

## CHAPTER 54-10 STATE AUDITOR

### 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 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.].

**54-10-01.1. State auditor to audit emergency commission action.**

The state auditor's office, in the course of its audits of state agencies, departments, and institutions, shall review the expenditure of funds transferred or made available by the emergency commission to such state agencies, departments, and institutions, and shall have incorporated in the financial statements of such governmental units expenditures arising from emergency commission action.

**54-10-02. Auditor to have access to all state offices.**

Except for active investigatory work product of the attorney general as defined in section 44-04-19.1, the state auditor shall have access to all state offices during business hours for the purpose of inspecting books, papers, accounts, and records therein as may concern the state auditor's duties. Except for active investigatory work product of the attorney general as defined in section 44-04-19.1 and tax records as described in section 54-10-24, access includes inspection of any books, papers, accounts, or records that the state auditor may deem relevant to an ongoing audit of any other state agency or computer system audit.

**54-10-03. Official bond.**

Repealed by S.L. 1999, ch. 113, § 24.

**54-10-04. Legislative assembly to provide for audit of state auditor's office.**

The legislative assembly shall provide for the employment by contract of a public accountant or accountants to conduct a postaudit of the office of the state auditor. A copy of such audit report must be filed with the governor and with each house of the legislative assembly.

**54-10-05. Auditor to set up account against person who fails to render account.**

Repealed by S.L. 1959, ch. 372, § 117.

**54-10-06. Auditor may procure books and blanks.**

Repealed by S.L. 1959, ch. 372, § 117.

**54-10-07. Auditor to have access to all state offices.**

Repealed by S.L. 1959, ch. 372, § 117.

**54-10-08. Legislative inspection of books of state auditor.**

Repealed by S.L. 1959, ch. 372, § 117.

**54-10-09. Transmit forms and instructions to county auditors.**

Repealed by S.L. 1959, ch. 372, § 117.

**54-10-10. Salary of state auditor.**

The annual salary of the state auditor is one hundred seven thousand eight hundred eighty-five dollars through June 30, 2020, and one hundred ten thousand five hundred eighty-two dollars thereafter.

**54-10-11. Official bond.**

Repealed by S.L. 1959, ch. 372, § 117.

**54-10-12. Department of transportation property.**

Repealed by S.L. 2001, ch. 122, § 11.

**54-10-13. Political subdivisions - Audits - State auditor powers.**

The state auditor shall perform audits of political subdivisions pursuant to section 54-10-14 unless otherwise requested by the governing board, ordered by the governor or the legislative

audit and fiscal review committee, or on petition pursuant to section 54-10-15, or at the discretion of the state auditor for alleged improprieties.

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

1. The state auditor shall audit the following political subdivisions once every two years, except as provided in this section or otherwise by law:
  - a. Counties.
  - b. Cities, and when a city is audited, to include any political subdivision that was created by the city and has bonding authority.
  - c. Park districts.
  - d. School districts.
  - e. Firefighters relief associations.
  - f. Airport authorities.
  - g. Public libraries.
  - h. Water resource districts.
  - i. Garrison Diversion Conservancy District.
  - j. Rural fire protection districts.
  - k. Special education districts.
  - l. Area career and technology centers.
  - m. Correction centers.
  - n. Recreation service districts.
  - o. Weed boards.
  - p. Irrigation districts.
  - q. Rural ambulance service districts.
  - r. Southwest water authority.
  - s. Regional planning councils.
  - t. Soil conservation districts.
  - u. Western area water supply authority industrial water sales on an annual basis.
2. The state auditor shall charge the political subdivision an amount equal to the fair value of the audit and any other services rendered. The fees must be deposited in the state auditor operating account. The state treasurer shall credit the state auditor operating account with the amount of interest earnings attributable to the deposits in that account. Expenses relating to political subdivision audits must be paid from the state auditor operating account, within the limits of legislative appropriation.
3. In lieu of conducting an audit every two years, the state auditor may require annual reports from school districts with less than one hundred enrolled students; cities with less than five hundred population; and other political subdivisions subject to this section, or otherwise provided by law, with less than three hundred thousand dollars of annual receipts, excluding any federal funds passed through the political subdivision to another entity. If any federal agency performs or requires an audit of a political subdivision that receives federal funds to pass through to another entity, the political subdivision shall provide a copy to the state auditor upon request by the state auditor. The reports must contain the financial information required by the state auditor. The state auditor also may make any additional examination or audit determined necessary in addition to the annual report. When a report is not filed, the state auditor may charge the political subdivision an amount equal to the fair value of the additional examination or audit and any other services rendered. The state auditor may charge a political subdivision a fee not to exceed eighty dollars an hour for the costs of reviewing the annual report.
4. A political subdivision, at the option of its governing body, may be audited by a certified public accountant or licensed public accountant rather than by the state auditor. The public accountant shall comply with generally accepted government auditing standards for audits of political subdivisions. The report must be in the form and content required by the state auditor. The number of copies of the audit report requested by the state auditor must be filed with the state auditor when the public accountant delivers the audit report to the political subdivision. The state auditor shall review the audit report to

