

2009 HOUSE POLITICAL SUBDIVISIONS

HB 1129

# 2009 HOUSE STANDING COMMITTEE MINUTES

Bill No. HB 1129

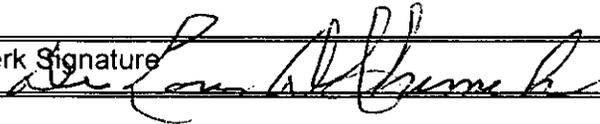
## House Political Subdivisions Committee

Check here for Conference Committee

Hearing Date: January 22, 2009

Recorder Job Number: 7551, 7555, 7599

Committee Clerk Signature



Minutes:

**Chairman Wrangham** opened the hearing on HB 1129.

**Ed Nagel, Director of the Office Of The State Auditor:** (see testimony #2) Went over the bill and proposed amendment. Explained how the office in Bismarck was closed and they have only the Fargo office open for auditing. That is why they wish to change the word shall to may. Has not been changed since 1967.

**Rep. Kilichowski:** How many audits do you perform for political subdivisions?

**Ed Nagel:** We do approximately 131 audits total. This is not annually. I do believe we do less than 131 annually.

**Rep. Kilichowski:** How many subdivisions do we have?

**Ed Nagel:** There are about 437 subdivisions that are required to be audited.

**Rep. Kilichowski:** Can you perform desk top audits at random?

**Ed Nagel:** Yes we do and we do complete audits.

**Rep. Kilichowski:** What are the costs in these three categories?

**Ed Nagel:** When we do our audits we charge an hourly fee depending on the level of the audit. When we review the annual reports that are submitted by small governments we charge

\$50/hr maximum. When we review CPA reports we also charge the \$50/hr. There is a maximum of \$500 to max out.

**Rep. Kilichowski:** How many compete audits do you do on political subdivisions a year?

**Ed Nagel:** We do approximately 132 over a two year period.

**Rep. Kilichowski:** Wouldn't it be a financial burden to political subdivisions that opt not to use you and use a private CPA for smaller cities?

**Ed Nagel:** **It might.** If we cannot do the audits they pay more per hour by using a CPA but we probably do it in less time.

**Rep. Jerry Kelsh:** How much an hour does a private CPA cost?

**Ed Nagel:** It varies allot depending on the size of the town.

**Rep. Conrad:** If you do not want to do it what is their option?

**Ed Nagel:** their option is to hire a CPA to perform the audit.

**Rep. Conrad:** You said many of them are audits that CPA's do not want to do. What is the option of the subdivision?

**Ed Nagel:** Some of those audits are ones we are doing.

**Rep. Conrad:** If you don't have to do them and you don't want to do them, what happens the political subdivisions?

**Ed Nagel:** They would have to hire a PCA.

**Rep. Koppelman:** I am looking at your fiscal note. I see no savings to the department? Are you cutting FTD's?

**Ed Nagel:** We are cutting PFT's? Some of those positions have been vacant for an extended period of time. Then there is no savings.

**Rep. Koppelman:** You tell us CPA's don't want to do these audits and some can't find CPA's to do them; therefore they are not going to get done unless something changes. The second

thing is, if I heard your testimony correctly you are saying these audits for political subdivisions we would remove the shall to may now you want us to change it to may to must but you are saying you don't want to do them and you have already closed your office in Bismarck and now you want us to change the law so you don't have to do them, I am curious about the logic to this.

**Ed Nagel:** Years ago we were getting general funds; now we receive no general fund. Explained about the fee payment and lack of funds.

**Rep. Zaiser:** Rep. Kilichowski and Rep. Koppelman asked questions of you, but I did not quite understand if you answered the questions? If they cannot get their audits for by a local CPA what is the political subdivision suppose to do? I understood the state was always a back up to do an audit?

**Ed Nagel:** As of today we have not run into the situation. Any local government the really wants and audit gets an audit. We are speaking thelecoly that they couldn't get an audit. If they pay enough money the CPA will come and do an audit. It is a matter of money and that is why we have the number of audits we have.

**Chairman Wrangham:** Does the auditor's office feel they have been requested to do nuisance audits for audits that were necessary? You don't get general fund money anymore; does the auditor's office consider trying to get some general funds since property tax is the main source of revenue? With property taxes rising, frankly there is some money in the general fund.

**Ed Nagel:** We did not consider that approach. Years ago when this division went from 100% funded from the general fund to something less than that it occurred in stages.

**Chairman Wrangham:** If this bill were to fail would the attorney general office feel they were obligated to give those services to political subdivisions and seek some additional general fund money to do that?

**Ed Nagel:** I don't know.

**Rep. Nancy Johnson:** What would happen if we pass the bill to allow an increase in the fees plus leaving the shell for them; would that help the organization?

