

Sixty-eighth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1508

Introduced by

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

Senators Kreun, Meyer

A BILL for an Act to create and enact a new subdivision to subsection 2 of section 12-60-24 and two new sections to chapter 54-10 of the North Dakota Century Code, relating to criminal history background checks of employees of the state auditor and audits of state agencies, political subdivisions, and occupation and professional boards; to amend and reenact sections 54-10-01, and 54-10-14, subsection 1 of section 54-10-15, and sections 54-10-25 and 54-10-27 of the North Dakota Century Code, relating to audit fees of state institutions, political subdivisions, and occupational and professional boards; to provide a penalty; and to provide for retroactive application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

The state auditor for all employees, as required by section 8 of this Act.

SECTION 2. 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 - Exception.

1. The state auditor shall:

- a. Be vested with the duties, powers, and responsibilities involved in performing the postaudit of all financial transactions of state government, detecting and reporting any defaults, and determining that expenditures have been made in accordance with law and appropriation acts.
- b. Perform or provide for the audit of the general purpose financial statements and a review of the material included in the comprehensive annual financial report of the state in accordance with government auditing standards.

- 1 c. Perform or provide for audits of state agencies in accordance with government
2 auditing standards and legislative audit and fiscal review committee guidelines
3 developed under section 54-35-02.10. Except for the annual audit of the North
4 Dakota lottery required by section 53-12.1-03, the state auditor shall audit each
5 state agency once every two years. Audits may be conducted at more frequent
6 intervals if requested by the governor or the legislative audit and fiscal review
7 committee. ~~The state auditor shall charge an amount equal to the cost of the~~
8 ~~audit and other services rendered by the state auditor~~ one thousandth of one
9 ~~percent of the agency's total biennial operating budget to all agencies that~~
10 ~~receive and expend moneys from other than the general fund. This charge may~~
11 ~~be reduced for an agency that receives and expends both general fund and~~
12 ~~nongeneral fund moneys. State agencies shall use nongeneral fund moneys to~~
13 ~~pay for the cost of the audit. If nongeneral fund moneys are not available, the~~
14 ~~agency may, upon approval of the legislative assembly, or the budget section if~~
15 ~~the legislative assembly is not in session, use general fund moneys to pay for the~~
16 ~~audit. Any budget section action under this subdivision must comply with section~~
17 ~~54-35-02.9.~~
- 18 d. Perform or provide for performance audits of state agencies, or the agencies'
19 blended component units or discreetly presented component units, as
20 determined necessary by the legislative assembly, or the legislative audit and
21 fiscal review committee if the legislative assembly is not in session. When
22 determining the necessity of a performance audit, the legislative audit and fiscal
23 review committee shall consider:
- 24 (1) The potential cost-savings or efficiencies that may be gained as a result of
25 the performance audit;
- 26 (2) The staff resources of the state auditor's office and of the state agency
27 being audited which will be required to conduct the audit;
- 28 (3) The potential for discovery of noncompliance with state law or legislative
29 intent regarding the program or agency; and
- 30 (4) The potential for the performance audit to identify opportunities for program
31 improvements.

- 1 e. Report on the functions of the state auditor's office to the governor and the
- 2 secretary of state in accordance with section 54-06-04 or more often as
- 3 circumstances may require.
- 4 f. Perform work on mineral royalties for the federal government in accordance with
- 5 section 1735(a) of the Mineral Lands and Mining Act [30 U.S.C. 1735 et seq.].
- 6 g. Perform all other duties as prescribed by law.
- 7 2. The state auditor may:
 - 8 a. Conduct any work required by the federal government.
 - 9 b. Within the resources available to the state auditor, perform or provide for
 - 10 performance audits of state agencies as determined necessary by the state
 - 11 auditor.
 - 12 c. Audit the International Peace Garden at the request of the board of directors of
 - 13 the International Peace Garden.
 - 14 d. Contract with a private certified public accountant or other qualified professional
 - 15 to conduct or assist with an audit, review, or other work the state auditor is
 - 16 authorized to perform or provide for under this section. Before entering any
 - 17 contract, the state auditor shall present information to the legislative audit and
 - 18 fiscal review committee on the need for the contract and its estimated cost and
 - 19 duration. Except for performance audits conducted under subdivision d of
 - 20 subsection 1 or subdivision b of this subsection and except for audits of
 - 21 occupational or professional boards, the state auditor shall execute the contract
 - 22 ~~and any executive branch agency, including higher education institutions, shall~~
 - 23 ~~pay the fees of the contractor.~~ For performance audits conducted under
 - 24 subdivision d of subsection 1 or subdivision b of this subsection, the state auditor
 - 25 may charge a state agency for the cost of a contract relating to an audit, subject
 - 26 to approval by the legislative assembly or the legislative audit and fiscal review
 - 27 committee if the legislative assembly is not in session. When considering a
 - 28 request, the legislative audit and fiscal review committee shall consider the effect
 - 29 of the audit cost on the agency being audited, the necessity of the contract, and
 - 30 the potential benefit to the state resulting from the contract. The state auditor

1 shall notify the affected agency of the potential cost before requesting approval
2 from the legislative assembly or the legislative audit and fiscal review committee.

