8/2021

4:06 PM

Subcommittee

A BILL for an Act to amend and reenact section 54-10-01 of the North Dakota Century Code, relating to the powers and duties of the state auditor.

4:06 **Chairman Mock** brought the committee to order. Members present: Chairman Mock, Representative Bellew, Representative Kempenich, Representative Howe, Representative Brandenburg.

### Discussion Topics:

- Amendment options
- The difference between financial and operational audits.

4:06 **Chairman Mock** explained a correction on previous testimony. Testimony #5911.

4:07 **Allan Knudson, Director, ND Legislative Council** explained proposed amendments.

4:21 **Joshua Gallion, State Auditor, Office of State Auditor** testified in response to questions.

4:31 **Lindsley Slappy, Quality Assurance Manager, Office of State Auditor** answered questions.

4:58 **Chairman Mock** adjourned the meeting.

*Sheri Lewis, Committee Clerk*



# North Dakota Legislative Council

Prepared for Representative Mock

LC# 21.9639.01000

February 2021

## COMPARISON OF INFORMATION INCLUDED IN AUDIT REPORTS

The schedule below lists categories of information included in audit reports, and provides a comparison of the categories included in selected audit reports.

Category	LAFRC Sample Audit <sup>1</sup>	2015 Arts Council Audit	2017 Arts Council Audit	2019 Arts Council Audit
Report highlights			✓	
Executive summary	✓	✓	✓	
Responses to Legislative Audit and Fiscal Review Committee (LAFRC) questions	✓	✓	✓	
Audit objectives, scope, and methodology	✓	✓		✓
Background information	✓			
Financial summary		✓		
Noteworthy accomplishments	✓			
Management's discussion and analysis	✓	✓		
Comparison of current to prior year's results	✓			
Analysis of significant changes in operations	✓			
Analysis of significant budgeted to actual variances	✓			
Statement of assets, liabilities, and fund equity	✓			
Statement of revenues and expenditures	✓	✓	✓	✓
Statement of appropriations	✓	✓	✓	✓
Appropriation adjustments		✓		
Expenditures without appropriations of specific amounts		✓	✓	
Analysis of internal control	✓	✓	✓	✓
Compliance with legislative intent	✓	✓	✓	
Findings and recommendations	✓	N/A	N/A	N/A
Operational improvements	✓	✓	✓	
Issues needing further study	✓			
Status of prior audit recommendations	✓	N/A	N/A	N/A

<sup>1</sup> The Legislative Audit and Fiscal Review Committee sample audit identifies information to be included in operational audit reports provided by the State Auditor to LAFRC when the change was made to begin conducting operational audits in 2000.



"Financial audit" means an audit completed in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in government auditing standards issued by the comptroller general of the United States;

"Operational audit" means an audit completed using nationally recognized standards, methods, and procedures as determined by the state auditor to:

- (1) Provide an independent assessment of the agency's internal control and compliance with laws, regulations, and legislative intent;
- (2) Provide an opinion on whether the agency's financial statements, including a condensed statement of assets and liabilities, statement of revenues and expenditures, and statement of appropriations are presented fairly in all material respects in accordance with the budgeting basis of accounting consistent with the appropriations acts;
- (3) Provide explanations of significant variances between budgeted and actual amounts and between fiscal years; and
- (4) Address other areas as determined by the state auditor.

"Performance audit" means an audit completed in accordance with performance auditing standards contained in government auditing standards issued by the comptroller general of the United States to provide an independent assessment of the performance and management of a program.

# 2021 HOUSE STANDING COMMITTEE MINUTES

## Appropriations - Government Operations Division

Brynhild Haugland Room, State Capitol

HB1453

2/18/2021

Subcommittee

A BILL for an Act to amend and reenact section 54-10-01 of the North Dakota Century Code, relating to the powers and duties of the state auditor.

3:45 **Chairman Mock** brought the subcommittee to order. Members present: Chairman Mock, Representative Bellew, Representative Howe.

### Discussion Topics:

- Whistle blower protection
- Audits

3:45 **Chairman Mock** explained amendment. LC# 21.0022.01006, (Testimony # 7012) LC# 21.0022.01003, (Testimony # 7010) and LC# 21.0022.01005. (Testimony # 7008)

3:52 **Representative Bellew** made a motion to adopt the amendments. LC# 21.0022.01006.

3:53 **Representative Howe** seconded the motion.

3:53 Voice vote.

3:53 Motion carried.

3:55 **Representative Howe** made a motion to adopt the amendment. LC# 21.0022.01003.

3:55 **Representative Bellew** seconded the motion.

3:56 Voice vote.

3:56 Motion carried.

3:58 **Representative Bellew** made a motion to adopt the amendment. LC# 21.0022.01005.

3:58 **Representative Howe** seconded the motion.

3:58 Voice vote.

3:58 Motion carried.

3:59 **Chairman Mock** dissolved the subcommittee and closed the meeting.

*Sheri Lewis, Committee Clerk*

21.0022.01006

Sixty-seventh  
Legislative Assembly  
of North Dakota

## HOUSE BILL NO. 1453

Introduced by

Representative Pollert

Senator Wardner

Primary Amendment to  
HB 1453

1 A BILL for an Act to create and enact a new section to chapter 54-35 of the North Dakota  
2 Century Code, relating to the legislative audit and fiscal review committee; and to amend and  
3 reenact section 54-10-01 and section 54-35-02.2 of the North Dakota Century Code, relating to  
4 the powers and duties of the state auditor and the legislative audit and fiscal review committee.

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

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

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

9 The state auditor shall:

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

1        general fund. This charge may be reduced for any agency that receives and expends  
2        both general fund and nongeneral fund moneys. State agencies must use nongeneral  
3        fund moneys to pay for audits performed by the state auditor. If nongeneral fund  
4        moneys are not available, the agency may, upon approval of the legislative assembly,  
5        or the budget section if the legislative assembly is not in session, use general fund  
6        moneys to pay for audits performed by the state auditor. The budget section reviews  
7        and approvals must comply with section 54-35-02.9. Audits and reviews may be  
8        conducted at more frequent intervals if requested by the governor or legislative audit  
9        and fiscal review committee.

- 10      3. Be vested with the authority to determine whether to audit the International Peace  
11      Garden at the request of the board of directors of the International Peace Garden.
- 12      4. Perform or provide for performance audits of state agencies, or the agencies' blended  
13      component units or discreetly presented component units, as determined necessary  
14      by the legislative assembly, the legislative audit and fiscal review committee, or the  
15      state auditor, subject to approval by the legislative audit and fiscal review committee. A  
16      performance audit must be done in accordance with generally accepted auditing  
17      standards applicable to performance audits. The state auditor may not hire a  
18      consultant to assist with conducting a performance audit of a state agency without the  
19      prior approval of the legislative audit and fiscal review committee. The state auditor  
20      shall notify an agency of the need for a consultant before requesting approval by the  
21      legislative audit and fiscal review committee. The agency that is audited shall pay for  
22      the cost of any consultant approved.
- 23      5. For the audits and reviews the state auditor is authorized to perform or provide for  
24      under this section, the audit or review may be provided for by contract with a private  
25      certified or licensed public accountant or other qualified professional. If the state  
26      auditor determines that the audit or review will be done pursuant to contract, the state  
27      auditor, except for occupational or professional boards, shall execute the contract, and  
28      any executive branch agency, including higher education institutions, shall pay the  
29      fees of the contractor.



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

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. 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. ~~The~~ Except for performance audits conducted under subdivision d of



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

15 ~~3. For purposes of this section:~~

- 16 ~~a. A financial audit means an audit completed in accordance with auditing standards~~  
17 ~~generally accepted in the United States of America and the standards applicable~~  
18 ~~to financial audits contained in government auditing standards issued by the~~  
19 ~~comptroller general of the United States; and~~  
20 ~~b. A performance audit means an audit completed in accordance with performance~~  
21 ~~auditing standards contained in government auditing standards issued by the~~  
22 ~~comptroller general of the United States to provide an independent assessment~~  
23 ~~of the performance and management of a program.~~

24 **SECTION 2. AMENDMENT.** Section 54-35-02.2 of the North Dakota Century Code is  
25 amended and reenacted as follows:

26 **54-35-02.2. Powers and duties of the legislative audit and fiscal review committee.**

27 The legislative audit and fiscal review committee shall study and review audit reports as  
28 selected by the committee from those submitted by the state auditor, confer with the auditor and  
29 deputy auditors in regard to such reports, and when necessary, confer with representatives of  
30 the department, agency, or institution audited in order to obtain full and complete information in  
31 regard to any and all fiscal transactions and governmental operations of any department,



1 agency, or institution of the state. The committee shall meet at least once each calendar quarter  
2 during each interim. Each department, agency, or institution shall furnish to the committee such  
3 aid, information, and assistance in regard to fiscal transactions and governmental operations as  
4 it may from time to time request. Whenever the committee may determine or have reason to  
5 believe that there may have been a violation of law relating to the receipt, custody, or  
6 expenditure of public funds by any state officer or employee, the committee shall present such  
7 evidence or information as may be in its possession to the attorney general. The attorney  
8 general shall receive and accept such evidence or information and shall immediately  
9 commence such additional investigation as the attorney general determines necessary. Upon  
10 completion of the investigation, if the evidence supplied by the committee and through the  
11 investigation indicates the probability of a violation of law by any state official or employee, the  
12 attorney general immediately shall prosecute such official or employee as provided by law.  
13 Whenever the committee may determine that a state agency, department, or institution has  
14 failed to correct an audit finding within two bienniums which the committee determines critically  
15 important, the committee may recommend the legislative assembly reduce the state agency,  
16 department, or institution's appropriation as compared with the amount appropriated to the  
17 agency, department, or institution for the previous biennium. The legislative management,  
18 through its committee on legislative audit and fiscal review, or such persons as may be directed  
19 or employed by the legislative council, is authorized, within the limits of legislative  
20 appropriations, to make such audits, examinations, or studies of the fiscal transactions or  
21 governmental operations of departments, agencies, or institutions of the state as the legislative  
22 management may determine necessary.

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

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

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

- 30 1. Applicable auditing standards;
- 31 2. Sound financial practices;



- 1     3. Compliance with laws and legislative intent;
- 2     4. Data analyses; and
- 3     5. The opportunity to improve the efficient and effective operations of state agencies.

**Mock, Corey R.**

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**From:** Knudson, Allen H.  
**Sent:** Thursday, February 18, 2021 1:27 PM  
**To:** Mock, Corey R.  
**Subject:** HB 1453 change

Language added to  
-01006 amendment.

Rep. Mock:

Below is the suggested language to add to HB 1453 amendment in subdivision c on page 3 to reference the LAFRC guidelines section.

Perform or provide for ~~financial~~ audits of state agencies in accordance with government auditing standards and legislative audit and fiscal review committee guidelines established under section 2 of this Act.

Let me know if you have any questions.

