

2009 SENATE POLITICAL SUBDIVISIONS

SB 2144

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2144

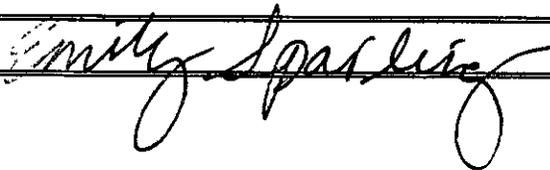
Senate Political Subdivisions Committee

Check here for Conference Committee

Hearing Date: 01/08/09

Recorder Job Number: 6689, 6690

Committee Clerk Signature



Minutes:

Chairman Andrist: Let's open the hearing on SB 2144, Claims against the bonding bill.

Bob Peterson: Testified in support of SB 2144. See attachment #1

Chairman Andrist: Any questions?

Senator Anderson: Can you walk us through or give us a little information on the fees, what are they and how are they collected?

Peterson: We charge 55\$'s an hour per individual and the state bonding fund pays us. Currently, we deposit the money in the general fund. Before when I had a prime investigator they are 100% special funds so they had to earn everything to make a living as there was no general funds involved.

Chairman Andrist: Where is the bonding fund, under what agency?

Peterson: My fund is under the Insurance Commissioner

Senator Bakke: How will you determine which agency you will use, is that on a bidding process? And would that agency be used all the time?

Peterson: Usually when we hire a CVA we use an RFB (request for bids). We usually set it out for a 3 year period. The Insurance Commissioner has an interesting way of doing that and I need to visit with them further about, they have a list and they just go down the list using who is available.

Senator Anderson: Do you anticipate the cost of 55\$'s per person per hour to go up?

Peterson: Private firms charge more. I believe Mr. Bitz will be addressing that in his testimony.

Vice Chairman Olafson: Certified Fraud Examiner: What does that mean? How are they trained? I thought anyone who was an auditor could do a fraud investigation. Can you enlighten us?

Peterson: Yes you can investigate a fraud as an auditor. A certified fraud examiner will have a degree in accounting and will have taken additional courses. They are required to pass a test. Your concentration is in that area. If you want to be certified you must pass the test.

Vice Chairman Olafson: So, any outside investigators we bring in to examine claims against the bonding bill will be a certified fraud investigator?

Peterson: Yes, simply from a time perspective you want the investigation to be completed as quickly as possible and if the claim were to go to court many prosecutors prefer to have a certified fraud examiner when they are prosecuting a state case.

Senator Anderson: In the auditing of subdivision books, these people would not be involved/engaged?

Peterson: No, only in the case of fraud or embezzlement.

Chairman Andrist: Any further questions? Any other witnesses in support? Anybody opposed to this legislation? Is there anyone who would like to clarify or answer further questions?

Jeff Bitz: Administrator of the State Bonding Fund speaking neither for against SB 2144, but seeks to inform on the status of the State Bonding Fund. See attachment #2.

Chairman Andrist: How long have you had your position?

Bitz: Since September 1999

Chairman Andrist: And you have never collected premiums?

Bitz: No, never.

Chairman Andrist: If you were to collect premiums, how would you set them? Obviously there are different levels of culpability.

Bitz: In the Bonding Funds section of the Century Code it gives the Commissioner authority to set premiums, it gives a minimum to \$2.50 per bond. So we would use that as a floor to determine the rate at which we would have to assess these bonds based on the number of employees per bond holder.

(Gives an example)

Chairman Andrist: You may charge more than the minimum?

Bitz: Yes we could, taking into account: what are our operating expenses and what could be our future liabilities and how are we going to bring the fund back up to three million dollars.

Chairman Andrist: How much would we need to bring it back up to three million dollars?

Bitz: We have been analyzing that now and never having had to charge premiums before since 1953 it would certainly be more than \$2.50 per bond. It could be upwards of \$5's.

Chairman Andrist: How much money was in the fund in 1999?