**Ed Nagel:** I don't think that would help that much. If we are still required to do audits that we could not get money on. The current office we have is in Fargo they monies in that area is not in big concern. It was in the western part of the state where clients don't have those resources to rely on. We would be reluctant to give up a client in the eastern part of the state to do an audit in the western part of the state to lose the good audits in the eastern part of the state plus we would have to travel from Fargo to the western part of the state.

No opposition.

Neutral testimony:

**Jerry Hgelanstad:** ND League of Cities: We have sponsors another bill to change the threshold for cities to get out of from \$300-\$500. Since we have that bill in we did some research on the costs of audit impacting those cities. We did study that shows the costs to the cities of \$300-\$4500 per city. For most of those cities that amounted to abs out 10 mills to pay for that audit. . We have concerns about the costs of audits going up.

**Rep. Conrad:** We they getting their audits from the state or private CPA's?

Jerry: These were from private CPA firms.

**Rep. Zaiser:** then the state denied doing the audit.

**Rep. Headland:** If the cost to the political subdivisions and the state was similar but the state did it vs. the private sections would there be any need for the state to perform that audit.

**Jerry:** I think cities would perform to work with their local firms, if they can do that. They would have to have an alternate if they needed to.

**Rep. Jerry Kelsh:** when a private CPA audit is done, does the state review it?

**Jerry:** It is my understanding they do review those. I understand they have found some that have not been very well done.

**Rep. Hatlestad:** Did any of you cities indicate the difficulty in finding a CPA to do their audits plus the cost?

**Jerry:** We have not been able to find anyone that has not been able to find an auditor. There have been concerns about the costs?

**Rep. Koppelman:** You have any concern about the removal of the current law so there would have no backup of the state.

**Jerry:** It would be nice to have the ability to request the state auditor to do the audits.

**Rep. Koppelman:** Is there a concern about removing that wording that the state would not be able to use the state since costs are going up to do private CPA's.

**Chairman Wrangham:** I am curious about the responsibilities of the governing board of local subdivisions. Do you see this as putting more of a burden on them and possibly making it even harder to get people to run for these positions and serve?

**Jerry:** It could cause more headaches for local governing boards.

**Chairman Wrangham:** We appreciate the auditor's office for wanting to trim their budgets, someone has to do this.

**Rep. Zaiser:** They say they would like to get out of audits. If a small community would want an audit, is that going to impact the price of the audit where they want to go to locals but there is no competition and no back up from the state; basically they have to use local. Do you see this as a potential problem?

**Jerry:** That could be a concern with lack of competition.

**Jerry:** I am not familiar with the actual time they have to spend and what they have for costs. \$500 maximum costs would be probably small compared to private CPA's. That part would be a concern.

Hearing closed.

**Start Job #7555**

**Chairman Wrangham** reopened the hearing on HB 1129.

**Rep. Jerry Kelsh:** Have you concerned going from \$50-\$80 to be appropriate?

**Rep. Nancy Johnson:** I did not like the comment from the west that he made on doing audits.

**Rep. Koppelman:** I can support the bill, but I am curious about the fiscal note because clearly they indicated that it could increase costs for subdivisions and you do not see that.

**Rep. Hallstead:** I serve on a couple local boards and they were asked the State Auditor to perform an audit and they couldn't find anyone. It took them two years to find a firm to do the auditing.

**Rep. Jerry Kelsh:** I think to eliminate this option for city government is all wrong. If you hire a local PCA they were view the audit and that is \$80/hr also. I go along with the increase, but not the other.

**Chairman Wrangham:** to be clear on the vote your motion would be that we would delete the word shall from this bill.

**Rep. Conrad:** I would like to make a motion to amend the bill to take out the word shall.

**Rep. Kaiser:** Seconded it.

**Rep. Koppelman:** If you take out that language you are deleting section 1. Leave the change on page 3, line 16 are changing the language. Performance audits, we heard testimony that the state auditor was breathing down their neck and here we have a section of law where the

state law is legally told shall perform audits to local groups and subdivisions if requested by the governing body. They were requested to do that and said no. Who is auditing the state auditor?

**Rep. Conrad:** I think the state auditor should ask for enough money to do this if that is necessary.

**Chairman Wrangham:** What we want to do with this bill we want to change it so that the only thing this bill does is change the fee from \$50-\$80? That is her motion.

**Rep. Conrad:** Yes

**Rep. Kaiser:** Every year they are audited by the auditors department.

**Chairman Wrangham:** we will wait to vote on this bill.

**Rep. Hatlestad:** they said they did not have enough auditors in the Bismarck office to do the audit, but they had closed the office because they did not have enough people to staff it.