**Allen H. Knudson**  
ND Legislative Council  
(701) 328-4231  
aknudson@nd.gov

21.0022.01003

Sixty-seventh  
Legislative Assembly  
of North Dakota

## HOUSE BILL NO. 1453

Optional Amendment

Introduced by

Representative Pollert

Senator Wardner

Highlighted Section :  
Audit Confidential until  
Presented to LAFRC

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

## BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. 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.**

The state auditor shall:

1. ~~Be vested with the duties, powers, and responsibilities involved in performing the postaudit of all financial transactions of the state government, detecting and reporting any defaults, and determining that expenditures have been made in accordance with law and appropriation acts.~~
2. ~~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 and perform or provide for the audits and reviews of state agencies. Except for the annual audit of the North Dakota lottery required by section 53-12.1-03, the state auditor shall audit or review each state agency once every two years. The state auditor shall determine the contents of the audits and reviews of state agencies. The state auditor may conduct any work required by the federal government. The state auditor may not contract for work required by the federal government without the prior approval of 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~~

Sixty-seventh  
Legislative Assembly

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



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

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



subsection 1 of this section 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 of this section 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. For purposes of this section:~~

- ~~a. A financial audit means an audit completed in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in government auditing standards issued by the comptroller general of the United States; and~~
- ~~b. A performance audit means an audit completed in accordance with performance auditing standards contained in government auditing standards issued by the comptroller general of the United States to provide an independent assessment of the performance and management of a program.~~

**SECTION 2. AMENDMENT.** Section 54-10-26 of the North Dakota Century Code is amended and reenacted as follows:

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

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



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

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

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

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

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



21.0022.01005

Sixty-seventh  
Legislative Assembly  
of North Dakota

## HOUSE BILL NO. 1453

Optional Amendment

Introduced by

Representative Pollert

Senator Wardner

Highlighted sections make tips  
Confidential and expand  
whistleblower protections.

- 1 A BILL for an Act to create and enact a new section to chapter 54-10 of the North Dakota  
2 Century Code, relating to protections for individuals who report potential violations of law; and to  
3 amend and reenact subsection 1 of section 34-11.1-04 and section 54-10-01 of the North  
4 Dakota Century Code, relating to protections for public employees who report potential  
5 violations of law and the powers and duties of the state auditor.

## 6 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

- 7 **SECTION 1. AMENDMENT.** Subsection 1 of section 34-11.1-04 of the North Dakota  
8 Century Code is amended and reenacted as follows:  
9 1. An employee ~~may~~, without fear of reprisal, may report in writing to the employee's  
10 respective agency head, a state's attorney, the attorney general, the state auditor, or  
11 an employee organization the existence of:  
12 a. A job-related violation of local, state, or federal law, rule, regulation, or ordinance.  
13 b. The job-related misuse of public resources.

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

16 **54-10-01. Powers and duties of state auditor.**17 ~~The state auditor shall:~~

- 18 1. ~~Be vested with the duties, powers, and responsibilities involved in performing the~~  
19 ~~postaudit of all financial transactions of the state government, detecting and reporting~~  
20 ~~any defaults, and determining that expenditures have been made in accordance with~~  
21 ~~law and appropriation acts.~~  
22 2. ~~Perform or provide for the audit of the general purpose financial statements and a~~  
23 ~~review of the material included in the comprehensive annual financial report of the~~  
24 ~~state and perform or provide for the audits and reviews of state agencies. Except for~~

1       ~~the annual audit of the North Dakota lottery required by section 53-12.1-03, the state~~  
2       ~~auditor shall audit or review each state agency once every two years. The state~~  
3       ~~auditor shall determine the contents of the audits and reviews of state agencies. The~~  
4       ~~state auditor may conduct any work required by the federal government. The state~~  
5       ~~auditor may not contract for work required by the federal government without the prior~~  
6       ~~approval of the legislative audit and fiscal review committee. The state auditor shall~~  
7       ~~charge an amount equal to the cost of the audit and other services rendered by the~~  
8       ~~state auditor to all agencies that receive and expend moneys from other than the~~  
9       ~~general fund. This charge may be reduced for any agency that receives and expends~~  
10       ~~both general fund and nongeneral fund moneys. State agencies must use nongeneral~~  
11       ~~fund moneys to pay for audits performed by the state auditor. If nongeneral fund~~  
12       ~~moneys are not available, the agency may, upon approval of the legislative assembly,~~  
13       ~~or the budget section if the legislative assembly is not in session, use general fund~~  
14       ~~moneys to pay for audits performed by the state auditor. The budget section reviews~~  
15       ~~and approvals must comply with section 54-35-02.9. Audits and reviews may be~~  
16       ~~conducted at more frequent intervals if requested by the governor or legislative audit~~  
17       ~~and fiscal review committee.~~  
18       3. ~~Be vested with the authority to determine whether to audit the International Peace~~  
19       ~~Garden at the request of the board of directors of the International Peace Garden.~~  
20       4. ~~Perform or provide for performance audits of state agencies, or the agencies' blended~~  
21       ~~component units or discreetly presented component units, as determined necessary~~  
22       ~~by the legislative assembly; the legislative audit and fiscal review committee; or the~~  
23       ~~state auditor, subject to approval by the legislative audit and fiscal review committee. A~~  
24       ~~performance audit must be done in accordance with generally accepted auditing~~  
25       ~~standards applicable to performance audits. The state auditor may not hire a~~  
26       ~~consultant to assist with conducting a performance audit of a state agency without the~~  
27       ~~prior approval of the legislative audit and fiscal review committee. The state auditor~~  
28       ~~shall notify an agency of the need for a consultant before requesting approval by the~~  
29       ~~legislative audit and fiscal review committee. The agency that is audited shall pay for~~  
30       ~~the cost of any consultant approved.~~



- 1       5. ~~For the audits and reviews the state auditor is authorized to perform or provide for~~  
2       ~~under this section, the audit or review may be provided for by contract with a private~~  
3       ~~certified or licensed public accountant or other qualified professional. If the state~~  
4       ~~auditor determines that the audit or review will be done pursuant to contract, the state~~  
5       ~~auditor, except for occupational or professional boards, shall execute the contract, and~~  
6       ~~any executive branch agency, including higher education institutions, shall pay the~~  
7       ~~fees of the contractor.~~
- 8       6. ~~Be responsible for the above functions and report thereon to the governor and the~~  
9       ~~secretary of state in accordance with section 54-06-04 or more often as circumstances~~  
10      ~~may require.~~
- 11      7. ~~Perform all other duties as prescribed by law.~~
- 12      8. ~~Perform work on mineral royalties for the federal government in accordance with~~  
13      ~~section 1735(a) of the Mineral Lands and Mining Act [30 U.S.C. 1735 et seq.].~~The  
14      state auditor shall:
  - 15      a. Be vested with the duties, powers, and responsibilities involved in performing the  
16      postaudit of all financial transactions of state government, detecting and reporting  
17      any defaults, and determining that expenditures have been made in accordance  
18      with law and appropriation acts.
  - 19      b. Perform or provide for the financial audit of the general purpose financial  
20      statements and a review of the material included in the comprehensive annual  
21      financial report of the state.
  - 22      c. Perform or provide for financial audits of state agencies. Except for the annual  
23      audit of the North Dakota lottery required by section 53-12.1-03, the state auditor  
24      shall audit each state agency once every two years. Audits may be conducted at  
25      more frequent intervals if requested by the governor or the legislative audit and  
26      fiscal review committee. The state auditor shall charge an amount equal to the  
27      cost of the audit and other services rendered by the state auditor to all agencies  
28      that receive and expend moneys from other than the general fund. This charge  
29      may be reduced for an agency that receives and expends both general fund and  
30      nongeneral fund moneys. State agencies shall use nongeneral fund moneys to  
31      pay for the cost of the audit. If nongeneral fund moneys are not available, the

1           agency may, upon approval of the legislative assembly, or the budget section if  
2           the legislative assembly is not in session, use general fund moneys to pay for the  
3           audit. Any budget section action under this subdivision must comply with section  
4           54-35-02.9.

5           d. Perform or provide for performance audits of state agencies, or the agencies'  
6           blended component units or discreetly presented component units, as  
7           determined necessary by the legislative assembly, or the legislative audit and  
8           fiscal review committee if the legislative assembly is not in session. When  
9           determining the necessity of a performance audit, the legislative audit and fiscal  
10          review committee shall consider:

11          (1) The potential cost-savings or efficiencies that may be gained as a result of  
12          the performance audit;

13          (2) The staff resources of the state auditor's office and of the state agency  
14          being audited which will be required to conduct the audit;

15          (3) The potential for discovery of noncompliance with state law or legislative  
16          intent regarding the program or agency; and

17          (4) The potential for the performance audit to identify opportunities for program  
18          improvements.

19          e. Report on the functions of the state auditor's office to the governor and the  
20          secretary of state in accordance with section 54-06-04 or more often as  
21          circumstances may require.

22          f. Perform work on mineral royalties for the federal government in accordance with  
23          section 1735(a) of the Mineral Lands and Mining Act [30 U.S.C. 1735 et seq.].

24          g. Perform all other duties as prescribed by law.

25          2. The state auditor may:

26          a. Conduct any work required by the federal government.

27          b. Within the resources available to the state auditor, perform or provide for  
28          performance audits of state agencies as determined necessary by the state  
29          auditor.

30          c. Audit the International Peace Garden at the request of the board of directors of  
31          the International Peace Garden.



1           d. Contract with a private certified public accountant or other qualified professional  
2           to conduct or assist with an audit, review, or other work the state auditor is  
3           authorized to perform or provide for under this section. Before entering any  
4           contract, the state auditor shall present information to the legislative audit and  
5           fiscal review committee on the need for the contract and its estimated cost and  
6           duration. The state auditor may charge a state agency for the cost of a contract  
7           relating to an audit, subject to approval by the legislative assembly or the  
8           legislative audit and fiscal review committee if the legislative assembly is not in  
9           session. When considering a request, the legislative audit and fiscal review  
10          committee shall consider the effect of the audit cost on the agency being audited,  
11          the necessity of the contract, and the potential benefit to the state resulting from  
12          the contract. The state auditor shall notify the affected agency of the potential  
13          cost before requesting approval from the legislative assembly or the legislative  
14          audit and fiscal review committee.

15          3. For purposes of this section:

- 16           a. A financial audit means an audit completed in accordance with auditing standards  
17           generally accepted in the United States of America and the standards applicable  
18           to financial audits contained in government auditing standards issued by the  
19           comptroller general of the United States; and  
20           b. A performance audit means an audit completed in accordance with performance  
21           auditing standards contained in government auditing standards issued by the  
22           comptroller general of the United States to provide an independent assessment  
23           of the performance and management of a program.

24          **SECTION 3.** A new section to chapter 54-10 of the North Dakota Century Code is created  
25          and enacted as follows:

26          **Reporting noncompliance - Confidentiality.**

27          Information that reasonably may be used to identify an individual who reported suspected or  
28          potential violations of law or other irregularities to the state auditor is a confidential record under  
29          section 44-04-17.1.

# 2021 HOUSE STANDING COMMITTEE MINUTES

## Appropriations - Government Operations Division Brynhild Haugland Room, State Capitol

HB1453  
2/19/2021

A BILL for an Act to amend and reenact section 54-10-01 of the North Dakota Century Code, relating to the powers and duties of the state auditor.

08:42 **Chairman Vigesaa** brought the committee to order. Members present: Chairman Vigesaa, Vice Chairman Brandenburg, Representative Kempenich, Representative Howe, Representative Bellew, Representative Meier, Representative Mock.

### Discussion Topics:

- Audit standards
- Whistle blower protection

08:44 **Representative Mock** explained the amendment. LC# 21.0022.01007 #7009, #7011

09:11 **Representative Mock** made a motion to adopt the amendment. LC# 21.0022.01007.

09:11 **Representative Howe** seconded the motion.

09:12 Voice vote.

09:12 Motion carried.