3 ~~3. Notwithstanding subdivision c of subsection 1 and subdivision d of subsection 2, the~~
4 ~~state auditor may not charge audit fees to an institution of higher education under the~~
5 ~~control of the state board of higher education. The auditor may not reject an audit~~
6 ~~report of an audit performed by a certified public accountant or licensed public~~
7 ~~accountant which meets generally accepted auditing standards.~~

8 4. All audits performed by the state auditor must be reviewed and approved by a certified
9 public accountant.

10 **SECTION 3. AMENDMENT.** Section 54-10-14 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **54-10-14. Political subdivisions - Audits - ~~Fees~~ - Alternative audits and reports.**

13 1. The state auditor shall audit the following political subdivisions once every two years,
14 except as provided in this section or otherwise by law:

- 15 a. Counties.
- 16 b. Cities, and when a city is audited, to include any political subdivision that was
17 created by the city and has bonding authority.
- 18 c. Park districts.
- 19 d. School districts.
- 20 e. Firefighters relief associations.
- 21 f. Airport authorities.
- 22 g. Public libraries.
- 23 h. Water resource districts.
- 24 i. Garrison Diversion Conservancy District.
- 25 j. Rural fire protection districts.
- 26 k. Special education districts.
- 27 l. Area career and technology centers.
- 28 m. Correction centers.
- 29 n. Recreation service districts.
- 30 o. Weed boards.
- 31 p. Irrigation districts.

- 1 q. Rural ambulance service districts.
- 2 r. Southwest water authority.
- 3 s. Regional planning councils.
- 4 t. Soil conservation districts.
- 5 u. Western area water supply authority industrial water sales on an annual basis.
- 6 2. ~~The state auditor shall charge the political subdivision an amount equal to the fair~~
7 ~~value of the audit and any other services rendered no more than one thousandth of~~
8 ~~one percent of the political subdivision's total annual operating budget. The fees must~~
9 ~~be deposited in the state auditor operating account. The state treasurer shall credit the~~
10 ~~state auditor operating account with the amount of interest earnings attributable to the~~
11 ~~deposits in that account. Expenses relating to political subdivision audits must be paid~~
12 ~~from the state auditor operating account, within the limits of legislative appropriation.~~
- 13 — 3. In lieu of conducting an audit every two years, the state auditor may require annual
14 reports from political subdivisions subject to this section, or otherwise provided by law,
15 with less than seven hundred fifty thousand dollars of annual receipts, excluding any
16 federal funds passed through the political subdivision to another entity. If any federal
17 agency performs or requires an audit of a political subdivision that receives federal
18 funds to pass through to another entity, the political subdivision shall provide a copy to
19 the state auditor upon request by the state auditor. The reports must contain the
20 financial information required by the state auditor. The state auditor also may make
21 any additional examination or audit determined necessary in addition to the annual
22 report. ~~When a report is not filed, the state auditor may charge the political subdivision~~
23 ~~an amount equal to the fair value of the additional examination or audit and any other~~
24 ~~services rendered one thousandth of one percent of the political subdivision's total~~
25 ~~annual operating budget. The state auditor may charge a political subdivision a fee not~~
26 ~~to exceed eighty-six dollars an hour for the costs of reviewing the annual report.~~
- 27 4.3. A political subdivision, at the option of its governing body, may be audited by a certified
28 public accountant or licensed public accountant rather than by the state auditor. The
29 public accountant shall comply with generally accepted government auditing standards
30 for audits of political subdivisions. The report must be in the form and content required
31 by the state auditor. The number of copies of the audit report requested by the state

1 auditor must be filed with the state auditor when the public accountant delivers the
2 audit report to the political subdivision. The state auditor shall review the audit report
3 to determine if the report is in the required form and has the required content, and if
4 the audit meets generally accepted government auditing standards. The state auditor
5 also may periodically review the public accountant's workpapers to determine if the
6 audit meets generally accepted government auditing standards. If the report is in the
7 required form and has the required content, and the report and workpapers comply
8 with generally accepted government auditing standards, the state auditor shall accept
9 the audit report. ~~The state auditor may charge the political subdivision a fee of up to~~
10 ~~eighty-six dollars an hour, but not to exceed seven hundred fifty dollars per review, for~~
11 ~~the related costs of reviewing the audit report and workpapers.~~

12 5-4. A political subdivision may not pay a public accountant for an audit until the state
13 auditor has accepted the audit. However, a political subdivision may make progress
14 payments to the public accountant. A political subdivision shall retain twenty percent of
15 any progress payment until the audit report is accepted by the state auditor.