Bitz: Over 4 million dollars. In the legislative session in 2003 there was a bill put in by the Office of Management and Budget to transfer out 1 million dollars from the state Bonding Fund into the General Fund and the 1 million was increased to 2.8 million. In 1999 there was about 4.8 and in 2003 it was brought down to roughly 2.3-2.4 million in that transfer. And that's where we sit now at \$1,532,225.

Chairman Andrist: Does OMB have the ability to transfer that money at any time without legislative approval?

Bitz: There was legislative approval.

Senator Anderson: Have you changed investments since the change in markets?

Bitz: We do not have any control over how RIO invests other than to know that the investments are conservatively managed.

Senator Anderson: So whenever there is an investigation your office stands by those costs? None is paid by the local subdivisions?

Bitz: We absorb all costs of investigations.

Vice Chairman Olafson: Is it more efficient to have an outside firm do the work rather than the State Auditor given the relatively low number of claims?

Bitz: I cannot answer because I have always used the Auditor and they arrive in a timely and efficient manner. I cannot judge if there would be more efficiency because we have never used an outside firm.

Senator Lee: Are there restrictions on when the fund must be restored? Or is it wait and see?

Bitz: The statute has no restrictions on when we must bring the fund back up other than that as soon as the Bond falls below 3 million we are required to charge and asses each bond hold until it is restored.

Senator Lee: Is there a certain time frame within which this must be accomplished? Long range vs. short term plans?

Bitz: We don't have any restrictions.

Chairman Andrist: Do you have a sense as to how long it will take?

Bitz: Depends on incurred but not reported losses. I would say at least 2-3 years.

Senator Dotzenrod: This bill basically asks us to take away the responsibility from the State Auditor to an outside firm. Will it be difficult to find people? How will firms be chosen? Will we have competent people doing the work?

Bitz: I hope there will be no conflict of interest between state and private auditing firms. It would be better answered by the State Auditor

Senator Dotzenrod: Who are the bondholders?

Bitz: It's a blanket bond, all townships participate in the state bonding bill.

Chairman Andrist: So is the insurance department also one bond holder?

Bitz: Yes, per employee charge for the bond.

Chairman Andrist: Any further questions? Ok, thanks for your explanations. Anyone else?

Peterson: I would be happy to answer Senator Dotzenrod's question about hiring. I am not involved in the hiring process. There are 3 people who independently asses the RFB's. We asses cost but also the quality of the firm. We are prepared to pay more for quality.

Senator Anderson: What do you mean by "when I do not have the resources available" in the last line of your testimony?

Peterson: I am not doing this to get out of fraud investigations. I do not have the staff available to spare for my other duties as well as this investigations. My people do not have enough experience. I have

only one staff member with over 2 years of experience. I do not have the qualified people to follow the law. I cannot train new people because of the lack of experience in my staff.

Senator Lee: I see this as a proactive way to deal with an issue that makes sure the work gets done in a timely manner and that the Political Subdivisions that want it done will get it done properly. I am confident that people will only do this when necessary. I look forward to supporting this bill.

Senator Dotzenrod: I am glad to see that with the drop in funding there is not an increase in claims.

Peterson: Fraud does not have a time table, the real issue is internal control and boards need to watch what happens in house. People are very trusting but we have to be careful.

Chairman Andrist: Bitz: one more question of clarification, if we start charging on bonds will townships stop covering everyone?

Bitz: Blanket bonds cover everyone, not specific people. The biggest challenge is to figure out the specific number of people in the bond.

There was no opposition to SB 2144

Chairman Andrist: Thanks for the questions, let's close the hearing on SB 2144.

Recorder Job 6690: Time-5:57

Chairman Andrist: Let's revisit SB 2144 at **Senator Anderson's** request

Senator Anderson: I have a problem with the bill. First off, how does the state bonding relate to the State Auditor?

Senator Lee: It's under the insurance department

Chairman Andrist: It would be my understanding that the only place the State Auditor comes in is when there needs to be an investigation. I suppose the bonding fund goes to the State Auditor's office if there's a problem and they want to have it checked out. According to the testimony of Bob Peterson the situation with his office is that he feels he cannot always assure prompt action and may have to hire outside the office. That was my understanding.