09:12 **Representative Mock** made a motion for a "Do Pass as Amended". 09:13

**Representative Howe** seconded the motion.

<i><b>Representatives</b></i>	<b>Yes</b>	<b>No</b>
<i>Chairman Vigesaa</i>	X	
<i>Vice Chairman Brandenburg</i>	X	
<i>Representative Kempenich</i>	X	
<i>Representative Howe</i>	X	
<i>Representative Meier</i>	X	
<i>Representative Bellew</i>	X	
<i>Representative Mock</i>	X	

09:13 Roll call vote 7 Yeas 0 Nays 0 Absent

09:13 Motion carried.

09:14 **Chairman Vigesaa** closed the meeting.

*Sheri Lewis, Committee Clerk*

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1453

Page 1, line 1, after "to" insert "create and enact a new section to chapter 54-10 and a new section to chapter 54-35 of the North Dakota Century Code, relating to protections for individuals who report potential violations of law and the legislative audit and fiscal review committee; and to"

Page 1, line 1, after "reenact" insert "subsection 1 of section 34-11.1-04,"

Page 1, line 1, after "54-10-01" insert ", 54-10-26, and section 54-35-02.2"

Page 1, line 2, after "to" insert "protections for public employees who report potential violations of law,"

Page 1, line 2, after "auditor" insert ", state auditor working papers, and the legislative audit and fiscal review committee"

Page 1, after line 3, insert:

**"SECTION 1. AMENDMENT.** Subsection 1 of section 34-11.1-04 of the North Dakota Century Code is amended and reenacted as follows:

1. An employee ~~may~~, without fear of reprisal, may report in writing to the employee's respective agency head, a state's attorney, the attorney general, the state auditor, or an employee organization the existence of:
  - a. A job-related violation of local, state, or federal law, rule, regulation, or ordinance.
  - b. The job-related misuse of public resources."

Page 3, line 8, remove the first "financial"

Page 3, line 10, after "state" insert "in accordance with government auditing standards"

Page 3, line 11, remove "financial"

Page 3, line 11, after "agencies" insert "in accordance with government auditing standards and legislative audit and fiscal review committee guidelines developed under section 6 of this Act"

Page 4, line 27, replace "The" with "Except for performance audits conducted under subdivision d of subsection 1 of this section 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 of this section or subdivision b of this subsection, the"

Page 5, replace lines 5 through 13 with:

**"SECTION 3.** A new section to chapter 54-10 of the North Dakota Century Code is created and enacted as follows:

## **Reporting noncompliance - Confidentiality.**

Information that reasonably may be used to identify an individual who reported suspected or potential violations of law or other irregularities to the state auditor is a confidential record under section 44-04-17.1.

**SECTION 4. AMENDMENT.** Section 54-10-26 of the North Dakota Century Code is amended and reenacted as follows:

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

Working papers of the state auditor are not public records and are exempt from section 44-04-18. Working papers include records kept by the auditor of the procedures applied, the tests performed, the information obtained, draft audit reports, and the pertinent conclusions reached in the engagement. Working papers may be, at the discretion of the state auditor and unless otherwise prohibited by law, made available for inspection. A draft audit report associated with an audit completed using government auditing standards applicable to financial audits which is released to the governing body or management of the audited entity is confidential until the final audit report is issued or work ceases on the audit. ~~The issued audit report is public information at which time the audit report becomes public information. Any other draft audit report released to the governing body or management of the audited entity is confidential until the final audit report is presented to the legislative audit and fiscal review committee at which time the audit report becomes public information.~~ The respective working papers of an issued audit report or an audit report presented to the legislative audit and fiscal review committee are public. At the discretion of the state auditor, all or a portion of the working papers of an ~~issued~~ publicly available audit report may be declared confidential. The declaration of confidentiality must state the reason for the confidentiality and the date, as can best be reasonably determined at the time, when the working papers will be made public.

**SECTION 5. AMENDMENT.** Section 54-35-02.2 of the North Dakota Century Code is amended and reenacted as follows:

### **54-35-02.2. Powers and duties of the legislative audit and fiscal review committee.**

The legislative audit and fiscal review committee shall study and review audit reports as selected by the committee from those submitted by the state auditor, confer with the auditor and deputy auditors in regard to such reports, and when necessary, confer with representatives of the department, agency, or institution audited in order to obtain full and complete information in regard to any and all fiscal transactions and governmental operations of any department, agency, or institution of the state. The committee shall meet at least once each calendar quarter during each interim. Each department, agency, or institution shall furnish to the committee such aid, information, and assistance in regard to fiscal transactions and governmental operations as it may from time to time request. Whenever the committee may determine or have reason to believe that there may have been a violation of law relating to the receipt, custody, or expenditure of public funds by any state officer or employee, the committee shall present such evidence or information as may be in its possession to the attorney general. The attorney general shall receive and accept such evidence or information and shall immediately commence such additional investigation as the attorney general determines necessary. Upon completion of the investigation, if the evidence supplied by the committee and through the investigation indicates the probability of a violation of



law by any state official or employee, the attorney general immediately shall prosecute such official or employee as provided by law. Whenever the committee may determine that a state agency, department, or institution has failed to correct an audit finding within two bienniums which the committee determines critically important, the committee may recommend the legislative assembly reduce the state agency, department, or institution's appropriation as compared with the amount appropriated to the agency, department, or institution for the previous biennium. The legislative management, through its committee on legislative audit and fiscal review, or such persons as may be directed or employed by the legislative council, is authorized, within the limits of legislative appropriations, to make such audits, examinations, or studies of the fiscal transactions or governmental operations of departments, agencies, or institutions of the state as the legislative management may determine necessary.

**SECTION 6.** A new section to chapter 54-35 of the North Dakota Century Code is created and enacted as follows:

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

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

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

Renumber accordingly

21.0022.01007

Sixty-seventh  
Legislative Assembly  
of North Dakota

**HOUSE BILL NO. 1453**

Introduced by

Representative Pollert

Senator Wardner

1 A BILL for an Act to create and enact a new section to chapter 54-10 and a new section to  
 2 chapter 54-35 of the North Dakota Century Code, relating to protections for individuals who  
 3 report potential violations of law and the legislative audit and fiscal review committee; and to  
 4 amend and reenact subsection 1 of section 34-11.1-04, section 54-10-01, 54-10-26, and section  
 5 54-35-02.2 of the North Dakota Century Code, relating to protections for public employees who  
 6 report potential violations of law, the powers and duties of the state auditor, state auditor  
 7 working papers, and the legislative audit and fiscal review committee.

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

9 **SECTION 1. AMENDMENT.** Subsection 1 of section 34-11.1-04 of the North Dakota  
 10 Century Code is amended and reenacted as follows:

- 11 1. An employee ~~may~~, without fear of reprisal, may report in writing to the employee's  
 12 respective agency head, a state's attorney, the attorney general, the state auditor, or  
 13 an employee organization the existence of:
- 14 a. A job-related violation of local, state, or federal law, rule, regulation, or ordinance.
  - 15 b. The job-related misuse of public resources.

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

18 **54-10-01. Powers and duties of state auditor.**

19 ~~The state auditor shall:~~

- 20 1. ~~Be vested with the duties, powers, and responsibilities involved in performing the~~  
 21 ~~postaudit of all financial transactions of the state government, detecting and reporting~~  
 22 ~~any defaults, and determining that expenditures have been made in accordance with~~  
 23 ~~law and appropriation acts.~~

Sixty-seventh  
Legislative Assembly

- 1       2. ~~Perform or provide for the audit of the general purpose financial statements and a~~  
2       ~~review of the material included in the comprehensive annual financial report of the~~  
3       ~~state and perform or provide for the audits and reviews of state agencies. Except for~~  
4       ~~the annual audit of the North Dakota lottery required by section 53-12.1-03, the state~~  
5       ~~auditor shall audit or review each state agency once every two years. The state~~  
6       ~~auditor shall determine the contents of the audits and reviews of state agencies. The~~  
7       ~~state auditor may conduct any work required by the federal government. The state~~  
8       ~~auditor may not contract for work required by the federal government without the prior~~  
9       ~~approval of the legislative audit and fiscal review committee. The state auditor shall~~  
10      ~~charge an amount equal to the cost of the audit and other services rendered by the~~  
11      ~~state auditor to all agencies that receive and expend moneys from other than the~~  
12      ~~general fund. This charge may be reduced for any agency that receives and expends~~  
13      ~~both general fund and nongeneral fund moneys. State agencies must use nongeneral~~  
14      ~~fund moneys to pay for audits performed by the state auditor. If nongeneral fund~~  
15      ~~moneys are not available, the agency may, upon approval of the legislative assembly,~~  
16      ~~or the budget section if the legislative assembly is not in session, use general fund~~  
17      ~~moneys to pay for audits performed by the state auditor. The budget section reviews~~  
18      ~~and approvals must comply with section 54-35-02.9. Audits and reviews may be~~  
19      ~~conducted at more frequent intervals if requested by the governor or legislative audit~~  
20      ~~and fiscal review committee.~~
- 21      3. ~~Be vested with the authority to determine whether to audit the International Peace~~  
22      ~~Garden at the request of the board of directors of the International Peace Garden.~~
- 23      4. ~~Perform or provide for performance audits of state agencies, or the agencies' blended~~  
24      ~~component units or discreetly presented component units, as determined necessary~~  
25      ~~by the legislative assembly; the legislative audit and fiscal review committee; or the~~  
26      ~~state auditor, subject to approval by the legislative audit and fiscal review committee. A~~  
27      ~~performance audit must be done in accordance with generally accepted auditing~~  
28      ~~standards applicable to performance audits. The state auditor may not hire a~~  
29      ~~consultant to assist with conducting a performance audit of a state agency without the~~  
30      ~~prior approval of the legislative audit and fiscal review committee. The state auditor~~  
31      ~~shall notify an agency of the need for a consultant before requesting approval by the~~



- 1        ~~legislative audit and fiscal review committee. The agency that is audited shall pay for~~  
2        ~~the cost of any consultant approved.~~
- 3        5. ~~For the audits and reviews the state auditor is authorized to perform or provide for~~  
4        ~~under this section, the audit or review may be provided for by contract with a private~~  
5        ~~certified or licensed public accountant or other qualified professional. If the state~~  
6        ~~auditor determines that the audit or review will be done pursuant to contract, the state~~  
7        ~~auditor, except for occupational or professional boards, shall execute the contract, and~~  
8        ~~any executive branch agency, including higher education institutions, shall pay the~~  
9        ~~fees of the contractor.~~
- 10       6. ~~Be responsible for the above functions and report thereon to the governor and the~~  
11       ~~secretary of state in accordance with section 54-06-04 or more often as circumstances~~  
12       ~~may require.~~
- 13       7. ~~Perform all other duties as prescribed by law.~~
- 14       8. ~~Perform work on mineral royalties for the federal government in accordance with~~  
15       ~~section 1735(a) of the Mineral Lands and Mining Act [30 U.S.C. 1735 et seq.].~~ The  
16       state auditor shall:
- 17       a. Be vested with the duties, powers, and responsibilities involved in performing the  
18       postaudit of all financial transactions of state government, detecting and reporting  
19       any defaults, and determining that expenditures have been made in accordance  
20       with law and appropriation acts.
- 21       b. Perform or provide for the ~~financial~~ audit of the general purpose financial  
22       statements and a review of the material included in the comprehensive annual  
23       financial report of the state in accordance with government auditing standards.
- 24       c. Perform or provide for ~~financial~~ audits of state agencies in accordance with  
25       government auditing standards and legislative audit and fiscal review committee  
26       guidelines developed under section 6 of this Act. Except for the annual audit of  
27       the North Dakota lottery required by section 53-12.1-03, the state auditor shall  
28       audit each state agency once every two years. Audits may be conducted at more  
29       frequent intervals if requested by the governor or the legislative audit and fiscal  
30       review committee. The state auditor shall charge an amount equal to the cost of  
31       the audit and other services rendered by the state auditor to all agencies that



1           receive and expend moneys from other than the general fund. This charge may  
2           be reduced for an agency that receives and expends both general fund and  
3           nongeneral fund moneys. State agencies shall use nongeneral fund moneys to  
4           pay for the cost of the audit. If nongeneral fund moneys are not available, the  
5           agency may, upon approval of the legislative assembly, or the budget section if  
6           the legislative assembly is not in session, use general fund moneys to pay for the  
7           audit. Any budget section action under this subdivision must comply with section  
8           54-35-02.9.

