

**2013 SENATE GOVERNMENT AND VETERANS AFFAIRS**

**SB 2149**

# 2013 SENATE STANDING COMMITTEE MINUTES

Senate Government and Veterans Affairs Committee  
Missouri River Room, State Capitol

SB 2149  
01/24/2013  
Job Number

Conference Committee

Committee Clerk Signature



## Minutes:

**Chairman Dever: Opened hearing on SB 2149.**

**Senator J. Lee, District 13: Testified as sponsor of the bill. See Attachment #1A and #1B for information for testimony.** I serve on the legislative audit and physical review committee. It is a statutory committee so we meet quarterly. I get a chance to see a little about all the departments without having to serve on appropriations. I view audits, including performance audits as a way to make sure that all of our departments are working in the most effective, efficient ways possible. The provisions relating to performance audits were added to statute in 1991, and the state auditor or LAFRC (Legislative Audit and Fiscal Review Committee) have determined which performance audits to conduct. One interim I wanted a performance audit done and I had to work hard to provide the information to the legislators at the time who were not sure they wanted to do that. It turned out that it was a good idea to do. As a legislator I needed to convince colleagues in this body that it was important. I would like to see that same oversight and approval without it being an ownerless process, be a part of the process for performance audits. This has nothing to do with regularly scheduled audits. (Gives examples of audits that spurred the idea of the bill) **(4:19)** I need to make it extremely clear that no one in these departments has ever talked to me about this. I am not coming here because anyone has complained. I am just making observations here. (References Attachment #1A)

**(5:30)** I think the cost of performance audits is one thing we should keep in mind. The most important thing in my view is that we are taking out personalities and we don't have any lone gunman deal. I don't think that as a legislator, that I should be able to call the auditors department and just because I want it, it gets done. I do not think that because I have some personal vendetta, I can ask the auditor's office to do one. I think that it is fine that another group of legislators have to agree with me that this is an important audit to do. I also feel that it protects the auditors department because they will have to get approval from others as back up from legislators agreeing that it is necessary. I also have an amendment; see Attachment #1B, to include compliance audits so that both performance and compliance audits would be subject to review and approval.

**(9:45) Senator Nelson:** We have already gotten one e mail that this is an attack on the auditor's office. How would you respond to that?

**Senator J. Lee:** It absolutely is not. I think that is a benefit for the auditor's office as well. They have the right to say if I come in with a crazy request that it would need the approval of LAFRC or appropriations committee or the entire legislative body. They are busy and cannot keep up with some of these. There are situations where contract auditors are hired because it is specialized or the general work load. I am not interested in keeping valid performance audits from being done. That is why I think this is important. So that the departments time is focused on those that really are valid. I don't think that I as an individual, I should be able to direct the auditors department to do that.

**Vice Chairman Berry:** You mentioned about the different types of audits, could you explain more on those? Also, would you consider to having state auditor remain in the language and adding the language that is on there?

**Senator J. Lee:** What I think is important is that legislators would be the ones to whom the performance audit request would be addressed. My whole point is that by having legislative approval by one of those legislative committees or body for a performance or compliance audit request.

**(12:58) Senator Poolman:** Mine is a bigger picture. If the State Auditor has to come to the legislature for permission to do his job, what is the difference of making us have the Attorney General have to ask permission in things they need to do, or the State Treasurer having to ask permission to carry out their role? Why would we have an executive, elected state officer if they had to be working at the will of the legislature?

**Senator J. Lee:** I do not think this is an intrusion into the abilities and responsibilities of the auditor's department because the buck stops with us anyway. I just think in the case of these specialized audits it is appropriate that more than one person decides if it is going to happen. Because of my experience with LAFRC, I think there should be more legislative engagement in some of those discussions. Why wouldn't that be an ok idea? I think it is a positive thing. It is the same reason we have co-sponsors on bills.

**Chairman Dever:** Does the legislative committee now, in the appropriations committee through the legislative process, have the ability to call for performance audits?