Senator Anderson: That was my understanding too and as I read the testimony the line about "if I do not have the resources" my experience is that it will be always. And in Bitz's testimony about the range of cost from \$80-200, in my experience, it will be \$200. I think he should hire more people. I don't think it's necessary.

Senator Lee: Mr. Peterson indicated that he could hire but he cannot find people to fill the positions and his staff are under experienced. I can't imagine that anyone would object to having the most competent qualified people doing the fraud investigation. If there are two firms having Certified Fraud Examiners they may bid against one another. Though it will cost more than the state we know that the state always charges less for such things. I think time is as much an issue as anything. One thing that I found out in private conversation is that there is a statute of limitations that he did not mention in his testimony that he will get for us. If these investigations go on too long you could actually bump up against a statute of limitations. I think they need that tool.

Chairman Andrist: I got the sense from Bob in private conversation that he would rather do the investigations himself because he has to bring an out of state person who he does not feel will do as good a job but he doesn't want to take up too much time.

Vice Chairman Olafson: My take on it is that this is a back up option not a change of standard operating procedures.

Senator Anderson: I'm going to vote no-I don't like adding money to any local subdivisions. I'm just afraid that this will add more money and be tapped from the local subdivisions.

Committee discussed some further ramifications of the bill that they decided should be addressed in a later bill.

Chairman Andrist: Ok, if there is no further discussion I will have the Clerk call the roll.

Senator Lee: I move that SB 2144 be moved forward as **do pass**

Vice Chairman Olafson: Second

A Roll call vote was taken. **Yes: 5, No: 1, Absent: 0**

Vice Chairman Olafson will carry the bill.

Chairman Andrist adjourned the meeting.

Date: 1/8/09
Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2144

Senate Political Subdivisions Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do pass Do not pass Amendment

Motion Made By _____ Seconded By _____

Senators	Yes	No	Senators	Yes	No
Chairman John M. Andrist	✓		Senator Arden C. Anderson		✓
Vice Chairman Curtis Olafson	✓		Senator JoNell A. Bakke	✓	
Senator Judy Lee	✓		Senator Jim Dotzenrod	✓	

Total (Yes) 5 No 1

Absent _____

Floor Assignment Senator Olafson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2144: Political Subdivisions Committee (Sen. Andrist, Chairman) recommends DO PASS (5 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2144 was placed on the Eleventh order on the calendar.

2009 HOUSE POLITICAL SUBDIVISIONS

SB 2144

2009 HOUSE STANDING COMMITTEE MINUTES

Bill No. SB 2144

House Political Subdivisions Committee

Check here for Conference Committee

Hearing Date: February 27, 2009

Recorder Job Number: 9849, 9850

Committee Clerk Signature 

Minutes:

Chairman Wrangham opened the hearing on SB 2144.

Robert R. Peterson, State Auditor: (see testimony #1).

Rep. Hatlestad: How many claims in an average year do you investigate on the bonding thing?

Robert Peterson: It varies; some years we have none and other years I have up to four or five. My audit manager is just up in Minot; but to do a trail we also have to do a pre trail work so there is some travel time involved and the state bonding fund.

Rep. Nancy Johnson: Before crossovers we heard you no longer do audits for political subdivisions on the western part of the state and now you are going to farm out investigations; are you downsizing your department?

Robert Peterson: I closed the Bismarck business last year. My audit manager is planning to work through December of this year. I had another employee resign last year because of stress and the stress came from the turnovers. In the past three years before his resignation we had about \$275,000 worth of work performed, but not collected. When you train people all the time you are losing money and we have lost some key individuals to the private sector. I lost two young up and coming auditors and that was one of the problems. I lost some due to

salaries and we lost three people due to retirement; within the same time. When my audit manager resigned I had three auditors left in the Bismarck division. One with two years and the other one had less than six months. To produce the kind of quality audit that my office wants to produce so I reluctantly made the decision to close the Bismarck office. All we have right now is the Fargo office with a young man with six years of experience. My hope is that eventually we can get these people trained and up to speed. That is down the road.

Rep. Kretschmar: In this bill you refer to the commissioner, who is that?

Robert Peterson: That is the insurance commissioner.