9           d. Perform or provide for performance audits of state agencies, or the agencies'  
10           blended component units or discreetly presented component units, as  
11           determined necessary by the legislative assembly, or the legislative audit and  
12           fiscal review committee if the legislative assembly is not in session. When  
13           determining the necessity of a performance audit, the legislative audit and fiscal  
14           review committee shall consider:

15           (1) The potential cost-savings or efficiencies that may be gained as a result of  
16           the performance audit;

17           (2) The staff resources of the state auditor's office and of the state agency  
18           being audited which will be required to conduct the audit;

19           (3) The potential for discovery of noncompliance with state law or legislative  
20           intent regarding the program or agency; and

21           (4) The potential for the performance audit to identify opportunities for program  
22           improvements.

23           e. Report on the functions of the state auditor's office to the governor and the  
24           secretary of state in accordance with section 54-06-04 or more often as  
25           circumstances may require.

26           f. Perform work on mineral royalties for the federal government in accordance with  
27           section 1735(a) of the Mineral Lands and Mining Act [30 U.S.C. 1735 et seq.].

28           g. Perform all other duties as prescribed by law.

29           2. The state auditor may:

30           a. Conduct any work required by the federal government.

- 1           b. Within the resources available to the state auditor, perform or provide for  
2           performance audits of state agencies as determined necessary by the state  
3           auditor.
- 4           c. Audit the International Peace Garden at the request of the board of directors of  
5           the International Peace Garden.
- 6           d. Contract with a private certified public accountant or other qualified professional  
7           to conduct or assist with an audit, review, or other work the state auditor is  
8           authorized to perform or provide for under this section. Before entering any  
9           contract, the state auditor shall present information to the legislative audit and  
10          fiscal review committee on the need for the contract and its estimated cost and  
11          duration. ~~The~~ Except for performance audits conducted under subdivision d of  
12          subsection 1 of this section or subdivision b of this subsection and except for  
13          audits of occupational or professional boards, the state auditor shall execute the  
14          contract and any executive branch agency, including higher education  
15          institutions, shall pay the fees of the contractor. For performance audits  
16          conducted under subdivision d of subsection 1 of this section or subdivision b of  
17          this subsection, the state auditor may charge a state agency for the cost of a  
18          contract relating to an audit, subject to approval by the legislative assembly or the  
19          legislative audit and fiscal review committee if the legislative assembly is not in  
20          session. When considering a request, the legislative audit and fiscal review  
21          committee shall consider the effect of the audit cost on the agency being audited,  
22          the necessity of the contract, and the potential benefit to the state resulting from  
23          the contract. The state auditor shall notify the affected agency of the potential  
24          cost before requesting approval from the legislative assembly or the legislative  
25          audit and fiscal review committee.

26          ~~3. For purposes of this section:~~

- 27          ~~a. A financial audit means an audit completed in accordance with auditing standards~~  
28          ~~generally accepted in the United States of America and the standards applicable~~  
29          ~~to financial audits contained in government auditing standards issued by the~~  
30          ~~comptroller general of the United States; and~~



1 ~~b. A performance audit means an audit completed in accordance with performance~~  
2 ~~auditing standards contained in government auditing standards issued by the~~  
3 ~~comptroller general of the United States to provide an independent assessment~~  
4 ~~of the performance and management of a program.~~

5 **SECTION 3.** A new section to chapter 54-10 of the North Dakota Century Code is created  
6 and enacted as follows:

7 **Reporting noncompliance - Confidentiality.**

8 Information that reasonably may be used to identify an individual who reported suspected or  
9 potential violations of law or other irregularities to the state auditor is a confidential record under  
10 section 44-04-17.1.

11 **SECTION 4. AMENDMENT.** Section 54-10-26 of the North Dakota Century Code is  
12 amended and reenacted as follows:

13 **54-10-26. State auditor's working papers.**

14 Working papers of the state auditor are not public records and are exempt from section  
15 44-04-18. Working papers include records kept by the auditor of the procedures applied, the  
16 tests performed, the information obtained, draft audit reports, and the pertinent conclusions  
17 reached in the engagement. Working papers may be, at the discretion of the state auditor and  
18 unless otherwise prohibited by law, made available for inspection. A draft audit report  
19 associated with an audit completed using government auditing standards applicable to financial  
20 audits which is released to the governing body or management of the audited entity is  
21 confidential until the final audit report is issued or work ceases on the audit. ~~The issued audit~~  
22 ~~report is public information~~ at which time the audit report becomes public information. Any other  
23 draft audit report released to the governing body or management of the audited entity is  
24 confidential until the final audit report is presented to the legislative audit and fiscal review  
25 committee at which time the audit report becomes public information. The respective working  
26 papers of an issued audit report or an audit report presented to the legislative audit and fiscal  
27 review committee are public. At the discretion of the state auditor, all or a portion of the working  
28 papers of ~~an issued~~ a publicly available audit report may be declared confidential. The  
29 declaration of confidentiality must state the reason for the confidentiality and the date, as can  
30 best be reasonably determined at the time, when the working papers will be made public.



1       **SECTION 5. AMENDMENT.** Section 54-35-02.2 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3       **54-35-02.2. Powers and duties of the legislative audit and fiscal review committee.**

4       The legislative audit and fiscal review committee shall study and review audit reports as  
5 selected by the committee from those submitted by the state auditor, confer with the auditor and  
6 deputy auditors in regard to such reports, and when necessary, confer with representatives of  
7 the department, agency, or institution audited in order to obtain full and complete information in  
8 regard to any and all fiscal transactions and governmental operations of any department,  
9 agency, or institution of the state. The committee shall meet at least once each calendar quarter  
10 during each interim. Each department, agency, or institution shall furnish to the committee such  
11 aid, information, and assistance in regard to fiscal transactions and governmental operations as  
12 it may from time to time request. Whenever the committee may determine or have reason to  
13 believe that there may have been a violation of law relating to the receipt, custody, or  
14 expenditure of public funds by any state officer or employee, the committee shall present such  
15 evidence or information as may be in its possession to the attorney general. The attorney  
16 general shall receive and accept such evidence or information and shall immediately  
17 commence such additional investigation as the attorney general determines necessary. Upon  
18 completion of the investigation, if the evidence supplied by the committee and through the  
19 investigation indicates the probability of a violation of law by any state official or employee, the  
20 attorney general immediately shall prosecute such official or employee as provided by law.  
21 Whenever the committee may determine that a state agency, department, or institution has  
22 failed to correct an audit finding within two bienniums which the committee determines critically  
23 important, the committee may recommend the legislative assembly reduce the state agency,  
24 department, or institution's appropriation as compared with the amount appropriated to the  
25 agency, department, or institution for the previous biennium. The legislative management,  
26 through its committee on legislative audit and fiscal review, or such persons as may be directed  
27 or employed by the legislative council, is authorized, within the limits of legislative  
28 appropriations, to make such audits, examinations, or studies of the fiscal transactions or  
29 governmental operations of departments, agencies, or institutions of the state as the legislative  
30 management may determine necessary.



1       **SECTION 6.** A new section to chapter 54-35 of the North Dakota Century Code is created  
2 and enacted as follows:

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

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

8       1.   Applicable auditing standards;

9       2.   Sound financial practices;

10      3.   Compliance with laws and legislative intent;

11      4.   Data analyses; and

12      5.   The opportunity to improve the efficient and effective operations of state agencies.

## PROPOSED AMENDMENTS TO HOUSE BILL NO. 1453

Page 1, line 1, after "to" insert "create and enact a new section to chapter 54-10 and a new section to chapter 54-35 of the North Dakota Century Code, relating to protections for individuals who report potential violations of law and the legislative audit and fiscal review committee; and to"

Page 1, line 1, after "reenact" insert "subsection 1 of section 34-11.1-04,"

Page 1, line 1, after "54-10-01" insert ", 54-10-26, and section 54-35-02.2"

Page 1, line 2, after "to" insert "protections for public employees who report potential violations of law,"

Page 1, line 2, after "auditor" insert ", state auditor working papers, and the legislative audit and fiscal review committee"

Page 1, after line 3, insert:

**"SECTION 1. AMENDMENT.** Subsection 1 of section 34-11.1-04 of the North Dakota Century Code is amended and reenacted as follows:

1. An employee ~~may~~, without fear of reprisal, may report in writing to the employee's respective agency head, a state's attorney, the attorney general, the state auditor, or an employee organization the existence of:
  - a. A job-related violation of local, state, or federal law, rule, regulation, or ordinance.
  - b. The job-related misuse of public resources."

Page 3, line 8, remove the first "financial"

Page 3, line 10, after "state" insert "in accordance with government auditing standards"

Page 3, line 11, remove "financial"

Page 3, line 11, after "agencies" insert "in accordance with government auditing standards and legislative audit and fiscal review committee guidelines developed under section 6 of this Act"

Page 4, line 27, replace "The" with "Except for performance audits conducted under subdivision d of subsection 1 of this section 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 of this section or subdivision b of this subsection, the"

Page 5, replace lines 5 through 13 with:

**"SECTION 3.** A new section to chapter 54-10 of the North Dakota Century Code is created and enacted as follows:



## **Reporting noncompliance - Confidentiality.**

Information that reasonably may be used to identify an individual who reported suspected or potential violations of law or other irregularities to the state auditor is a confidential record under section 44-04-17.1.

**SECTION 4. AMENDMENT.** Section 54-10-26 of the North Dakota Century Code is amended and reenacted as follows:

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

Working papers of the state auditor are not public records and are exempt from section 44-04-18. Working papers include records kept by the auditor of the procedures applied, the tests performed, the information obtained, draft audit reports, and the pertinent conclusions reached in the engagement. Working papers may be, at the discretion of the state auditor and unless otherwise prohibited by law, made available for inspection. A draft audit report associated with an audit completed using government auditing standards applicable to financial audits which is released to the governing body or management of the audited entity is confidential until the final audit report is issued or work ceases on the audit. ~~The issued audit report is public information at which time the audit report becomes public information. Any other draft audit report released to the governing body or management of the audited entity is confidential until the final audit report is presented to the legislative audit and fiscal review committee at which time the audit report becomes public information.~~ The respective working papers of an issued audit report or an audit report presented to the legislative audit and fiscal review committee are public. At the discretion of the state auditor, all or a portion of the working papers of ~~an issued~~ a publicly available audit report may be declared confidential. The declaration of confidentiality must state the reason for the confidentiality and the date, as can best be reasonably determined at the time, when the working papers will be made public.