**Senator J. Lee:** I believe so. I believe that if it were part of a bill draft that we could do it and I believe that the appropriations people could request it but the ultimate decision would be by the auditor's department. It was also recommended by legislative council.

**Chairman Dever:** Would you see a separate bill calling for that, that an audit would be called for in a budget bill of an individual agency?

**Senator J. Lee:** I would think even an amendment to a budget. I don't see that as being part of a budget bill. I don't see the auditor's department putting in an amendment on every

budget bill that the appropriations committee sees is right to do a performance audit. I think that would be unlikely. They are unique, specialized audits that are zeroed in on a specific topic much of the time. For the details of that process I would refer to Mr. Smith.

**Chairman Dever:** Does LAFRC request performance audits on a regular basis?

**Senator J. Lee:** Not often, but occasionally. We have one going on now of the North Dakota university system office. (Gives a couple of examples of some that have been done) From what I hear, there are some people that can make those requests that have an issue with a department and I don't think I should be able to do that without someone else saying that it is necessary.

**Senator Cook:** When you say appropriations committees, I assume you mean the standing committees that meet only during session?

**Senator J. Lee:** Yes, and LAFRC would be responsible when the session is not ongoing.

**Senator Cook:** When you are saying that appropriation committees have to approve it, do you mean either one or both?

**Senator J. Lee:** We may need to clarify that.

**Senator Cook:** So if an individual legislator was requesting a performance or compliance audit, they could go to either appropriations committee and get someone to make a motion and if that motion carried, that would be sufficient? No introduction of legislation?

**Senator J. Lee:** The intention would not there would be any bills, really advice and consent from one of these committees to determine if it was a valid thing. I have learned from LAFRC that the whole purpose of audits is to make the departments better. We have wonderful elected officials in these offices, but sometimes there are ways to do things differently that may make the process more efficient. Maybe we should recognize that and we can change how we do things.

**(22:45) Senator Cook:** I am trying to make sure the bill does what you want. If the appropriations committee does not agree with me, do I still have the option to go to the full body of the Senate, how would we do that? Would that require a bill or just a motion?

**Senator J. Lee:** I appreciate your question. I honestly have not thought through the process. My goal is to make it simple.

**Senator Cook:** What if instead of saying legislative assembly or appropriations committee it said legislative management?

**Senator J. Lee:** Legislative management is active during the interim, but has less to do with it during the session. I think what legislative council's reasoning was in putting it in this way, is that during this time when we are in Bismarck, is that there is a way to do this as well. LAFRC does not always meet during the session. That is a procedural question we need to follow up on.

**(24:57) Vice Chairman Berry:** For clarification, there was not a problem; this was mainly a change proactively?

**Senator J. Lee:** I have anecdotal reports that there have been issues with individuals requesting performance audits. Whether they have been done or not, I don't have any data on that. I am realizing because of my LAFRC experience that there is not any legislative input required in this request for performance or compliance audit.

**Senator Marcellais:** I noticed in the bill that it requires, that the consultant is to be paid for the agency being audited, what if the agency does not have it in their budget?

**Senator J. Lee:** That is current language. When we are doing a performance audit there needs to be someone that has expertise in that field if we do not have it.

**Chairman Dever:** Is there any other testimony in support, opposition?

**(28:45)Robert R. Peterson, State Auditor:** See Attachment # 2 for testimony in opposition. ((**31:35**) Addresses the vendetta driven audit accusations and current audits going on)

**(35:20) Senator Cook:** Could you provide us with the last 10 years of audits and how they were initiated.

**Robert Peterson:** That is not a problem.

**Chairman Dever:** Are there certain guidelines that you use to decide when to do an audit?

**Robert Peterson:** What happens is that the performance audit team will sit down and they will gather information from other auditors within our department and they will brainstorm and talk about areas that they think are interesting. It basically is a brainstorming effort of ideas. Then they vote internally and decide what ones will advance the state's interests.