16 6-5. The state auditor may require the correction of any irregularities, objectionable
17 accounting procedures, or illegal actions on the part of the governing board, officers,
18 or employees of the political subdivision disclosed by the audit report or workpapers,
19 and failure to make the corrections must result in audits being resumed by the state
20 auditor until the irregularities, objectionable accounting procedures, or illegal actions
21 are corrected.

22 **SECTION 4. AMENDMENT.** Subsection 1 of section 54-10-15 of the North Dakota Century
23 Code is amended and reenacted as follows:

24 1. The state auditor, by duly appointed deputy auditors or other authorized agents, shall
25 audit or review the books, records, and financial accounts of any political subdivision
26 when ordered by the governor or the legislative audit and fiscal review committee,
27 requested by the governing board, or upon petition of at least thirty-five percent of the
28 qualified electors of any political subdivision enumerated in section 54-10-14 voting for
29 the office of governor at the preceding general election or, in the case of school
30 districts, upon petition of at least thirty-five percent of the qualified electors voting at
31 the preceding school board election, or upon the request of the state court

1 administrator with respect to clerk of district court services provided by a county in
2 accordance with chapter 27-05.2. ~~Fees for the audits must be paid in accordance with~~
3 ~~the provisions of section 54-10-14.~~

4 **SECTION 5. AMENDMENT.** Section 54-10-27 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **54-10-27. Occupational and professional boards - Audits and reports.**

7 The governing board of any occupational or professional board shall provide for an audit
8 once every two years by a certified public accountant or licensed public accountant. The
9 accountant conducting the audit shall submit the audit report to the state auditor's office. If the
10 report is in the form and style prescribed by the state auditor, the state auditor may not audit
11 that board. An occupational or professional board may request the state auditor to conduct its
12 audit, ~~and if the state auditor agrees to conduct the audit, the state auditor shall deposit the fees~~
13 ~~charged to the occupational or professional board into the state auditor operating account.~~
14 Instead of providing for an audit every two years, an occupational or professional board that has
15 less than two hundred thousand dollars of annual receipts may submit an annual report to the
16 state auditor. The report must contain the information required by the state auditor. The state
17 auditor also may make any additional examination or audit determined necessary in addition to
18 the annual report. When a report is not filed, the state auditor ~~may charge the occupational or~~
19 ~~professional board an amount equal to the fair value of the additional examination or audit and~~
20 ~~any other services rendered one thousandth of one percent of the occupational or professional~~
21 ~~board's total biennial operating budget. The state auditor may charge an occupational or~~
22 ~~professional board a fee not to exceed eighty-six dollars an hour for the costs of reviewing the~~
23 ~~annual report shall perform an additional examination or audit.~~

24 **SECTION 6. AMENDMENT.** Section 54-10-25 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **54-10-25. Divulging of certain secret information prohibited - Penalty.**

- 27 1. The state auditor and the auditor's employees, including any person employed by the
28 auditor to perform the examination of any return, report, or other information filed and
29 in the possession of the tax commissioner which is made confidential by law, may not
30 divulge the contents of any return, report, or other information examined or any listing

1 made therefrom by the state auditor or the auditor's employees except when otherwise
2 directed by judicial order, or as is otherwise provided by law.

3 2. The state auditor, the auditor's employees, or an agent of the auditor may not divulge
4 any information relating to a matter forwarded to the attorney general or a state's
5 attorney for further investigation until the attorney general or state's attorney has made
6 a determination as to whether there is probable cause to believe a violation of law has
7 occurred.

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

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

11 **Audit findings - Review period.**

12 The state auditor shall provide any audit findings to the audited state entity, political
13 subdivision, or occupational or professional board thirty days before the state auditor publishes
14 the audit findings. The state auditor shall provide all audit findings to the legislative audit and
15 fiscal review committee.

16 **SECTION 8.** A new section to chapter 54-10 of the North Dakota Century Code is created
17 and enacted as follows:

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

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

22 **SECTION 9. RETROACTIVE APPLICATION - AUDIT FEES - INSTITUTIONS OF HIGHER**
23 **EDUCATION.** ~~Subsection 3 of section 1 of this~~ This Act applies retroactively to all audit fees

24 assessed to North Dakota institutions of higher education after July 31, 2021. The state auditor
25 shall reimburse all audit fees paid by each respective institution during the 2021-23 biennium.

26 **SECTION 10. RETROACTIVE APPLICATION - AUDIT FEES - RURAL FIRE DISTRICTS**
27 **AND RURAL AMBULANCE DISTRICTS - FIREFIGHTERS RELIEF ASSOCIATION.** This Act
28 applies retroactively to all audit fees assessed to rural fire districts, rural ambulance districts,
29 and firefighter relief associations after December 31, 2017. The state auditor shall reimburse all
30 audit fees paid by each entity since the 2017-18 biennium.