**SECTION 5. AMENDMENT.** Section 54-35-02.2 of the North Dakota Century Code is amended and reenacted as follows:

### **54-35-02.2. Powers and duties of the legislative audit and fiscal review committee.**

The legislative audit and fiscal review committee shall study and review audit reports as selected by the committee from those submitted by the state auditor, confer with the auditor and deputy auditors in regard to such reports, and when necessary, confer with representatives of the department, agency, or institution audited in order to obtain full and complete information in regard to any and all fiscal transactions and governmental operations of any department, agency, or institution of the state. The committee shall meet at least once each calendar quarter during each interim. Each department, agency, or institution shall furnish to the committee such aid, information, and assistance in regard to fiscal transactions and governmental operations as it may from time to time request. Whenever the committee may determine or have reason to believe that there may have been a violation of law relating to the receipt, custody, or expenditure of public funds by any state officer or employee, the committee shall present such evidence or information as may be in its possession to the attorney general. The attorney general shall receive and accept such evidence or information and shall immediately commence such additional investigation as the attorney general determines necessary. Upon completion of the investigation, if the evidence supplied by the committee and through the investigation indicates the probability of a violation of

law by any state official or employee, the attorney general immediately shall prosecute such official or employee as provided by law. Whenever the committee may determine that a state agency, department, or institution has failed to correct an audit finding within two bienniums which the committee determines critically important, the committee may recommend the legislative assembly reduce the state agency, department, or institution's appropriation as compared with the amount appropriated to the agency, department, or institution for the previous biennium. The legislative management, through its committee on legislative audit and fiscal review, or such persons as may be directed or employed by the legislative council, is authorized, within the limits of legislative appropriations, to make such audits, examinations, or studies of the fiscal transactions or governmental operations of departments, agencies, or institutions of the state as the legislative management may determine necessary.

**SECTION 6.** A new section to chapter 54-35 of the North Dakota Century Code is created and enacted as follows:

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

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

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

Renumber accordingly

# 2021 HOUSE STANDING COMMITTEE MINUTES

## Appropriations Committee Brynhild Haugland Room, State Capitol

HB 1453  
2/19/2021

A BILL for an Act to amend and reenact section 54-10-01 of the North Dakota Century Code, relating to the powers and duties of the state auditor.

**11:00 Chairman Delzer-** Opened the meeting for HB 1453

Attendance	P/A
Representative Jeff Delzer	P
Representative Keith Kempenich	P
Representative Bert Anderson	P
Representative Larry Bellew	P
Representative Tracy Boe	A
Representative Mike Brandenburg	P
Representative Michael Howe	P
Representative Gary Kreidt	P
Representative Bob Martinson	P
Representative Lisa Meier	P
Representative Alisa Mitskog	P
Representative Corey Mock	P
Representative David Monson	P
Representative Mike Nathe	P
Representative Jon O. Nelson	P
Representative Mark Sanford	P
Representative Mike Schatz	P
Representative Jim Schmidt	P
Representative Randy A. Schobinger	P
Representative Michelle Strinden	P
Representative Don Vigesaa	P

### Discussion Topics:

- Amendment

**11:01 Representative Mock-** Reviews the bill and explains amendment 21.0222.01007

**11:12 Representative Mock** Makes a motion to adopt amendment

**Representative Schmidt** Second

Further discussion

**Voice Vote- Motion carries**



**11:12 Representative Mock** Make a motion for a Do Pass as Amended

**Representative Kempenich** Second

Further discussion

**11:13 Roll call vote was taken;**

<b>Representatives</b>	<b>Vote</b>
Representative Jeff Delzer	Y
Representative Keith Kempenich	Y
Representative Bert Anderson	Y
Representative Larry Bellew	Y
Representative Tracy Boe	A
Representative Mike Brandenburg	Y
Representative Michael Howe	Y
Representative Gary Kreidt	Y
Representative Bob Martinson	Y
Representative Lisa Meier	Y
Representative Alisa Mitskog	Y
Representative Corey Mock	Y
Representative David Monson	Y
Representative Mike Nathe	Y
Representative Jon O. Nelson	Y
Representative Mark Sanford	Y
Representative Mike Schatz	Y
Representative Jim Schmidt	Y
Representative Randy A. Schobinger	Y
Representative Michelle Strinden	Y
Representative Don Vigesaa	Y

**Motion Carries 20-0-1 Representative Mock will carry the bill**

**Additional written testimony:** No Written testimony

**11:15 Chairman Delzer-** Closes the meeting for HB 1453

*Risa Berube,*

*House Appropriations Committee Clerk*

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1453

Page 1, line 1, after "to" insert "create and enact a new section to chapter 54-10 and a new section to chapter 54-35 of the North Dakota Century Code, relating to protections for individuals who report potential violations of law and the legislative audit and fiscal review committee; and to"

Page 1, line 1, after "reenact" insert "subsection 1 of section 34-11.1-04,"

Page 1, line 1, after "54-10-01" insert ", 54-10-26, and section 54-35-02.2"

Page 1, line 2, after "to" insert "protections for public employees who report potential violations of law,"

Page 1, line 2, after "auditor" insert ", state auditor working papers, and the legislative audit and fiscal review committee"

Page 1, after line 3, insert:

**"SECTION 1. AMENDMENT.** Subsection 1 of section 34-11.1-04 of the North Dakota Century Code is amended and reenacted as follows:

1. An employee ~~may~~, without fear of reprisal, may report in writing to the employee's respective agency head, a state's attorney, the attorney general, the state auditor, or an employee organization the existence of:
  - a. A job-related violation of local, state, or federal law, rule, regulation, or ordinance.
  - b. The job-related misuse of public resources."

Page 3, line 8, remove the first "financial"

Page 3, line 10, after "state" insert "in accordance with government auditing standards"

Page 3, line 11, remove "financial"

Page 3, line 11, after "agencies" insert "in accordance with government auditing standards and legislative audit and fiscal review committee guidelines developed under section 6 of this Act"

Page 4, line 27, replace "The" with "Except for performance audits conducted under subdivision d of subsection 1 of this section 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 of this section or subdivision b of this subsection, the"

Page 5, replace lines 5 through 13 with:

**"SECTION 3.** A new section to chapter 54-10 of the North Dakota Century Code is created and enacted as follows:

### **Reporting noncompliance - Confidentiality.**

Information that reasonably may be used to identify an individual who reported suspected or potential violations of law or other irregularities to the state auditor is a confidential record under section 44-04-17.1.

**SECTION 4. AMENDMENT.** Section 54-10-26 of the North Dakota Century Code is amended and reenacted as follows:

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

Working papers of the state auditor are not public records and are exempt from section 44-04-18. Working papers include records kept by the auditor of the procedures applied, the tests performed, the information obtained, draft audit reports, and the pertinent conclusions reached in the engagement. Working papers may be, at the discretion of the state auditor and unless otherwise prohibited by law, made available for inspection. A draft audit report associated with an audit completed using government auditing standards applicable to financial audits which is released to the governing body or management of the audited entity is confidential until the final audit report is issued or work ceases on the audit. ~~The issued audit report is public information at which time the audit report becomes public information.~~ Any other draft audit report released to the governing body or management of the audited entity is confidential until the final audit report is presented to the legislative audit and fiscal review committee at which time the audit report becomes public information. The respective working papers of an issued audit report or an audit report presented to the legislative audit and fiscal review committee are public. At the discretion of the state auditor, all or a portion of the working papers of an ~~issued~~ publicly available audit report may be declared confidential. The declaration of confidentiality must state the reason for the confidentiality and the date, as can best be reasonably determined at the time, when the working papers will be made public.

**SECTION 5. AMENDMENT.** Section 54-35-02.2 of the North Dakota Century Code is amended and reenacted as follows:

#### **54-35-02.2. Powers and duties of the legislative audit and fiscal review committee.**

The legislative audit and fiscal review committee shall study and review audit reports as selected by the committee from those submitted by the state auditor, confer with the auditor and deputy auditors in regard to such reports, and when necessary, confer with representatives of the department, agency, or institution audited in order to obtain full and complete information in regard to any and all fiscal transactions and governmental operations of any department, agency, or institution of the state. The committee shall meet at least once each calendar quarter during each interim. Each department, agency, or institution shall furnish to the committee such aid, information, and assistance in regard to fiscal transactions and governmental operations as it may from time to time request. Whenever the committee may determine or have reason to believe that there may have been a violation of law relating to the receipt, custody, or expenditure of public funds by any state officer or employee, the committee shall present such evidence or information as may be in its possession to the attorney general. The attorney general shall receive and accept such evidence or information and shall immediately commence such additional investigation as the attorney general determines necessary. Upon completion of the investigation, if the evidence supplied by the committee and through the investigation indicates the probability of a violation of



law by any state official or employee, the attorney general immediately shall prosecute such official or employee as provided by law. Whenever the committee may determine that a state agency, department, or institution has failed to correct an audit finding within two bienniums which the committee determines critically important, the committee may recommend the legislative assembly reduce the state agency, department, or institution's appropriation as compared with the amount appropriated to the agency, department, or institution for the previous biennium. The legislative management, through its committee on legislative audit and fiscal review, or such persons as may be directed or employed by the legislative council, is authorized, within the limits of legislative appropriations, to make such audits, examinations, or studies of the fiscal transactions or governmental operations of departments, agencies, or institutions of the state as the legislative management may determine necessary.

**SECTION 6.** A new section to chapter 54-35 of the North Dakota Century Code is created and enacted as follows:

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

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

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

Renumber accordingly

**REPORT OF STANDING COMMITTEE**

**HB 1453: Appropriations Committee (Rep. Delzer, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (20 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1453 was placed on the Sixth order on the calendar.

Page 1, line 1, after "to" insert "create and enact a new section to chapter 54-10 and a new section to chapter 54-35 of the North Dakota Century Code, relating to protections for individuals who report potential violations of law and the legislative audit and fiscal review committee; and to"

Page 1, line 1, after "reenact" insert "subsection 1 of section 34-11.1-04,"

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Page 1, line 2, after "auditor" insert ", state auditor working papers, and the legislative audit and fiscal review committee"

Page 1, after line 3, insert:

**"SECTION 1. AMENDMENT.** Subsection 1 of section 34-11.1-04 of the North Dakota Century Code is amended and reenacted as follows:

1. An employee ~~may~~, without fear of reprisal, may report in writing to the employee's respective agency head, a state's attorney, the attorney general, the state auditor, or an employee organization the existence of:
  - a. A job-related violation of local, state, or federal law, rule, regulation, or ordinance.
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**SECTION 5. AMENDMENT.** Section 54-35-02.2 of the North Dakota Century Code is amended and reenacted as follows:

**54-35-02.2. Powers and duties of the legislative audit and fiscal review committee.**

The legislative audit and fiscal review committee shall study and review audit reports as selected by the committee from those submitted by the state auditor, confer with the auditor and deputy auditors in regard to such reports, and when necessary, confer with representatives of the department, agency, or institution audited in order to obtain full and complete information in regard to any and all fiscal transactions and governmental operations of any department, agency, or institution of the state. The committee shall meet at least once each calendar quarter during each interim. Each department, agency, or institution shall furnish to the committee such aid, information, and assistance in regard to fiscal transactions and governmental operations as it may from time to time request. Whenever the committee may determine or have reason to believe that there may have been a violation of law relating to the receipt, custody, or expenditure of public funds by any state officer or employee, the committee shall present such evidence or information as may be in its possession to the attorney general. The attorney general shall receive and accept such evidence or information and shall immediately commence such additional investigation as the attorney general determines necessary. Upon completion of the investigation, if the evidence supplied by the committee and through the investigation indicates the probability of a violation of law by any state official or employee, the attorney general immediately shall prosecute such official or employee as provided by law. Whenever the committee may determine that a state agency, department, or institution has failed to correct an audit finding within two bienniums which the committee determines critically important, the committee may recommend the legislative assembly reduce the state agency, department, or institution's appropriation as compared with the amount appropriated to the agency, department, or institution for the previous biennium. The legislative management, through its committee on legislative audit and fiscal review, or such persons as may



be directed or employed by the legislative council, is authorized, within the limits of legislative appropriations, to make such audits, examinations, or studies of the fiscal transactions or governmental operations of departments, agencies, or institutions of the state as the legislative management may determine necessary.