**Vice Chairman Berry:** Would you be opposed to leaving state auditor in there along with the new language?

**Robert Peterson:** I want the state auditor left in there. As far as the legislative assembly and the appropriation committees, we have done audits that were inserted into budgets. The legislative assembly, by extension, now has an opportunity to vote.

**Vice Chairman Berry:** As long as state auditor is left in the language, you are not opposed to the bill as written then?

**Robert Peterson:** Not at all. (Senator Dever asks Robert Peterson to explain what an elected officer explanation was to the children visiting in the room)

**(39:20)Gordy Smith, Audit Manager, North Dakota State Auditor's Office:** See Attachment #3 for testimony. (Explained performance audit process) We do not do compliance audits.

**(45:48) Chairman Dever:** I wonder if the term "compliance" might have application when she was talking about the fraud task force with the Department of Human Services.

**Gordy Smith:** That may well be. One of the reasons we looked at that is that we are the only state without one of those Medicaid fraud units. Years ago, Human Services was able to convince the federal agency that there is no fraud in North Dakota. So they were able to get a waiver from implementing that fraud unit. That waiver doesn't ever expire. As part of that audit, we asked them again to go back to the feds to see if they still believe that. I kindly and respectfully request that you give a do not pass to the bill.

**Chairman Dever:** Is there anything that you would like to see different in the involvement of the legislature in determining when these kinds of audits should be done?

**Gordy Smith:** We always welcome input. I have dealt with legislators for a long time and I welcome their input on ideas. We have never had a problem. We have done every single performance audit requested either in law or everyone asked for by the LAFRC committee as a whole. All of those asked for we have done. The struggle we have there is that we want to make sure that we address the concern that the committee has, but in the same way, we have to stay independent so we can determine the scope of the audit. You cannot let the client determine what you are going to look at and what period otherwise you are not independent. The balance we try to strike is trying to make sure we address the concerns in determining the scope of the audit. I welcome any input from legislators. I would like it to be a committee. We never really have someone come up and ask for one; we simply don't follow that.

**Chairman Dever:** Closed hearing on SB 2149.

# 2013 SENATE STANDING COMMITTEE MINUTES

Senate Government and Veterans Affairs Committee  
Missouri River Room, State Capitol

SB 2149  
01/25/2013  
Job Number 17767

Conference Committee

Committee Clerk Signature



## Minutes:

**Chairman Dever:** Opened SB 2149 for committee discussion.

**Senator Nelson:** I don't think we need this bill.

**Chairman Dever:** I wonder if there is a different approach to what she wants to accomplish. It seems redundant to say legislative assembly and the appropriations committees.

**Senator Nelson:** I don't like the idea that they took the auditor out. I think there are cases where the auditor has to make that decision and to be able to make it immediately.

**Chairman Dever:** Right now the appropriations committees can put a section in any agencies budget calling for performance audit and that is approved by legislative assembly.

**Senator Nelson:** When he was talking about the thing the chancellor asked for at Dickenson State that was immediately needed. They did not want to have to wait for others to meet. I would not mind so much if you put the auditor back into the equation.

**Chairman Dever:** The question I have is if there is anything that we can put into this bill that would define the circumstances.

**Senator Nelson:** Why are we micromanaging his office?

**Senator Cook:** The only thing the bill does is take the state auditor out. You either think that is a good reason or you don't. I think that is an easy question for all of us to go up or

down on. If you indicate that there is something else you think we can do, I would have no problem with having this thing sit here. I just can't imagine what would improve the situation. In a lot of cases the auditors work in the legislative branch, but we don't do it that way. It is black and white. I don't think we should.

**Chairman Dever:** I think the point of the bill is not for more audits but to restrain from some of the audits that are currently done.

**Vice Chairman Berry:** I thought that Senator Poolman brought up a good point in her question when she looked at the broader picture. This is a decision as to whether we want to change that. I agree with Senator Cook that we can leave it the way it is. If you add the other committees in there and they have that ability, that doesn't bother me. I do think having the state auditor as part of that is important. I have not seen a reason not to.