**Rep. Nancy Johnson:** I think you should leave in section 4.

**Rep. Koppelman:** I think we amended the motion to do that.

**Rep. Conrad:** My desire was to only address the obligation of the auditor. Delete the change in the law from May to shall.

**Rep. Zaiser:** Seconded motion.

**Vote carried.** One no.

**Rep. Klemin:** Since we have now changed the may to shall on page 1 line 9 now that makes no sense at all. We need to remove the language on 9 & 10 too.

**Rep. Koppelman:** I would move that we take out everything in HB 1129 except for the change on page 3, line 16 and second 4 & 5. Change all the lines in the current bill except lines 2 & 16 on page 3 and sections 4 & 5 on page 4. It gets back to what the governing board can request; it does keep the challenge in current law.

**Chairman Wrangham:** We will get this in writing before we vote on the final bill.

Voice Vote Carried.

Hearing closed.

**Start of Job #7599**

**Chairman Wrangham:** Reopened hearing on HB 1129. We have an amendment passed out. Who wants to explain that? (See attach. #2)

**Rep. Koppelman:** Explained the amendment.

Amendment voice carried.

**Motion of Do Pass As Amended By Rep. Koppelman Seconded by Rep. Zaiser.**

**V ote: 13 Yes 0 No 0 Absent Carrier: Rep. Kelsh**

Hearing closed.

**FISCAL NOTE**  
**Requested by Legislative Council**  
03/09/2009

Amendment to: Engrossed  
HB 1129

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Currently cities with less than 300 people are not required to be audited. This bill will increase the minimum from 300 to 500 people.

The fiscal impact of this bill will be insignificant.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

<b>Name:</b>	ED NAGEL	<b>Agency:</b>	OFFICE OF THE STATE AUDITOR
<b>Phone Number:</b>	328-4782	<b>Date Prepared:</b>	03/09/2009

**FISCAL NOTE**  
**Requested by Legislative Council**  
01/28/2009

Amendment to: HB 1129

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Expenditures</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Appropriations</b>	\$0	\$0	\$0	\$0	\$0	\$0

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Political subdivisions that are currently required to be audited, would no longer be required to obtain an audit. Audits would be optional.

The fiscal impacts of this bill are unknown.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Sections 1 and 2 of this bill would make audits optional, rather than mandatory.

The fiscal impact is unknown.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The amount of revenue deposited into fund 246 of the State Auditors Office will likely decrease.

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The amount of expenditures made out of fund 246 likely decrease.

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Appropriations for the Office of the State Auditor will decrease.

<b>Name:</b>	Ed Nagel	<b>Agency:</b>	Office of the State Auditor
<b>Phone Number:</b>	328-4782	<b>Date Prepared:</b>	01/29/2009

**FISCAL NOTE**  
**Requested by Legislative Council**  
12/23/2008

Bill/Resolution No.: HB 1129

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Expenditures</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Appropriations</b>	\$0	\$0	\$0	\$0	\$0	\$0

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Political subdivisions that are currently required to be audited, would no longer be required to obtain an audit. Audits would be optional.

The fiscal impacts of this bill are unknown.

**B. Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Sections 1 and 2 of this bill would make audits optional, rather than mandatory.

The fiscal impact is unknown.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

**A. Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

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**B. Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The amount of expenditures made out of fund 246 likely decrease.

**C. Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Appropriations for the Office of the State Auditor will decrease.

<b>Name:</b>	Ed Nagel	<b>Agency:</b>	Office of the State Auditor
<b>Phone Number:</b>	328-4782	<b>Date Prepared:</b>	12/30/2008

VK  
1/23/09

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1129

Page 1, line 1, remove "54-10-13," and remove ", 54-10-15,"

Page 1, remove lines 6 through 12

Page 1, line 16, remove the overstrike over "~~shall~~" and remove "may"

Page 3, line 26, replace "may" with "must"

Page 3, remove lines 28 through 31

Page 4, remove lines 1 through 8

Renumber accordingly

Roll Call Vote # 1

Date:

**2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. HB 1129**

House Political Subdivisions Committee

Check here for Conference Committee

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

Action Taken Do Pass Do Not Pass Amended

*W. Hatstad  
SHALL*

Motion Made By K Conrad Seconded By S Zain

Representatives	Yes	No	Representatives	Yes	No
Rep. Dwight Wrangham, Chairman			Senator Kari Conrad		
Rep. Craig Headland, Vice Chairman			Senator Jerry Kelsh		
Rep. Patrick Hatlestad			Senator Robert Kilichowski		
Rep. Nancy Johnson			Senator Corey Mock		
Rep. Lawrence Klemin			Senator Steve Zaiser		
Rep. Kim Koppelman					
Rep. William Kretschmar					
Rep. Vonnie Pietsch					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