Rep. Koppelman: what would be the procedure if get into the habit of farming out these frauds? You would contact a firm of some sort of what?

Robert Peterson: I believe that Brady Marks has a fraud investigation firm. If we had a fraud we would negotiate a price.

Rep. Koppelman: Do you have a procedure then; is this a public process. How would this affect your appropriation? How do you know what this is going to cost? In terms of public disclosure; this is a very public process that people know when you go outside.

Robert Peterson: I have paid for these audits of fraud investigations. They will cost some money. It is a public process. We restrict the work papers up until the trial and sentencing are completed. We have never had a request from the media. We don't want this information out prior to the trial.

Rep. Koppelman: so you said it will cost more, but the bond fund funds it; not your department. We don't have a fiscal note. Do you have any idea of what we are looking at here?

Robert Peterson: There is a gentleman here from the insurance department that can give you this information. There is no average of funds. We can come up with a number but it is

the states attorney who decides how far we want to take this. There is no average; it just varies. Some investigations take longer than others.

Rep. Zaiser: Is the reduction in your budget a direct result the appropriation committee and are they aware of the situation that you might have to contract outside auditors for this stuff?

Robert Peterson: In my appropriation we did have a reduction in FTE's of 3 people. That is the Bismarck office. As far as the other reductions that took place within my budget, I think that the appropriations committee desire to reduce every ones budget.

Rep. Zaiser: Are they aware you might have to contract and don't have the in house staff?

Robert Peterson: We did talk about my individual costs. This one city has 307 people so they just missed the cutoff. They get an audit bill for \$6,500. That is a significant amount of money for a small community.

Rep. Zaiser: You weren't here when discussed the problems of closing the western office. The auditors in the private sector have a hard time and we discussed the community of South Heart that just was above the threshold and that is what happens? Could there be any reconsideration in the western half given the situations that are happening?

Robert Peterson: The number of cities that identify their needing audits; yes I would like to open up the Bismarck office again, but I just don't have people. Yes, the private sector has taken advantage of a trained employee.

Rep. Kilichowski: Can you give us your number of audits for the last 12 years and your estimated costs?

Robert Peterson: We should be able to give you the number of frauds for the past 12 years and we can tell you what the investments were. I don't know if I can tell you the costs we per fraud.

Rep. Jerry Kelsh: I am not sure how your office is financed but just from your testimony you said you don't get any general fund money. Is that the case?

Robert Peterson: My office is general funded for the agency audits; in other words state government. The political subdivision is a pool of with special funds. Everything that make goes into supporting their retirement, travel, salaries etc. So you have two options in a political subdivision you can either contracts with a CPA firm or my office. You can use other CPA firms and there are many of them to use.

Rep. Jerry Kelsh: Have you requested extra dollars to attract these people?

Robert Peterson: I can certainly get an appropriation for it; but I can only charge so much money to do an audit and I only want to break even; not make money off the political subdivisions. I understand and I am running a small business.

Rep. Conrad: have you asked for appropriations for this?

Robert Peterson: At this point I have not asked for additional funds for these political subdivisions because I need the people first and I intend to concentrate on keeping the Fargo office open.

Rep. Conrad: Couldn't you have asked for appropriations for this?

Robert Peterson: Are you talking about the current legislation in front of you? That comes out of the bond income. I don't pay for the fraud investigations.

Rep. Headland: Give me a scenario if what will happen if what will happen if we choose not to pass this piece of legislation.

Robert Peterson: The basic thing is there is more pressure put on the staff. We only get one or two small frauds a year. This is not the issue. It is when we start getting more and they take a lot of time so we end up transferring the workload to the rest of the staff. I can do that for so long before they become unhappy.

Rep. Headland: I think if we go this direction you probably won't get FTE's back. Do you have an open position for this gentleman who retired and are you actively seeking somebody for that position?

Robert Peterson: No I am not actively seeking someone for that position. The three positions that we had in the Bismarck office we are not seeking anyone. It is difficult to find someone; like a certified examiner if I could get these people in the Fargo office trained properly I could use some of those people. As long as you understand auditing it just takes a little longer; where as a certified auditor; they will do it a lot faster.