**Senator Poolman: Moved a Do Not Pass.**

**Senator Nelson: Seconded.**

**A Roll Call Vote Was Taken: 7 yeas, 0 nays, 0 absent.**

**Bill fails.**

**Vice Chairman Berry: Carrier.**

Date: 1/25

Roll Call Vote #: 1

2013 SENATE STANDING COMMITTEE  
ROLL CALL VOTES

BILL/RESOLUTION NO. 2149

Senate Government and Veterans Affairs Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By Senator Poolman Seconded By Senator Nelson

Senators	Yes	No	Senator	Yes	No
Chariman Dick Dever	✓		Senator Carolyn Nelson	✓	
Vice Chairman Spencer Berry	✓		Senator Richard Marcellais	✓	
Senator Dwight Cook	✓				
Senator Donald Schaible	✓				
Senator Nicole Poolman	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Berry

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

**REPORT OF STANDING COMMITTEE**

**SB 2149: Government and Veterans Affairs Committee (Sen. Dever, Chairman)**  
recommends **DO NOT PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).  
SB 2149 was placed on the Eleventh order on the calendar.

**2013 TESTIMONY**

**SB 2149**

## ESTIMATED COSTS RELATING TO THE PERFORMANCE AUDIT OF FEES CHARGED AT NORTH DAKOTA STATE UNIVERSITY AND UNIVERSITY OF NORTH DAKOTA

The schedule below identifies estimated costs involved in the performance audit of fees charged at North Dakota State University (NDSU) and the University of North Dakota (UND) conducted by the State Auditor's office. The audit was completed in June 2012. The amounts shown include expenses estimated by the State Auditor's office, NDSU, and UND, and related costs of the special meeting of the Legislative Audit and Fiscal Review Committee (LAFRC) to receive the audit report.

Estimated Costs					
	Staff Hours	Cost of Staff Time	Travel/Other Expenses	LAFRC Per Diem	Total
NDSU	1,152	\$76,600	\$2,348		\$78,948
UND	1,215	111,100	3,149		114,249
State Auditor's office	4,500	139,131	4,175		143,306
LAFRC			2,612	\$2,434	5,046
<b>Total</b>	<b>6,867</b>	<b>\$326,831</b>	<b>\$12,284</b>	<b>\$2,434</b>	<b>\$341,549</b>

13.0282.01001  
Title.

Prepared by the Legislative Council staff for  
Senator J. Lee  
January 17, 2013

PROPOSED AMENDMENTS TO SENATE BILL NO. 2149

Page 1, line 6, after "for" insert "compliance or"

Page 1, line 8, after "A" insert "compliance or"

Page 1, line 11, after the first "a" insert "compliance or"

Renumber accordingly

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**TESTIMONY BEFORE THE GOVERNMENT AND VETERANS AFFAIRS COMMITTEE**

**Senate Bill No. 2149**

**Presented by Robert R. Peterson, State Auditor**

Mr. Chairman, members of the Government and Veterans Affairs committee. My name is Robert Peterson and I'm the State Auditor. I'm testifying in opposition to this bill.

This bill is a solution looking for a problem. The current subsection 4 of 54-10-01 of the Century Code gives the legislature the ability to request performance audits. The proposed amendment would exclude the state auditor from having any decision as to what performance audits are selected.

For example, if this bill had been in place, the performance audit of the presidents' homes at UND and NDSU, and the performance audit at Dickinson State University, wouldn't have taken place unless the legislative parties mentioned in the amendment could meet and agree to have a performance audit conducted.

This proposed amendment creates the conditions that exist with a legislative auditor. Many states have a legislative auditor that is appointed by the legislative assembly or representatives of the legislative assembly and conduct audits on behalf of the legislature. In those situations, the final approval of a decision to have a performance audit rests with the legislative assembly or their agents.

I'm a constitutional officer elected by the people of North Dakota. As such, my independence in selecting performance audits for my office to undertake is crucial to appropriately carry out the responsibilities of this office.