**SECTION 6.** A new section to chapter 54-35 of the North Dakota Century Code is created and enacted as follows:

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

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

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

Renumber accordingly

**2021 SENATE GOVERNMENT AND VETERANS AFFAIRS**

**HB 1453**

# **2021 SENATE STANDING COMMITTEE MINUTES**

**Government and Veterans Affairs Committee**  
Room JW216, State Capitol

HB 1453  
3/25/2021

<b>Relating to protections for public employees who report potential violations of law, the powers and duties of the state auditor, state auditor working papers, and the legislative audit and fiscal review committee.</b>
--

**Chair Vedaa** opened the hearing at 3:01 PM with Sen Vedaa, Meyer, Elkin, K Roers, Weber, Wobbema, and Marcellais present.

## **Discussion Topics:**

- Operational audit
- Legislative Audit and Fiscal Review Committee (LAFRC) guidelines
- Whistle blower protection
- Language modernization

**Rep Pollert – Dist 29** – Introduced the bill

**Rep Mock – Dist 18** – testified in favor

**Josh Gallion – ND State Auditor** – testified neutral #10782

## ***Additional written testimony:***

***Mitchell Sanderson – opposed - #10434***

Adjourned at 3:30 PM

*Pam Dever, Committee Clerk*





Office of the  
State Auditor

TESTIMONY TO SENATE GOVERNMENT & VETERANS AFFAIRS

HB 1453

325/2021

Good afternoon, Chairman Vedaa, members of the committee, my name is Joshua Gallion, and I serve as North Dakota's State Auditor.

As you are aware, the State Auditor is a constitutional state official elected by North Dakota citizens. My job is to lead the way in providing truthful, objective, and independent information to you and the citizens of North Dakota and because of that, I am here today to provide neutral testimony how House Bill 1453 will affect our office.

From where this bill started to where it is today being presented to you, it has been through many changes and amendments. I thought it would be easiest to walk you through section by section and explain how each section will pertain to the Auditor's Office and give my remarks.

### Section 1

I support this section as it allows employees to report issues to the Auditor's Office and remain confidential.

### Section 2

This section clarifies expectations between the State Auditor and Legislature acting through the legislative audit and fiscal review committee for audits conducted by the SAO or outsourced and contracted by the SAO. It allows us to continue performing the 2-year audits using the same standards to best meet our clients' needs and maintains the ability for us to order performance audits if necessary.

### Section 3

This section keeps identifiable information and records confidential for anyone who reports potential violations of law.

### Section 4

Section 4 added this statement "Any other draft audit report released to the governing body or management of the audited entity is confidential until the final audit report is presented to the legislative audit and fiscal review committee at which time the audit report becomes public information." What I would like to know is how do you define "presented"?

We understand what is trying to be accomplished by this section and we think have a concept that we can both meet the wants of the Legislature and also meet the Standards. NDCC 54-10-26 allows confidential draft audit reports to be released to the governing body or management. Our current process gives audit clients one week to respond to confidential audit reports with no findings and two weeks for audit reports with findings and recommendations. If we were to incorporate LAFRC into this process, you'd have one to two weeks to review confidential audit reports prior to their public release.

### Section 5

This requires LAFRC to meet at least quarterly which is a legislative decision and does not directly impact the SAO other than additional meetings/presentations. Ultimately, I think more communication is better and I hope this leads to a better understanding between the two separate branches of government.

### Section 6

As long as this section cannot take precedence over GAGAS, which I have been assured by Rep. Mock that that is not the intention, I support the additional guidance to make sure the information the SAO is providing to the committee

helps improve their evaluation of government programs and use of funding. The legislature is one of our significant stakeholders and being responsive to them is just as important as communicating with the citizens.

That concludes my remarks and I am happy to answer any questions you may have.



Senator,

**Under NO circumstances should an unelected official make public policy!**

**Under NO circumstances should a health official violate our Constitutional Rights!**

There are already court cases clearly stating that what the governor did here in ND violated our first and 14th amendment rights with his EO's.

Thank you,

--

Mitchell S. Sanderson

# 2021 SENATE STANDING COMMITTEE MINUTES

## Government and Veterans Affairs Committee Room JW216, State Capitol

HB 1453  
4/8/2021

**Relating to protections for public employees who report potential violations of law, the powers and duties of the state auditor, state auditor working papers, and the legislative audit and fiscal review committee.**

**Chair Vedaa** called to order at 11:22 AM with Sen Vedaa, Meyer, Elkin, K Roers, Weber, Wobbema, and Marcellais present.

### Discussion Topics:

- Committee Work

**Sen K. Roers** moves amendment 21.0022.02001 - #11413

**Sen Meyer** seconds

**VOICE VOTE TAKEN: MOTION PASSED**

**Sen K. Roers** moves **DO PASS** as Amended

**Sen Meyer** Seconds

**Roll Call Vote: 7 -- YES 0 -- NO -0-ab Motion Passed**

Senators	Vote
Senator Shawn Vedaa	Y
Senator Scott Meyer	Y
Senator Jay R. Elkin	Y
Senator Richard Marcellais	Y
Senator Kristin Roers	Y
Senator Mark F. Webber	Y
Senator Michael A. Wobbema	Y

**Sen K. Roers will carry the bill.**

Adjourned at 11:28 AM

*Pam Dever, Committee Clerk*

April 2, 2021

8/1  
100  
4/8

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1453

Page 6, line 14, replace "to" with "at a meeting of"

Page 6, line 15, after "information" insert ". The final audit report may be provided to the members of the legislative audit and fiscal review committee before the meeting"

Renumber accordingly



**REPORT OF STANDING COMMITTEE**

**HB 1453, as engrossed: Government and Veterans Affairs Committee (Sen. Vedaa, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1453 was placed on the Sixth order on the calendar.

Page 6, line 14, replace "to" with "at a meeting of"

Page 6, line 15, after "information" insert ". The final audit report may be provided to the members of the legislative audit and fiscal review committee before the meeting"

Renumber accordingly

**FIRST ENGROSSMENT**

Sixty-seventh  
Legislative Assembly  
of North Dakota

**ENGROSSED HOUSE BILL NO. 1453**

Introduced by

Representative Pollert

Senator Wardner

1 A BILL for an Act to create and enact a new section to chapter 54-10 and a new section to  
2 chapter 54-35 of the North Dakota Century Code, relating to protections for individuals who  
3 report potential violations of law and the legislative audit and fiscal review committee; and to  
4 amend and reenact subsection 1 of section 34-11.1-04, section 54-10-01, 54-10-26, and section  
5 54-35-02.2 of the North Dakota Century Code, relating to protections for public employees who  
6 report potential violations of law, the powers and duties of the state auditor, state auditor  
7 working papers, and the legislative audit and fiscal review committee.

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

9 **SECTION 1. AMENDMENT.** Subsection 1 of section 34-11.1-04 of the North Dakota  
10 Century Code is amended and reenacted as follows:

- 11 1. An employee ~~may~~, without fear of reprisal, may report in writing to the employee's  
12 respective agency head, a state's attorney, the attorney general, the state auditor, or  
13 an employee organization the existence of:
- 14 a. A job-related violation of local, state, or federal law, rule, regulation, or ordinance.  
15 b. The job-related misuse of public resources.

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

18 **54-10-01. Powers and duties of state auditor.**

19 ~~The state auditor shall:~~

- 20 1. ~~Be vested with the duties, powers, and responsibilities involved in performing the~~  
21 ~~postaudit of all financial transactions of the state government, detecting and reporting~~  
22 ~~any defaults, and determining that expenditures have been made in accordance with~~  
23 ~~law and appropriation acts.~~

2. ~~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 and perform or provide for the audits and reviews of state agencies. Except for the annual audit of the North Dakota lottery required by section 53-12.1-03, the state auditor shall audit or review each state agency once every two years. The state auditor shall determine the contents of the audits and reviews of state agencies. The state auditor may conduct any work required by the federal government. The state auditor may not contract for work required by the federal government without the prior approval of 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 any agency that receives and expends both general fund and nongeneral fund moneys. State agencies must use nongeneral fund moneys to pay for audits performed by the state auditor. 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 audits performed by the state auditor. The budget section reviews and approvals must comply with section 54-35-02.9. Audits and reviews may be conducted at more frequent intervals if requested by the governor or legislative audit and fiscal review committee.~~
3. ~~Be vested with the authority to determine whether to audit the International Peace Garden at the request of the board of directors of the International Peace Garden.~~
4. ~~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; the legislative audit and fiscal review committee; or the state auditor, subject to approval by the legislative audit and fiscal review committee. A performance audit must be done in accordance with generally accepted auditing standards applicable to performance audits. The state auditor may not hire a consultant to assist with conducting a performance audit of a state agency without the prior approval of the legislative audit and fiscal review committee. The state auditor shall notify an agency of the need for a consultant before requesting approval by the~~



legislative audit and fiscal review committee. The agency that is audited shall pay for the cost of any consultant approved.

5. ~~For the audits and reviews the state auditor is authorized to perform or provide for under this section, the audit or review may be provided for by contract with a private certified or licensed public accountant or other qualified professional. If the state auditor determines that the audit or review will be done pursuant to contract, the state auditor, except for occupational or professional boards, shall execute the contract, and any executive branch agency, including higher education institutions, shall pay the fees of the contractor.~~

6. ~~Be responsible for the above functions and report thereon to the governor and the secretary of state in accordance with section 54-06-04 or more often as circumstances may require.~~

7. ~~Perform all other duties as prescribed by law.~~

8. ~~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.]. 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 or provide for audits of state agencies in accordance with government auditing standards and legislative audit and fiscal review committee guidelines developed under section 6 of this Act. 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

1           and expend moneys from other than the general fund. This charge may be  
2           reduced for an agency that receives and expends both general fund and  
3           nongeneral fund moneys. State agencies shall use nongeneral fund moneys to  
4           pay for the cost of the audit. If nongeneral fund moneys are not available, the  
5           agency may, upon approval of the legislative assembly, or the budget section if  
6           the legislative assembly is not in session, use general fund moneys to pay for the  
7           audit. Any budget section action under this subdivision must comply with section  
8           54-35-02.9.

9           d. Perform or provide for performance audits of state agencies, or the agencies'  
10          blended component units or discreetly presented component units, as  
11          determined necessary by the legislative assembly, or the legislative audit and  
12          fiscal review committee if the legislative assembly is not in session. When  
13          determining the necessity of a performance audit, the legislative audit and fiscal  
14          review committee shall consider:

- 15          (1) The potential cost-savings or efficiencies that may be gained as a result of  
16               the performance audit;  
17          (2) The staff resources of the state auditor's office and of the state agency  
18               being audited which will be required to conduct the audit;  
19          (3) The potential for discovery of noncompliance with state law or legislative  
20               intent regarding the program or agency; and  
21          (4) The potential for the performance audit to identify opportunities for program  
22               improvements.

23          e. Report on the functions of the state auditor's office to the governor and the  
24          secretary of state in accordance with section 54-06-04 or more often as  
25          circumstances may require.