Rep. Hatlestad: If I understand this right you are saying the only time you would use a CPA firm is if you can't get the work done. So it is not automatic; you get a fraud band.

Robert Peterson: Depending upon the complexity of the fraud; if it is a small fraud and we think we can accomplish that in a short period of time, we don't have to worry about that as long as the staff is available. We have a couple of time frames we have to do. One of them is getting out the financial combined annual financial for the State of North Dakota. We want to have that to the publisher by the middle of the summer. We also have another time frame due in March. We have to get the audit of all federal funding in the state of ND receipts to the federal government; which is \$2.5 billion. I need to be mindful of these time constraints that we face. I don't have a large staff.

Rep. Koppelman: Is there any mechanism to audit your office? You are obviously charged with auditing everyone else.

Robert Peterson: I am audited by Legislative Council who uses a private CPA firm. In addition I belong to the National State Auditor's Association and every three years we have a quality control review so two auditors; and they are rotated around so no two do the same audit.

Rep. Kilichowski: Can we get a copy of those performance audits?

Robert Peterson: Are you talking about those two new audits? Certainly that is not a problem.

Jeff Bitz, Administrator for state bonding fund: I am just here supporting this bill.

Rep. Conrad: How many fraud audits do you expect in a year?

Jeff Bitz: Between three and four. Some are large and small are quick. The complicated ones that particular subdivision will use a CPA because of the nature of the fraud. Sometimes the state will come in and piggy back off them and confirm what their findings are and move on.

Rep. Koppelman: What fiscal impact would this have on you folks? How much more would it cost you and how is it paid for? Is it in the budget or bonding or what?

Jeff Bitz: It is hard to say. The smaller entities; they might pay \$500; depending upon the nature of the embezzlement. If the state comes in and auditors off the piggybacking what was audited then it varies.

Rep. Koppelman: So the return of the rate or the strength of the bond or how does that surplus have an effect?

Jeff Bitz: This is the first time since 1953 that the state bonding fund is faced with the likelihood of accepting every bond super or premium or period bonds because of the investment within the buying fund are below the \$2 million; so when we get our investment results in March for January we will have to make a decision and assessing all of our bond holders. Currently, our surplus is \$2,150,000. I don't know what this bill would do in terms of that. It could have an impact or could not.

Chairman Wrangham: It seems to me a fraud investigator seems to be more specified line of work. Do you know if there are people out there that specialize in fraud investigation on a daily basis?

Jeff Bitz: I only know of two firms; Iley Bailey and Brady Marks. I don't know of any other firms out there that audit political subdivisions.

Chairman Wrangham: I guess if I wanted to hire someone I would prefer someone that does it on a regular basis. Does the state auditor have people that are certified in fraud investigation?

Jeff Bitz: I have been with the State Auditor since 1991. I have only worked with one up until he retired; Auggie Ternes, he did a great job. He did a very timely and in depth investigations.

Opposition: None

Neutral: None

Hearing closed.

(38.22)

Job 9850

Chairman Wrangham reopened the hearing on SB2144.

Rep. Conrad: Why isn't he taking it up immediately?

Rep. Hatlestad: I don't think he has people. I don't think he can find people. They are leaving his office in significant numbers for whatever reason.

Rep. Conrad: Why doesn't he have action to take care of the problem?

Rep. Hatlestad: It might be cheaper to use a CPA firm in the long run instead of using an FTE on staff if they are only handling 3-4 a year and political subdivisions often hire their own.

Do Pass Motion Made By Rep. Kretschmar: Seconded By Rep. Nancy Johnson:

Vote: 8 Yes 4 No 1 Absent Carrier: Rep. Kretschmar:

Hearing closed.