determine if the report is in the required form and has the required content, and if the audit meets generally accepted government auditing standards. The state auditor also may periodically review the public accountant's workpapers to determine if the audit meets generally accepted government auditing standards. If the report is in the required form and has the required content, and the report and workpapers comply with generally accepted government auditing standards, the state auditor shall accept the audit report. The state auditor may charge the political subdivision a fee of up to eighty dollars an hour, but not to exceed five hundred dollars per review, for the related costs of reviewing the audit report and workpapers.

5. A political subdivision may not pay a public accountant for an audit until the state auditor has accepted the audit. However, a political subdivision may make progress payments to the public accountant. A political subdivision shall retain twenty percent of any progress payment until the audit report is accepted by the state auditor.
6. The state auditor may require the correction of any irregularities, objectionable accounting procedures, or illegal actions on the part of the governing board, officers, or employees of the political subdivision disclosed by the audit report or workpapers, and failure to make the corrections must result in audits being resumed by the state auditor until the irregularities, objectionable accounting procedures, or illegal actions are corrected.

**54-10-15. Audits of political subdivisions by order of governor or the legislative audit and fiscal review committee, upon petition, or upon request of the state court administrator.**

1. The state auditor, by duly appointed deputy auditors or other authorized agents, shall audit or review the books, records, and financial accounts of any political subdivision when ordered by the governor or the legislative audit and fiscal review committee, requested by the governing board, or upon petition of at least thirty-five percent of the qualified electors of any political subdivision enumerated in section 54-10-14 voting for the office of governor at the preceding general election or, in the case of school districts, upon petition of at least thirty-five percent of the qualified electors voting at the preceding school board election, or upon the request of the state court administrator with respect to clerk of district court services provided by a county in accordance with chapter 27-05.2. Fees for the audits must be paid in accordance with the provisions of section 54-10-14.
2. If an audit is ordered due to financial irregularities or allegations of embezzlement, the governor may suspend an elected or appointed school board member from the individual's duties if the governor determines suspension is in the best interest of the state pending the results of the audit. If the governor suspends an elected or appointed school board member, the governor immediately shall provide notice to the school board with which the suspended member serves. Within five days of receiving notice, the school board shall appoint an individual to replace the suspended member to serve during the pendency of the audit. The governor shall consult with the superintendent of public instruction in determining whether suspension of a member of a school board is in the best interest of the state.

**54-10-16. Audit in case of irregularity or embezzlement.**

It is not the duty of the state auditor or the state auditor's staff to make audits of any political subdivisions, funds, commissions, associations, and bureaus, for the reason of severance from the service of such political subdivisions, funds, commissions, associations, and bureaus of any officer, clerk, deputy, cashier, or other employee unless the head of such state office or department, or the board administering any other of the agencies named herein shall request such audit in writing, and state that there is reason to believe that there is irregularity in handling funds or embezzlement involved.

**54-10-17. Audit of counties.**

Repealed by S.L. 2005, ch. 480, § 1.

**54-10-18. Supervision of records and fiscal affairs of counties.**

Repealed by S.L. 2009, ch. 463, § 3.

**54-10-19. Supervision of public institutions and private institutions with which state has dealings.**

The state auditor may examine the books and accounts of all private institutions with which the state has any dealings so far only as the same relate to such dealings. If any public officer having control of any such office or institutions fails or refuses to comply with the directions of the state auditor, the auditor shall report the facts to the governor and to the manager of the state bonding fund, and such refusal constitutes grounds for removal from office and cancellation of the bond of such officer.

**54-10-20. Special state auditor.**

The governor, at such time as the governor may consider it for the best interests of the state, may appoint a special state auditor to examine any of the state institutions, state industries, state departments, or public offices. Such special state auditor shall have all the powers and authority that are granted to the state auditor in making such audits and also shall examine into and report upon such other matters connected with the state institutions and public offices as the governor may direct. The special state auditor shall receive as compensation for such services the sum of forty dollars per day for the time actually employed upon such examinations and must be paid traveling expenses at the same rate as is paid other state employees which compensation and expenses are to be paid upon vouchers approved by the governor, in the same manner as state officers' salaries are now paid.

**54-10-21. Duty of state auditor on failures by officers.**

The state auditor may report to the attorney general the refusal or neglect of any state officer to obey the state auditor's recommendations. After investigation, the attorney general may take appropriate action to enforce compliance therewith.

