

**PROPOSED AMENDMENT TO
ENGROSSED SENATE BILL NO. 2251**

FIRST ENGROSSMENT

Introduced by

Senators Cleary, Weston, Castaneda, Paulson

Representatives M. Ruby, Rohr

1 A BILL for an Act to amend and reenact section 54-10-01, subsection 5 of section 54-10-14, and
2 section 54-10-27 of the North Dakota Century Code, relating to audits conducted by the state
3 auditor and charges for audits.

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

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

7 **54-10-01. Powers and duties of state auditor - Report. (Retroactive application - See**
8 **note)**

9 1. The state auditor shall:

- 10 a. Be vested with the duties, powers, and responsibilities involved in performing the
11 postaudit of all financial transactions of state government, detecting and reporting
12 any defaults, and determining that expenditures have been made in accordance
13 with law and appropriation acts.
- 14 b. 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
16 the state in accordance with government auditing standards.
- 17 c. Except for the audit of the department of financial institutions as outlined in
18 section 54-10-31, perform or provide for audits of state agencies in accordance
19 with government auditing standards and legislative audit and fiscal review
20 committee guidelines developed under section 54-35-02.10. Except for the
21 annual audit of the North Dakota lottery required by section 53-12.1-03, the state
22 auditor shall audit each state agency once every two to four years. Audits may be

1 conducted at more frequent intervals if requested by the governor or the
2 legislative audit and fiscal review committee. ~~The state auditor shall charge an~~
3 ~~amount equal to the cost of the audit and other services rendered by the state~~
4 ~~auditor to all agencies that receive and expend moneys from other than the~~
5 ~~general fund. This charge may be reduced for an agency that receives and~~
6 ~~expends both general fund and nongeneral fund moneys. The charge for an audit~~
7 ~~of an agricultural commodity group listed in section 4.1-44-04 must be six~~
8 ~~thousand dollars for an annual financial statement audit or four thousand dollars~~
9 ~~for a two-year single page financial statement audit performed during the~~
10 ~~biennium ending June 30, 2025, and may be increased by five percent on July~~
11 ~~first of each odd-numbered year thereafter. State agencies shall use nongeneral~~
12 ~~fund moneys to pay for the cost of the audit. If nongeneral fund moneys are not~~
13 ~~available, the agency may, upon approval of the legislative assembly, or the~~
14 ~~budget section if the legislative assembly is not in session, use general fund~~
15 ~~moneys to pay for the audit. Any budget section action under this subdivision~~
16 ~~must comply with section 54-35-02.9.~~

- 17 d. Except for the audit of the department of financial institutions as outlined in
18 section 54-10-31, perform or provide for performance audits of state agencies, or
19 the agencies' blended component units or discreetly presented component units,
20 as 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.
- 32 e. Report quarterly to the legislative audit and fiscal review committee regarding:

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- 1 (1) Communication processes with audited entities and any changes to the
- 2 processes;
- 3 (2) Billing practices and procedures, including the use of cost estimates for
- 4 audits, an itemized invoicing methodology, and a defined change order
- 5 process for audits that exceed the original estimate;
- 6 (3) Information on audits completed, including:
- 7 (a) Name of the audited organization;
- 8 (b) Organization type;
- 9 (c) Audit type;
- 10 (d) Audit period;
- 11 (e) Estimated and actual hours and costs; and
- 12 (f) Total audit cost and the total cost as a percentage of the audited
- 13 organization's operating budget; and
- 14 (4) Audit schedules, including audits performed by private firms and audits
- 15 performed by the state auditor's office.
- 16 f. Report on the functions of the state auditor's office to the governor and the
- 17 secretary of state in accordance with section 54-06-04 or more often as
- 18 circumstances may require.
- 19 g. Perform work on mineral royalties for the federal government in accordance with
- 20 section 1735(a) of the Mineral Lands and Mining Act [30 U.S.C. 1735 et seq.].
- 21 h. Report to the legislative audit and fiscal review committee regarding final report
- 22 distribution policies and practices and any final audit reports released to the
- 23 public prior to distribution of the final audit report to all individuals charged with
- 24 the governance of the audit client.
- 25 i. Perform all other duties as prescribed by law.
- 26 2. The state auditor may:
- 27 a. Conduct any work required by the federal government and charge an amount
- 28 equal to the cost of the audit to be paid by the audited federal funds of the
- 29 appropriate government agency and deposited into the general fund.
- 30 b. Within the resources available to the state auditor, perform or provide for
- 31 performance audits of state agencies as determined necessary by the state
- 32 auditor.