26          f. Perform work on mineral royalties for the federal government in accordance with  
27          section 1735(a) of the Mineral Lands and Mining Act [30 U.S.C. 1735 et seq.].

28          g. Perform all other duties as prescribed by law.

29          2. The state auditor may:

30          a. Conduct any work required by the federal government.

- 1           **b.** Within the resources available to the state auditor, perform or provide for  
2           performance audits of state agencies as determined necessary by the state  
3           auditor.
- 4           **c.** Audit the International Peace Garden at the request of the board of directors of  
5           the International Peace Garden.
- 6           **d.** Contract with a private certified public accountant or other qualified professional  
7           to conduct or assist with an audit, review, or other work the state auditor is  
8           authorized to perform or provide for under this section. Before entering any  
9           contract, the state auditor shall present information to the legislative audit and  
10          fiscal review committee on the need for the contract and its estimated cost and  
11          duration. Except for performance audits conducted under subdivision d of  
12          subsection 1 of this section or subdivision b of this subsection and except for  
13          audits of occupational or professional boards, the state auditor shall execute the  
14          contract and any executive branch agency, including higher education  
15          institutions, shall pay the fees of the contractor. For performance audits  
16          conducted under subdivision d of subsection 1 of this section or subdivision b of  
17          this subsection, the state auditor may charge a state agency for the cost of a  
18          contract relating to an audit, subject to approval by the legislative assembly or the  
19          legislative audit and fiscal review committee if the legislative assembly is not in  
20          session. When considering a request, the legislative audit and fiscal review  
21          committee shall consider the effect of the audit cost on the agency being audited,  
22          the necessity of the contract, and the potential benefit to the state resulting from  
23          the contract. The state auditor shall notify the affected agency of the potential  
24          cost before requesting approval from the legislative assembly or the legislative  
25          audit and fiscal review committee.

26          **SECTION 3.** A new section to chapter 54-10 of the North Dakota Century Code is created  
27 and enacted as follows:

28          **Reporting noncompliance - Confidentiality.**

29          Information that reasonably may be used to identify an individual who reported suspected or  
30          potential violations of law or other irregularities to the state auditor is a confidential record under  
31          section 44-04-17.1.



1       **SECTION 4. AMENDMENT.** Section 54-10-26 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3       **54-10-26. State auditor's working papers.**

4       Working papers of the state auditor are not public records and are exempt from section  
5 44-04-18. Working papers include records kept by the auditor of the procedures applied, the  
6 tests performed, the information obtained, draft audit reports, and the pertinent conclusions  
7 reached in the engagement. Working papers may be, at the discretion of the state auditor and  
8 unless otherwise prohibited by law, made available for inspection. A draft audit report  
9 associated with an audit completed using government auditing standards applicable to financial  
10 audits which is released to the governing body or management of the audited entity is  
11 confidential until the final audit report is issued or work ceases on the audit. The issued audit  
12 report is public information at which time the audit report becomes public information. Any other  
13 draft audit report released to the governing body or management of the audited entity is  
14 confidential until the final audit report is presented ~~to~~ at a meeting of the legislative audit and  
15 fiscal review committee at which time the audit report becomes public information. The final  
16 audit report may be provided to the members of the legislative audit and fiscal review committee  
17 before the meeting. The respective working papers of an issued audit report or an audit report  
18 presented to the legislative audit and fiscal review committee are public. At the discretion of the  
19 state auditor, all or a portion of the working papers of an issued a publicly available audit report  
20 may be declared confidential. The declaration of confidentiality must state the reason for the  
21 confidentiality and the date, as can best be reasonably determined at the time, when the  
22 working papers will be made public.

23       **SECTION 5. AMENDMENT.** Section 54-35-02.2 of the North Dakota Century Code is  
24 amended and reenacted as follows:

25       **54-35-02.2. Powers and duties of the legislative audit and fiscal review committee.**

26       The legislative audit and fiscal review committee shall study and review audit reports as  
27 selected by the committee from those submitted by the state auditor, confer with the auditor and  
28 deputy auditors in regard to such reports, and when necessary, confer with representatives of  
29 the department, agency, or institution audited in order to obtain full and complete information in  
30 regard to any and all fiscal transactions and governmental operations of any department,  
31 agency, or institution of the state. The committee shall meet at least once each calendar quarter

1 during each interim. Each department, agency, or institution shall furnish to the committee such  
2 aid, information, and assistance in regard to fiscal transactions and governmental operations as  
3 it may from time to time request. Whenever the committee may determine or have reason to  
4 believe that there may have been a violation of law relating to the receipt, custody, or  
5 expenditure of public funds by any state officer or employee, the committee shall present such  
6 evidence or information as may be in its possession to the attorney general. The attorney  
7 general shall receive and accept such evidence or information and shall immediately  
8 commence such additional investigation as the attorney general determines necessary. Upon  
9 completion of the investigation, if the evidence supplied by the committee and through the  
10 investigation indicates the probability of a violation of law by any state official or employee, the  
11 attorney general immediately shall prosecute such official or employee as provided by law.  
12 Whenever the committee may determine that a state agency, department, or institution has  
13 failed to correct an audit finding within two bienniums which the committee determines critically  
14 important, the committee may recommend the legislative assembly reduce the state agency,  
15 department, or institution's appropriation as compared with the amount appropriated to the  
16 agency, department, or institution for the previous biennium. The legislative management,  
17 through its committee on legislative audit and fiscal review, or such persons as may be directed  
18 or employed by the legislative council, is authorized, within the limits of legislative  
19 appropriations, to make such audits, examinations, or studies of the fiscal transactions or  
20 governmental operations of departments, agencies, or institutions of the state as the legislative  
21 management may determine necessary.

22 **SECTION 6.** A new section to chapter 54-35 of the North Dakota Century Code is created  
23 and enacted as follows:

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

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

- 29 1. Applicable auditing standards;
- 30 2. Sound financial practices;
- 31 3. Compliance with laws and legislative intent;

- 1       4. Data analyses; and
- 2       5. The opportunity to improve the efficient and effective operations of state agencies.



**2021 CONFERENCE COMMITTEE**

**HB 1453**

# 2021 HOUSE STANDING COMMITTEE MINUTES

## Appropriations - Government Operations Division

Brynhild Haugland Room, State Capitol

HB1453

4/19/2021

Conference Committee

A BILL for an Act to create and enact a new section to chapter 54-10 and a new section to chapter 54-35 of the North Dakota Century Code, relating to protections for individuals who report potential violations of law and the legislative audit and fiscal review committee; and to amend and reenact subsection 1 of section 34-11.1-04, section 54-10-01, 54-10-26, and section 54-35-02.2 of the North Dakota Century Code, relating to protections for public employees who report potential violations of law, the powers and duties of the state auditor, state auditor working papers, and the legislative audit and fiscal review committee.

3:03 **Chairman Bellew** brought the conference committee to order. Members present: Chairman Bellew, Representative Mock, Representative Howe, Senator Meyer, Senator Roers, Senator Marcellais.

### Discussion Topics:

- LAFRC

3:04 **Senator Roers** explained the changes to the bill.

3:05 **Senator Meyer** discussed proposed changes to the bill.

3:13 **Chairman Bellew** adjourned the conference committee.

*Sheri Lewis, Committee Clerk*

# 2021 HOUSE STANDING COMMITTEE MINUTES

## Appropriations - Government Operations Division Brynhild Haugland Room, State Capitol

HB1453  
4/21/2021  
Conference Committee

A BILL for an Act to amend and reenact section 54-10-01 of the North Dakota Century Code, relating to the powers and duties of the state auditor.

11:00 **Chairman Bellew** brought the conference committee to order. Members present: Chairman Bellew, Representative Howe, Representative Mock, Senator Meyer, Senator Roers, Senator Marcellais.

### Discussion Topics:

- Amendments

11:09 **Representative Mock** discussed the potential amendment of including desktop support to the bill. (Testimony # 11738)

11:09 **Representative Mock** made a motion to include language from HB1094 in this bill concerning desktop support for the state auditor.

11:13 **Chairman Bellew** seconded the motion.

11:14 Voice vote.

11:14 Motion failed.

11:15 **Representative Mock** explained the proposed amendment to section 5 of the bill.

11:23 **Senator Roers** made a motion to recede from the Senate amendments and amend to change the language in section 5 of the bill.

11:23 **Representative Mock** seconded the motion.

11:26 Roll call vote 4 Yeas 2 Nays 0 Absent

11:26 Motion failed.

11:26 **Chairman Bellew** adjourned the conference committee.

*Sheri Lewis, Committee Clerk*

**2021 HOUSE CONFERENCE COMMITTEE  
ROLL CALL VOTES**

BILL/RESOLUTION NO. HB1453 as (re) engrossed

**House Government Operations Committee**

- Action Taken**    ☐ **HOUSE accede to Senate Amendments**  
☐ **HOUSE accede to Senate Amendments and further amend**  
☐ **SENATE recede from Senate amendments**  
☒ **SENATE recede from Senate amendments and amend as follows**
- ☐ **Unable to agree**, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Senator Roers                      Seconded by: Representative Mock

Representatives	4/19	4/21		Yes	No		Senators	4/19	4/21		Yes	No
Chairman Bellew	X	X		X			Senator Meyer	X	X			X
Representative Mock	X	X		X			Senator Roers	X	X		X	
Representative Howe	X	X		X			Senator Marcellais	X	X			X
Total Rep. Vote							Total Senate Vote					

Vote Count            Yes: 4                      No: 2                      Absent: 0

House Carrier                      Senate Carrier                      \_\_\_\_\_

LC Number                      .                      of amendment

LC Number                      .                      of engrossment

Emergency clause added or deleted

Statement of purpose of amendment- to change the language in section 5 of the bill.

Motion failed



21.0022.02002  
Title.

Prepared by the Legislative Council staff for  
Representative Mock  
April 20, 2021

# PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1453

That the Senate recede from its amendments as printed on page 1605 of the House Journal and page 1339 of the Senate Journal and that Engrossed House Bill No. 1453 be amended as follows:

Page 6, line 4, overstrike "Working" and insert immediately thereafter:

"1. Except as provided in this section, working"

Page 6, line 8, after the period, insert:

"2."

Page 6, line 10, remove "which is"

Page 6, line 10, overstrike "released to the governing body or management of the audited entity"

Page 6, line 12, after "the" insert "draft"

Page 6, line 12, remove "public information. Any other"

Page 6, line 13, replace "draft audit report released to the governing body or management of the audited entity is" with "an open record. However, while the draft audit report is confidential:

- a. The draft audit report may be released to the governing body or management of the audited entity and to the legislative audit and fiscal review committee; and
- b. The legislative audit and fiscal review committee may release the draft audit report as necessary to carry out the committee's duties, including releasing the draft audit report for a public meeting, or as required by law.
3. A draft audit report that is not subject to subsection 2 and the final version of that audit report are

Page 6, line 15, after "the" insert "draft and final versions of the"

Page 6, line 15, replace "becomes public information" with "become open records. However, while the draft and final versions of the audit report are confidential:

- a. The draft and final versions of the audit report may be released to the governing body or management of the audited entity and to the legislative audit and fiscal review committee; and
- b. The legislative audit and fiscal review committee may release the draft and final versions of the audit report as necessary to carry out the committee's duties, including releasing the versions for a public meeting, or as required by law"

Page 6, line 15, after the period insert:

"4."