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

The officers and employees of all departments, institutions, boards, commissions, and political subdivisions, subject to examination by the state auditor, shall afford all reasonable facilities for the investigation provided for in this title and shall make returns and exhibits to the auditor under oath in such form and in such manner as the auditor may prescribe. The auditor shall have full power and authority to audit any books, papers, accounts, bills, vouchers, and other documents or property of any and all departments, boards, commissions, political subdivisions, and financial institutions subject to the auditor's audit. The auditor shall have authority to audit under oath any or all trustees, managers, officers, employees, or agents of any such departments, boards, commissions, or political subdivisions. When necessary, the auditor shall employ stenographers or clerical help, the expense incurred to be collected by the auditor from the respective department, institution, board, commission, or political subdivision.

**54-10-22.1. State auditor's access to information relating to operations of governmental entities subject to audit.**

Notwithstanding any other specific sections of law, the state auditor and persons employed by the state auditor, when necessary in conducting an audit, shall have access to all information relating to operations of all governmental units or component units subject to audit except active investigatory work product of the attorney general as defined in section 44-04-19.1 and financial records and estate planning records a donor provides to a nonprofit organization affiliated with an institution under the control of the state board of higher education which provides support to and is organized and operated for the benefit of the institution. Except for active investigatory work product of the attorney general as defined in section 44-04-19.1 and tax records as

described in section 54-10-24, the state auditor may inspect any state agency's books, papers, accounts, or records that may be relevant to an ongoing audit of any other state agency or computer system audit. The state auditor and persons employed by the state auditor examining any information, which is confidential by law, shall guard the secrecy of such information except when otherwise directed by judicial order or as is otherwise provided by law.

**54-10-23. Obstructing or misleading auditor - Penalty.**

Every person who, when required to do so, shall refuse or neglect to make any return or exhibit, or to make or give any information required by the auditor, or who willfully shall obstruct or mislead the auditor in the execution of the auditor's duties, or who in any manner shall hinder a thorough examination by the auditor, is guilty of a class C felony.

**54-10-24. The state auditor shall have access to tax returns and other records filed with the tax commissioner.**

The state auditor and persons employed by the state auditor, when necessary in conducting an audit and examination of the books and records of the tax commissioner as authorized by law, may examine any return, report, or other information filed with the tax commissioner, and confirm the authenticity of such return, report, or other information with the taxpayer who filed it.

The audit report of the state auditor may not identify any return, report, or other document examined whose secrecy is guarded by law and which is examined pursuant to this chapter by the state auditor or the auditor's representatives, but the state auditor or the auditor's representatives shall make a listing of each return, report, or other document examined whose secrecy is guarded by law, which listing must include the name and address of the taxpayer or other person who filed the return, report, or other document or to whom it relates, and the tax department file identification number for it; such listing must also identify all summaries and schedules examined which are compiled and kept by the tax commissioner and which identify taxpayers and taxpayer information to which the secrecy requirements apply; the listing must also show the name or names of the individuals representing the state auditor who examined each such return, report, summary, schedule, or other document. A copy of the listing must be filed by the state auditor with the tax commissioner. Such listing and all copies thereof are subject to the same secrecy or confidentiality requirements that apply to the information described in the listing.

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

The state auditor and the auditor's employees, including any person employed by the auditor to perform the examination of any return, report, or other information filed and in the possession of the tax commissioner which is made confidential by law, may not divulge the contents of any return, report, or other information examined or any listing made therefrom by the state auditor or the auditor's employees except when otherwise directed by judicial order, or as is otherwise provided by law.

**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 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. The working papers of an issued audit report are public. At the discretion of the state auditor, all or a portion of the working papers of an issued 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.

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

The governing board of any occupational or professional board shall provide for an audit once every two years by a certified public accountant or licensed public accountant. The accountant conducting the audit shall submit the audit report to the state auditor's office. If the report is in the form and style prescribed by the state auditor, the state auditor may not audit that board. An occupational or professional board may request the state auditor to conduct its audit, and if the state auditor agrees to conduct the audit, the state auditor shall deposit the fees charged to the occupational or professional board into the state auditor operating account. Instead of providing for an audit every two years, an occupational or professional board that has less than two hundred thousand dollars of annual receipts may submit an annual report to the state auditor. The report must contain the information required by the state auditor. The state auditor also may make any additional examination or audit determined necessary in addition to the annual report. When a report is not filed, the state auditor may charge the occupational or professional board an amount equal to the fair value of the additional examination or audit and any other services rendered. The state auditor may charge an occupational or professional board a fee not to exceed fifty dollars an hour for the costs of reviewing the annual report.