Last session Senator Grindberg proposed limiting performance audits selected by the state auditor to three months. Those selected by the Legislative Audit and Fiscal Review Committee did not have that same stipulation. That bill was defeated. I ask that this committee do the same with Senate Bill 2149.

Thank you.

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**TESTIMONY BEFORE THE GOVERNMENT AND VETERAN'S AFFAIRS COMMITTEE**

**Senate Bill No. 2149**

**Presented by Gordy L. Smith**

Mr. Chairman my name is Gordy Smith and I am an audit manager with the North Dakota State Auditor's Office (SAO) and I am here to testify in opposition to SB 2149.

If passed this legislation would remove the State Auditor's authority to select performance audits to conduct. The legislation reserves that right for the Legislative Audit and Fiscal Review Committee (LAFRC), the appropriations committees or the entire Legislative Assembly.

The legislative appropriations committees have in the past selected performance audits they would like conducted (for example, the Veteran's Home) so this legislation does not change anything relating to the current selection process in regard to their authority to select performance audits. The LAFRC has in the past selected performance audits to be conducted (for example the UND School of Medicine and Health Sciences) so this legislation does not change anything relating to the current selection process in regard to the LAFRC's authority to select performance audits. The only aspect of the current selection process that is affected by this legislation is the removal of the State Auditor's authority to select performance audits to conduct.

One might speculate that the purpose of this legislation is in response to a failure of the State Auditor's Office to fulfill performance audit requests from the LAFRC or at the direction of the full Legislature. However this is not the case. Of the last 15 performance audits conducted by the State Auditor's Office over the past several years more than 50% of them (8) were requested by either the LAFRC or required by session laws passed by the entire Legislature. Thus when we have received a request from the LAFRC or direction from the legislative assembly we have conducted the performance audits they selected. This legislation is not needed to ensure that audits considered necessary by the LAFRC or the legislative assembly are conducted.

The State Auditor's Office performance audit division has 4 staff members and 1 audit manager. The division has been conducting performance audits for more than 20 years and is the state's expert in conducting performance audits of governmental entities. We have conducted more of them during this time period than all of the CPA firms in the state combined. This expertise and experience is extremely valuable in selecting which performance audits to conduct. Presently

the performance audit team gathers information from various sources (including performance audits conducted in other states) and makes suggestions as to which audit should be conducted. Their suggestions flow through the audit manager, the audit director and the State Auditor before a decision is made. This helps ensure the division's resources are used in an efficient manner.

The Legislature and its appropriations committees meet only once every two years. The LAFRC generally meets 3-4 times per year. Passage of this bill may prevent the State Auditor's Office from starting a performance audit in a timely manner. For example we received a request from the North Dakota University System Chancellor to conduct an audit of Dickinson State University. Had this piece of legislation been in effect, we would not have been able to immediately start the audit. Instead we would have had to wait until the next meeting of the LAFRC or the 2013 Legislature met to seek their approval before starting the audit. A review of the performance audit report of Dickinson State University clearly indicates that it was critical to conduct the audit as soon as possible. This is but one example of the delays this legislation would put into place.

Our performance audits have routinely provided valuable information to our stakeholders. We have also consistently demonstrated that the State Auditor's Office is independent as is required by the auditing standards. Our most important stakeholder is the public who expect state government to be transparent and accountable. State government is neither if it's elected independent State Auditor is prohibited from selecting the performance audits his office will conduct. The State Auditor is a constitutionally elected official and as such is accountable to all of the state's citizens. Since he will be held accountable for the performance audits conducted he should have the appropriate authority to select those he feels will be the most efficient and effective use of his department's resources.

Passage of this legislation would represent micro-management at its worst. The concept of this legislation would suggest that the Legislature should also select which specific individual and corporate tax returns are to be audited by the Tax Commissioner's Office or which specific insurance companies will be investigated by the Insurance Commissioner. Micro-management of this type is virtually unheard of in state government because it's poor public policy.

Mr. Chairman and members of the Government and Veteran's Affairs committee I respectfully request that you give this bill a do not pass. I will gladly answer any questions that the committee may have.