Page 6, line 17, overstrike ". At the discretion of the state auditor," and insert immediately thereafter "records unless the state auditor declares"

Page 6, line 18, overstrike "of"

Page 6, line 18, remove "a publicly available"

Page 6, line 18, overstrike "audit report may be declared"

Renumber accordingly

# 2021 HOUSE STANDING COMMITTEE MINUTES

## Appropriations - Government Operations Division

Brynhild Haugland Room, State Capitol

HB1453

4/22/2021

Conference Committee

A BILL for an Act to amend and reenact section 54-10-01 of the North Dakota Century Code, relating to the powers and duties of the state auditor.

3:00 **Chairman Bellew** brought the conference committee to order. Members present: Chairman Bellew, Representative Howe, Representative Mock, Senator Meyer, Senator Roers, Senator Marcellais.

### Discussion Topics:

- Amendments

3:01 **Chairman Bellew** adjourned the conference committee.

*Sheri Lewis, Committee Clerk*

# 2021 HOUSE STANDING COMMITTEE MINUTES

## Appropriations - Government Operations Division

Brynhild Haugland Room, State Capitol

HB1453

4/23/2021

Conference Committee

A BILL for an Act to amend and reenact section 54-10-01 of the North Dakota Century Code, relating to the powers and duties of the state auditor.

2:31 **Chairman Bellew** brought the conference committee to order. Members present: Chairman Bellew, Representative Mock, Representative Howe,

### Discussion Topics:

- LAFRC
- Performance audits

2:32 **Representative Mock** explained the changes.

2:34 **Chairman Bellew** discussed amendment 21.0022.02005.

2:36 **Chairman Bellew** made a motion for the Senate to recede from the Senate amendments and amend with 21.0022.02005.

2:36 **Senator Poolman** seconded the motion.

2:37 Roll call vote 6 Yeas 0 Nays 0 Absent

2:37 Motion carried.

2:40 **Chairman Bellew** closed the conference committee.

*Sheri Lewis, Committee Clerk*

**Bill was later brought back for reconsideration**



PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1453

That the Senate recede from its amendments as printed on page 1605 of the House Journal and page 1339 of the Senate Journal and that Engrossed House Bill No. 1453 be amended as follows:

Page 6, line 4, overstrike "Working" and insert immediately thereafter:

"1. Except as provided in this section, working"

Page 6, line 8, overstrike "A" and insert immediately thereafter:

"2. Except as provided in subsection 3, a"

Page 6, line 9, remove "associated with an audit completed using government auditing standards applicable to financial"

Page 6, line 10, remove "audits which is"

Page 6, line 12, remove "public information. Any other"

Page 6, remove lines 13 and 14

Page 6, line 15, replace "committee at which time the audit report becomes public information" with "an open record."

3. A draft or final version of an audit report for an audit completed in accordance with performance auditing standards contained in government auditing standards issued by the comptroller general of the United States to provide an independent assessment of the performance and management of a program may be provided only to the governing body or management of the audited entity, the legislative council, and the legislative audit and fiscal review committee. The draft and final versions of the audit report are confidential until released by the legislative council for a public meeting of the legislative audit and fiscal review committee at which time the draft and final versions become open records. If the legislative council does not release the final audit report for the next public meeting of the legislative audit and fiscal review committee following receipt of the report, the draft and final versions of the report are open records fourteen days after the meeting. Reports for audits performed under subdivision f of subsection 1 of section 54-10-01 or subdivision a of subsection 2 of section 54-10-01 are not subject to this subsection"

Page 6, line 15, after the period insert:

"4."

Page 6, line 17, overstrike "public. At the discretion of the state auditor," and insert immediately thereafter "open records unless the state auditor declares"

Page 6, line 18, overstrike "of"

Page 6, line 18, remove "a publicly available"

Page 6, line 18, overstrike "audit report may be declared"

Renumber accordingly

**2021 HOUSE CONFERENCE COMMITTEE  
ROLL CALL VOTES**

BILL/RESOLUTION NO. HB1453 as (re) engrossed

**House Government Operations Committee**

- Action Taken**    ☐ **HOUSE accede to Senate Amendments**  
☐ **HOUSE accede to Senate Amendments and further amend**  
☐ **SENATE recede from Senate amendments**  
☒ **SENATE recede from Senate amendments and amend as follows**
- ☐ **Unable to agree**, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Representative Bellew      Seconded by: Senator Poolman

Representatives	4/22	4/23		Yes	No		Senators	4/22	4/23		Yes	No
Chairman Bellew	X	X		X			Senator Meyer	X	X		X	
Representative Mock	X	X		X			Senator Poolman	X	X		X	
Representative Howe	X	X		X			Senator Marcellais	X	X		X	
Total Rep. Vote				3			Total Senate Vote				3	

Vote Count      Yes: 6      No: 0      Absent: 0

House Carrier Representative Mock      Senate Carrier Senator Poolman

LC Number 21.0022 . 02005 of amendment

LC Number 21.0022 . .04000 of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

# 2021 HOUSE STANDING COMMITTEE MINUTES

## Appropriations - Government Operations Division

Brynhild Haugland Room, State Capitol

HB1453

4/27/2021

Conference Committee

Relating to the powers and duties of the state auditor.
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3:01 **Chairman Vigesaa** brought the conference committee to order. Members present: Chairman Vigesaa, Representative Mock, Representative Howe, Senator Meyer, Senator Roers, Senator Marcellais.

### Discussion Topics:

- Public Records
- LAFRC

3:02 **Representative Mock** made a motion to reconsider their actions on amendment LC 21.0022.02005 on 4/27/21.

3:02 **Representative Howe** seconded the motion.

3:02 **Representative Mock** made a motion for the Senate to recede from the Senate amendments and amend with LC 21.0022.02008.

3:02 **Representative Howe** seconded the motion.

3:14 Roll call vote 6 Yeas 0 Nays 0 Absent

3:14 Motion carried.

3:15 **Chairman Vigesaa** closed the conference committee.

*Sheri Lewis, Committee Clerk*



DE 4/27/21  
10/2

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1453

That the Senate recede from its amendments as printed on page 1605 of the House Journal and page 1339 of the Senate Journal and that Engrossed House Bill No. 1453 be amended as follows:

Page 6, line 4, overstrike "Working" and insert immediately thereafter:

"1. Except as provided in this section, working"

Page 6, line 8, overstrike "A" and insert immediately thereafter:

"2. Except as provided in subsection 3, a"

Page 6, remove line 9

Page 6, line 10, remove "audits which is"

Page 6, line 12, remove "public information. Any other"

Page 6, remove lines 13 and 14

Page 6, line 15, replace "committee at which time the audit report becomes public information" with "an open record."

3. Except as provided in this subsection, a draft audit report for an audit completed in accordance with performance auditing standards contained in government auditing standards issued by the comptroller general of the United States to provide an independent assessment of the performance and management of a program released to the governing body or management of the audited entity is confidential until the final version of the audit report is an open record. After the auditor receives the audited entity's response to the draft report, the auditor shall complete the audit report, which is then deemed a preliminary audit report. The auditor shall provide the preliminary audit report and the audited entity's response to the legislative audit and fiscal review committee for a seven-day review period, except the auditor may not provide any information that is confidential under subsection 2 of section 54-10-25. During the review period, the preliminary audit report and the response may not be provided to any other person except by the legislative audit and fiscal review committee as necessary to perform the committee's duties as described in section 54-35-02.2. At the end of the review period, the preliminary audit report is deemed a final audit report, and the final audit report and the audited entity's response are open records. Reports for audits performed under subdivision f of subsection 1 of section 54-10-01 or subdivision a of subsection 2 of section 54-10-01 are not subject to this subsection"

Page 6, line 15, after the period insert:

"4."

Page 6, line 17, overstrike "public. At the discretion of the state auditor," and insert immediately thereafter "open records unless the state auditor declares"

Page 6, line 18, overstrike "of"

Page 6, line 18, remove "a publicly available"

Page 6, line 18, overstrike "audit report may be declared"

Renumber accordingly

**2021 HOUSE CONFERENCE COMMITTEE  
ROLL CALL VOTES**

BILL/RESOLUTION NO. HB1453 as (re) engrossed

**House Government Operations Committee**

- Action Taken**    ☐ **HOUSE accede to Senate Amendments**  
☐ **HOUSE accede to Senate Amendments and further amend**  
☐ **SENATE recede from Senate amendments**  
☒ **SENATE recede from Senate amendments and amend as follows**
- ☐ **Unable to agree**, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Representative Mock      Seconded by: Representative Howe

Representatives	4/27			Yes	No		Senators	4/27			Yes	No
Chairman Vigesaa	X			X			Senator Meyer	X			X	
Representative Mock	X			X			Senator Roers	X			X	
Representative Howe	X			X			Senator Marcellais	X			X	
Total Rep. Vote							Total Senate Vote					

Vote Count      Yes: 6      No: 0      Absent: 0

House Carrier Representative Mock      Senate Carrier Senator Roers

LC Number 21.0022 . 02008 of amendment

LC Number 21.0022 . 05000 of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

Insert LC: 21.0022.02008  
House Carrier: Mock  
Senate Carrier: J. Roers

**REPORT OF CONFERENCE COMMITTEE**

**HB 1453, as engrossed:** Your conference committee (Sens. Meyer, K. Roers, Marcellais and Reps. Vigasaa, Howe, Mock) recommends that the **SENATE RECEDE** from the Senate amendments as printed on HJ page 1605, adopt amendments as follows, and place HB 1453 on the Seventh order:

That the Senate recede from its amendments as printed on page 1605 of the House Journal and page 1339 of the Senate Journal and that Engrossed House Bill No. 1453 be amended as follows:

Page 6, line 4, overstrike "Working" and insert immediately thereafter:

"1. Except as provided in this section, working"

Page 6, line 8, overstrike "A" and insert immediately thereafter:

"2. Except as provided in subsection 3, a"

Page 6, remove line 9

Page 6, line 10, remove "audits which is"

Page 6, line 12, remove "public information. Any other"

Page 6, remove lines 13 and 14

Page 6, line 15, replace "committee at which time the audit report becomes public information" with "an open record."

3. Except as provided in this subsection, a draft audit report for an audit completed in accordance with performance auditing standards contained in government auditing standards issued by the comptroller general of the United States to provide an independent assessment of the performance and management of a program released to the governing body or management of the audited entity is confidential until the final version of the audit report is an open record. After the auditor receives the audited entity's response to the draft report, the auditor shall complete the audit report, which is then deemed a preliminary audit report. The auditor shall provide the preliminary audit report and the audited entity's response to the legislative audit and fiscal review committee for a seven-day review period, except the auditor may not provide any information that is confidential under subsection 2 of section 54-10-25. During the review period, the preliminary audit report and the response may not be provided to any other person except by the legislative audit and fiscal review committee as necessary to perform the committee's duties as described in section 54-35-02.2. At the end of the review period, the preliminary audit report is deemed a final audit report, and the final audit report and the audited entity's response are open records. Reports for audits performed under subdivision f of subsection 1 of section 54-10-01 or subdivision a of subsection 2 of section 54-10-01 are not subject to this subsection"

Page 6, line 15, after the period insert:

"4."

Page 6, line 17, overstrike "public. At the discretion of the state auditor," and insert immediately thereafter "open records unless the state auditor declares"



**Insert LC: 21.0022.02008**  
**House Carrier: Mock**  
**Senate Carrier: J. Roers**

Page 6, line 18, overstrike "of"

Page 6, line 18, remove "a publicly available"

Page 6, line 18, overstrike "audit report may be declared"

Renumber accordingly

Engrossed HB 1453 was placed on the Seventh order of business on the calendar.