#### **54-10-28. Information technology responsibilities.**

The state auditor may:

1. Conduct information technology compliance reviews, as determined necessary by the information technology committee, by conducting individual agency audits of information technology management, information technology planning, compliance with information technology plans, and compliance with information technology standards and policies and conducting statewide agency audits of compliance with specific information technology standards and policies.
2. Consult with the information technology department on audits of compliance with information technology plans and compliance with information technology standards and policies.
3. Participate in the information technology department's enterprise architecture process for developing information technology standards and policies.
4. Monitor major information technology projects for compliance with project management and information technology standards and policies.
5. Present results of information technology compliance reviews to the information technology committee and the state information technology advisory committee.

#### **54-10-29. Audits of computer systems - Penalty.**

1. The state auditor may:
  - a. Pursuant to the powers and duties outlined in this chapter, conduct a review and assessment of computer systems and related security systems. Computer systems subject to this section include the computer systems of a state agency or political subdivision that is subject to audit by the state auditor. Tests conducted in connection with this review and assessment may include an assessment of system vulnerability, network penetration, potential security breach, and susceptibility to cyber attack or cyber fraud.
  - b. Disclose any findings to the chief information officer of the state or to any state official or legislative committee. Working papers and preliminary drafts of reports created in connection with the review of computer systems and the security of the systems are exempt from section 44-04-18. Those parts of findings and working papers that identify the methods of the state auditor or that may cause or perpetuate vulnerability of the computer system reviewed are exempt from section 44-04-18 and protected from disclosure until the state auditor directs otherwise.
  - c. Procure the services of a specialist in information security systems or other contractors deemed necessary in conducting a review under this section. The procurement of these services is exempt from the requirements of chapter 54-44.4.

2. An outside contractor hired to provide services in the review of the security of a computer system is subject to the confidentiality provisions of this section and section 44-04-27. Any individual who knowingly discloses confidential information is subject to the provisions of section 12.1-13-01.
3. The state auditor shall notify the executive officer of any state agency of the date, time, and location of any test conducted in connection with a review and assessment of computer systems or related security systems. The executive officer or the officer's designee may attend and observe any test during which confidential information may be accessed or controlled.
4. The state auditor shall notify the attorney general of the date, time, and location of any test conducted in connection with a review and assessment of computer systems or related security systems. The attorney general may designate an individual to participate in the test. The designee of the attorney general may order the test to be terminated if the individual believes a sensitive system is being breached, a sensitive system may be breached, or sensitive information may be revealed.
5. Notwithstanding any provision in chapter 32-12.2 to the contrary, if the attorney general and the director of the office of management and budget determine it is in the best interest of the state, the state auditor may agree to limit the liability of a contractor performing a review and assessment under this section. The liability limitation must be approved by the attorney general and director of the office of management and budget in writing. For any uninsured losses, the director of the office of management and budget may approve the risk management fund to assume all or part of the contractor's liability to the state in excess of the limitation.
6. A state agency receiving federal tax information under section 6103 of the Internal Revenue Code, as amended [26 U.S.C. 6103], in conjunction with the state auditor, may enter a contract with the vendor selected by the state auditor under subdivision c of subsection 1 to conduct a review and assessment of the state agency's computer systems and related security systems, including an assessment of system vulnerability, network penetration, potential security breach, and susceptibility to cyber attack or cyber fraud.

**54-10-30. State board of higher education audits - Higher education audit division.**

1. The state auditor shall establish a higher education audit division and employ a division audit manager to perform all audit related functions of the state board of higher education, including the examination and evaluation of the adequacy and effectiveness of the board's governance, risk management, internal controls, performance of constitutionally and statutorily required duties, and other areas as determined by the state auditor. The audit manager shall conduct audits, as determined appropriate by the state auditor, of each institution under the supervision and control of the state board of higher education. The audit manager may consult with the state board of higher education, or a committee designated by the board, regarding audit plans, results of audit activities, and any other appropriate issue. The state auditor shall determine the audit scope and related audit areas of any audit conducted by the audit manager. This section does not require the state auditor to perform any duties that would compromise the auditor's independence under government auditing standards.
2. The audit manager may access and examine any record under the control of the state board of higher education. For purposes of reviewing records under the Family Educational Rights and Privacy Act [20 U.S.C. 1232g; 34 CFR 99] or any other federal privacy law, the audit manager must be considered a state educational official authorized to access student records for audit purposes.
3. The state auditor may hire employees necessary to carry out the duties and responsibilities of this section. The state auditor may hire consultants to assist with any duties required under this section subject to approval by the legislative audit and fiscal review committee. The state board of higher education shall pay for the cost of any consultant approved under this section.



4. This section does not prohibit the state board of higher education from employing internal audit staff or contracting for internal audit services.