Sixty-second
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1448

Introduced by

Representatives Thoreson, Headland, Kasper, S. Meyer

Senators Grindberg, Klein

A BILL for an Act to create and enact a new section to chapter 54-10 of the North Dakota Century Code, relating to requiring the state auditor to contract for recovery audits; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 54-10 of the North Dakota Century Code is created and enacted as follows:

State auditor to contract for recovery audits.

1. By July 1, 2011, the state auditor shall contract on behalf of the state with a single qualified and experienced recovery audit consultant firm to conduct a recovery audit of payments made to vendors during the previous four fiscal years by or through state agencies that have an annual budget exceeding five hundred thousand dollars regardless of whether the agencies have had internal or third-party auditors perform similar audits in the past. Any specific improper payment identified by a previous audit is not eligible for identification or recovery under this section. Payments audited may include state or federal funds of any character, including grants. The audit must comply with applicable state and federal laws and must be designed to detect and recover improper payments to the state's vendors and to recommend improvements to accounting and payment policies and procedures of state agencies. Beginning on July 1, 2013, and each biennium thereafter, the state auditor shall contract on behalf of the state for audits to be performed on the payments made by the state to vendors during the previous two fiscal years in accordance with this subsection.
2. A contract issued under this section:
   a. Must provide for reasonable compensation paid by the state to the consultant on a contingency basis as a specified percentage of the total amount of improper

payments recovered, either in cash, rebates, credits, or otherwise, by the state in connection with the audit;

b. Must allow the consultant or the state to pursue recovery of any improper payment detected by the consultant, including recovery through setoffs against future payments to vendors that previously received improper payments;

c. Must allow for the consultant to reaudit payments that have been previously audited or reviewed by internal or external auditors and found to be correct or proper, if the state auditor determines the consultant is reasonably likely to find and recover a material amount of improper payments among those previously audited or reviewed payments;

d. Must include reasonable safeguards and penalties to prevent the wrongful disclosure of confidential information by the contractor or its employees or agents in accordance with all applicable laws; and

e. May not allow a recovery audit of:

(1) A payment to a vendor until at least one hundred eighty days after the date the payment was made;

(2) State employee payroll payments;

(3) Retirement plan payments to former or current state employees;

(4) Loans, bond debt service, and related interest; or

(5) Unemployment compensation payments, judgments, and settlements.

3. Notwithstanding any other provision of law, each state agency with payments being audited shall provide the consultant with prompt cooperation with the audit and recovery process, as reasonably requested by the consultant, including providing the consultant with access to any information in the custody of the state that is necessary or desirable to achieve optimal performance of the audit or the recovery of improper payments. An agency may not provide access to any record if disclosure of the record is otherwise prohibited by law or contractual obligation.

4. Within thirty days after presentment by a consultant of a claim regarding improper payment, the state auditor shall notify the consultant in writing if the consultant is not authorized to pursue the improper payment for recovery. The notice must contain an explanation for the determination. The state auditor shall base the determination on

the reasonable unlikelihood of recovering the improper payment, whether due to an erroneous finding by the consultant, the vendor being insolvent, or other substantially similar circumstances. If the consultant identifies a pattern of improper payments to a specific vendor, the state auditor may authorize the consultant to conduct an audit of up to one additional prior biennium of payments to the vendor. Upon the request of the state auditor, the attorney general shall consider initiating any legal action necessary to recover an improper payment.

5. For the purposes of this section, "improper payment" means any payment made in an incorrect amount; to an incorrect payee; or for an incorrect reason or purpose, including:

   a. Duplicate payments;

   b. Payments of fraudulent or erroneous invoices or bills;

   c. Payments based on a failure to apply an applicable discount, rebate, allowance, or price reduction;

   d. Payments for goods or services not provided or rendered in whole or in part;

   e. Payments for incorrect or unauthorized goods or services; and

   f. Payments made in violation of contractual provisions.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.