Date: 2/27/09
Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2144

HOUSE POLITICAL SUBS COMMITTEE

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DP DNP DP AS AMEND DNP AS AMEND

Motion Made By Rep Kretschmar Seconded By Rep Johnson

Representatives	Yes	No	Representatives	Yes	No
Ch. Wrangham	✓		Rep. Conrad		✓
Vice Chair Rep. Headland	✓		Rep. Kelsh		✓
Rep. Hatlestad	✓		Rep. Kilichowski		✓
Rep. N. Johnson	✓		Rep. Mock		✓
Rep. Klemin	0		Rep. Zaiser	✓	
Rep. Koppelman	✓				
Rep. Kretschmar	✓				
Rep. Pietsch	✓				

Total (Yes) 8 No 4

Absent 1

Floor Carrier: Rep. Kretschmar

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2144: Political Subdivisions Committee (Rep. Wrangham, Chairman) recommends DO PASS (8 YEAS, 4 NAYS, 1 ABSENT AND NOT VOTING). SB 2144 was placed on the Fourteenth order on the calendar.

2009 TESTIMONY

SB 2144

STATE AUDITOR
ROBERT R. PETERSON



PHONE
(701) 328-2241
FAX
(701) 328-1406

STATE OF NORTH DAKOTA
OFFICE OF THE STATE AUDITOR
STATE CAPITOL
600 E. BOULEVARD AVE. - DEPT. 117
BISMARCK, ND 58505

**TESTIMONY BEFORE THE SENATE
POLITICAL SUBDIVISIONS COMMITTEE**
January 8, 2009

Senate Bill No. 2144

Testimony- Presented by Bob Peterson
State Auditor

Chairman Andrist and members of the Political Subdivisions Committee, I am here to testify in support of Senate Bill No. 2144.

This bill changes the language in section 26.1-21-12 of the North Dakota Century Code, relating to the duty of the State Auditor when claims are made against the Bonding Fund.

The change made by this bill will allow the State Auditor to have another firm investigate claims filed against the Bonding Fund due to fraud or embezzlement.

This section of the code has remained unchanged since 1983. At that time my office was the only firm with experience in doing fraud investigations for the Bonding Fund. Back in 1983 my office did virtually all state agency audits and most local government audits. That is no longer the case.

Up until his retirement last biennium, the fraud investigations were performed by the manager of the local government division who was a certified fraud examiner. That division is self-funded and therefore has the flexibility to hire additional staff as long as funding is available. We no longer have a person in the local government division who can perform these investigations. The current division manager has 6 years of experience in local government audits and a staff of 4 auditors who have a year and a half or less experience in local government audits. That manager's time is committed to training and supervising local government audits and therefore is unable to perform these investigations.

Due to the expertise required to investigate allegations of fraud, these investigations are currently performed by an audit manager in the state agency division and generally staffed by a senior auditor in that division. The state agency division is funded by 100% general funds and therefore the investigation fees collected from the State Bonding Fund are deposited into the general fund. We do not have the flexibility to hire additional staff to compensate for the time spent by the manager and senior auditor since we have not received additional general fund appropriation to carry out these investigations.

It places an extreme burden on my office to use my manager and senior auditor for this activity. State law requires me to complete audits of state government within a two year period and I need both of these individuals to comply with that law. This bill would allow me to hire a firm to investigate claims filed with the bonding fund when I do not have the resources available to carry out this duty.

I would be happy to answer any questions that you may have.

Thank you for your time and favorable consideration of this bill.

SENATE BILL NO. 2144

Presented by: Jeff Bitz
Administrator, State Bonding Fund
North Dakota Insurance Department

Before: Senate Political Subdivisions Committee
Senator John Andrist, Chairman

Date: January 8, 2009

TESTIMONY

Mr. Chairman and members of the committee:

My name is Jeff Bitz and I am the Administrator of the State Bonding Fund.

I appear before you today on Senate Bill No. 2144, not to take a position, but to inform you of the purpose and status of the State Bonding Fund.

The State Bonding Fund provides fidelity bond coverage to the State of North Dakota and its political subdivisions, including counties, townships, cities, park districts, and school districts. The bond issued by the Fund is a fidelity blanket bond, which covers public officials and employees for theft of money and property by public officials and employees.

Established by the Legislature in 1919, no premium has been charged for this coverage since 1953. Collection of premiums resumes if the Fund reserve is depleted below \$2 million and continues until the reserve fund reaches \$3 million.