- 1 c. Audit the International Peace Garden at the request of the board of directors of
2 the International Peace Garden.
- 3 d. Contract with a private certified public accountant or other qualified professional
4 to conduct or assist with an audit, review, or other work the state auditor is
5 authorized to perform or provide for under this section. Before entering any
6 contract, the state auditor shall present information to the legislative audit and
7 fiscal review committee on the need for the contract and its estimated cost and
8 duration. Except for performance audits conducted under subdivision d of
9 subsection 1 or subdivision b of this subsection and except for audits of
10 occupational or professional boards, the state auditor shall execute the contract
11 and any executive branch agency, including higher education institutions, shall
12 pay the fees of the contractor. For performance audits conducted under
13 subdivision d of subsection 1 or subdivision b of this subsection, the state auditor
14 may charge a state agency for the cost of a contract relating to an audit, subject
15 to approval by the legislative assembly or the legislative audit and fiscal review
16 committee if the legislative assembly is not in session. When considering a
17 request, the legislative audit and fiscal review committee shall consider the effect
18 of the audit cost on the agency being audited, the necessity of the contract, and
19 the potential benefit to the state resulting from the contract. The state auditor
20 shall notify the affected agency of the potential cost before requesting approval
21 from the legislative assembly or the legislative audit and fiscal review committee.
- 22 3. Notwithstanding subdivision c of subsection 1 and subdivision d of subsection 2, the
23 state auditor may not charge audit fees to an institution of higher education, agency, or
24 office under the control of the state board of higher education, including passthrough
25 grants, except for a proportional share of audit fees on federal programs or grants to
26 the extent those audited federal programs or grants provide for allowable cost
27 recovery. Institutions without an approved indirect cost recovery fund may not be
28 assessed audit fees on closed federal programs.

29 **SECTION 2. AMENDMENT.** Subsection 5 of section 54-10-14 of the North Dakota Century
30 Code is amended and reenacted as follows:

- 31 5. A political subdivision may not pay a public accountant for an audit until the state
32 auditor has accepted the audit. However, a political subdivision may make progress

1 payments to the public accountant. A political subdivision shall retain twentyfive
2 percent of any progress payment until the audit report is accepted by the state auditor.

3 **SECTION 3 AMENDMENT.** Section 54-10-22 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **54-10-22. Public officers to aid state auditor - Auditor's authority on investigation.**

6 The officers and employees of all departments, institutions, boards, commissions, and
7 political subdivisions, subject to examination by the state auditor, shall afford all reasonable
8 facilities for the investigation provided for in this title and shall make returns and exhibits to the
9 auditor under oath in such form and in such manner as the auditor may prescribe. The auditor
10 shall refer a request for access to or inspection of information provided, pursuant to this section,
11 to that department, institution, board, commission or political subdivision. This referral satisfies
12 any responsibility of the auditor to provide that information under open records requirements.

13 The auditor shall have full power and authority to audit any books, papers, accounts, bills,
14 vouchers, and other documents or property of any and all departments, boards, commissions,
15 political subdivisions, and financial institutions subject to the auditor's audit. The auditor shall
16 have authority to audit under oath any or all trustees, managers, officers, employees, or agents
17 of any such departments, boards, commissions, or political subdivisions. When necessary, the
18 auditor shall employ stenographers or clerical help, the expense incurred to be collected by the
19 auditor from the respective department, institution, board, commission, or political subdivision.

20 **SECTION ~~34~~. AMENDMENT.** Section 54-10-27 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **54-10-27. Occupational and professional boards - Audits and reports.**

23 The governing board of any occupational or professional board shall provide for an audit
24 once every two years by a certified public accountant or licensed public accountant. The
25 accountant conducting the audit shall submit the audit report to the state auditor's office. If the
26 report is in the form and style prescribed by the state auditor, the state auditor may not audit
27 that board. An occupational or professional board may request the state auditor to conduct its
28 audit, and if the state auditor agrees to conduct the audit, the state auditor shall deposit the fees
29 charged to the occupational or professional board into the state auditor operating account.
30 Instead of providing for an audit every two years, an occupational or professional board that has
31 less than ~~two hundred thousand~~ two million dollars of annual receipts may submit an annual
32 report to the state auditor. The report must contain the information required by the state auditor.

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1 The state auditor also may make any additional examination or audit determined necessary in
2 addition to the annual report. When a report is not filed, the state auditor may charge the
3 occupational or professional board an amount equal to the fair value of the additional
4 examination or audit and any other services rendered. The state auditor may charge an
5 occupational or professional board a fee not to exceed ninety dollars an hour for the costs of
6 reviewing the annual report.