The State Bonding Fund serves 2,956 bondholders with a combined insured value of approximately \$527 million.

Section 26.1-21-12: The proposed amendment appears to provide the State Auditor the authority to contract out the investigation into the accounts of public employees or public officials for whom claims have been made against and for those services of the investigative firm to be paid out of the Fund.

The Fund receives 2-3 claims on average per year and currently has 4 open claims with reserves totaling \$141,000. The State Auditor's hourly rate is \$55 compared to private forensic auditing hourly rates of between \$80 and \$200. In addition, the mileage rate, daily per diem and lodging rate would increase from state rates to federal rates and actual costs. It would be reasonable to assume that the Fund's operating cost would increase.

This year, for the first time since 1953, the State Bonding Fund is faced with assessing each bondholder a premium because the Fund's reserve balance (surplus) has dropped below the statutory requirement of \$2 million. The decrease in surplus did not result in an increase in the frequency of claims, large claim payments or increased operating costs, but because of poor investment results due principally from the collapse of the world financial markets.

According to the Retirement and Investment Office (RIO), the Fund had a -13.97% return on investments for the last quarter of 2008 (October-December) which reduced the Fund's balance to \$1,532,225 as of December 31, 2008. This compared with the Fund's balance as of September 30, 2008, of \$2,352,098.

I understand the limitations of the State Auditor's office with regards to expertise and staffing and have always been grateful for the ability to work with them in such a cooperative manner. Again, I respectfully take no position on this bill and only present this testimony to inform the committee on the current state of the State Bonding Fund.

I would be happy to try and answer any questions the committee members may have.

Thank you.



STATE OF NORTH DAKOTA
OFFICE OF THE STATE AUDITOR
STATE CAPITOL
600 E. BOULEVARD AVE. - DEPT. 117
BISMARCK, ND 58505

**TESTIMONY BEFORE THE HOUSE
POLITICAL SUBDIVISIONS COMMITTEE**
February 27, 2009

Senate Bill No. 2144

Testimony - Presented by Robert R. Peterson,
State Auditor

Chairman Wrangham and members of the House Political Subdivisions Committee, I am here to testify in support of Senate Bill No. 2144.

This bill changes the language in section 26.1-21-12 of the North Dakota Century Code, relating to the duty of the State Auditor when claims are made against the Bonding Fund. The change would allow the State Auditor to have a CPA firm investigate claims filed against the Bonding Fund due to fraud or embezzlement.

This section of the code has remained unchanged since 1983. At that time the State Auditor's Office was the only entity with experience in doing fraud investigations for the Bonding Fund. The State Auditor's Office did virtually all state agency audits and most local government audits. That is no longer the case.

The manager of the local government division previously conducted the fraud investigations. This individual was a certified fraud examiner. The local government division is self-funded and therefore has the flexibility to hire additional staff as long as funding is available. This individual retired last biennium and we no longer have staff available in the local government division with the appropriate expertise and experience to perform these investigations. The current division manager has 6 years of experience in local government audits and a staff of 4 auditors who have a year and a half or less experience in local government audits. That manager's time is committed to training and supervising local government audits and therefore he is unable to perform these investigations.

Due to the expertise required to investigate allegations of fraud, they are currently performed by an audit manager in the state agency division and generally staffed by a senior auditor in that division. The state agency division is funded by 100% general funds and therefore the investigation fees collected from the State Bonding Fund are deposited into the general fund. We do not have the flexibility to hire additional staff to compensate for the time spent by the manager and senior auditor since we have not received additional general fund appropriation to carry out these investigations.

It places an extreme burden on the State Auditor's Office to use an audit manager and senior auditor to investigate the fraud or embezzlement. State law requires the State Auditor's Office to complete audits of state government within a two year period. Both individuals presently conducting the fraud investigations are needed to comply with that law. Again, this bill would allow us to hire a CPA firm to investigate claims filed with the bonding fund when we do not have the resources available to carry out this duty.

Mr. Chairman that concludes my testimony. I would be happy to answer any questions that you may have.

Thank you for your time and favorable consideration of this bill.