*Vote Note  
Conrad*

Roll Call Vote #: (2)

Date: 1-22-09

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1129

House Political Subdivisions Committee

Check here for Conference Committee

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

Action Taken Do Pass Do Not Pass Amended

Motion Made By Rep. K. Koppelman Seconded By W. Kretschmar

*Pg 3, line 74.*

Representatives	Yes	No	Representatives	Yes	No
Rep. Dwight Wrangham, Chairman			Senator Kari Conrad		
Rep. Craig Headland, Vice Chairman			Senator Jerry Kelsh		
Rep. Patrick Hatlestad			Senator Robert Kilichowski		
Rep. Nancy Johnson			Senator Corey Mock		
Rep. Lawrence Klemin			Senator Steve Zaiser		
Rep. Kim Koppelman					
Rep. William Kretschmar					
Rep. Vonnie Pietsch					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

*All 2+ votes  
voice vote  
carried*

Roll Call Vote #: 3

Date: 1-22-09

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

House Political Subdivisions Committee

Check here for Conference Committee

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

Action Taken Do Pass Do Not Pass Amended

Motion Made By Rep. K. Koppelman Seconded By Rep. S. Zaiser

Representatives	Yes	No	Representatives	Yes	No
Rep. Dwight Wrangham, Chairman			Senator Kari Conrad		
Rep. Craig Headland, Vice Chairman			Senator Jerry Kelsh		
Rep. Patrick Hatlestad			Senator Robert Kilichowski		
Rep. Nancy Johnson			Senator Corey Mock		
Rep. Lawrence Klemin			Senator Steve Zaiser		
Rep. Kim Koppelman					
Rep. William Kretschmar					
Rep. Vonnie Pietsch					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

*Moved  
Amendment  
Voice carried  
Vote:*

Roll Call Vote #: 4

Date: 1-22-09

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB1129

House Political Subdivisions Committee

Check here for Conference Committee

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

Action Taken Do Pass Do Not Pass Amended

Motion Made By Rep. Koppelman Seconded By Rep. Jovic

Representatives	Yes	No	Representatives	Yes	No
Rep. Dwight Wrangham, Chairman	✓		Senator Kari Conrad	✓	
Rep. Craig Headland, Vice Chairman	✓		Senator Jerry Kelsh	✓	
Rep. Patrick Hatlestad	✓		Senator Robert Kilichowski	✓	
Rep. Nancy Johnson	✓		Senator Corey Mock	✓	
Rep. Lawrence Klemin	✓		Senator Steve Zaiser	✓	
Rep. Kim Koppelman	✓				
Rep. William Kretschmar	✓				
Rep. Vonnie Pietsch	✓				

Total (Yes) 13 No 0

Absent 0

Floor Assignment Rep. J. Kelsh

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

**REPORT OF STANDING COMMITTEE**

**HB 1129: Political Subdivisions Committee (Rep. Wrangham, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1129 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "54-10-13," and remove ", 54-10-15,"

Page 1, remove lines 6 through 12

Page 1, line 16, remove the overstrike over "~~shall~~" and remove "may"

Page 3, line 26, replace "may" with "must"

Page 3, remove lines 28 through 31

Page 4, remove lines 1 through 8

Renumber accordingly

2009 SENATE POLITICAL SUBDIVISIONS

HB 1129

## 2009 SENATE STANDING COMMITTEE MINUTES

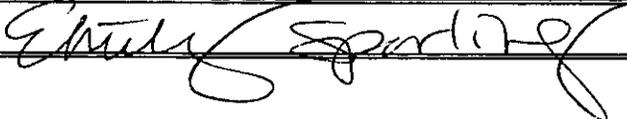
Bill/Resolution No. 1129

Senate Political Subdivisions Committee

Check here for Conference Committee

Hearing Date: February 26, 2009

Recorder Job Number: 1129

Committee Clerk Signature 

Minutes:

**Chairman Andrist:** Opened the hearing on engrossed HB 1129, all members present.

**Gordy Smith:** Audit Manager with the State Auditor's Office testified in support of engrossed HB 1129. (See attachment #1)

**Senator Anderson:** Some of these entities listed in proposed amendments handle less money and some handle a great deal of money, would the auditor's office have some criteria or priority system for performing audits on those entities that are responsible for the greatest amount of money?

**Gordy Smith:** If there was fraud alleged or an investigation of some kind, then we would consider that. If there was a specific problem or a specific case, we would then try to staff and address the needs and concerns.

**Senator Anderson:** If we put in the changes you are seeking, are there some of these political subdivisions that would never be audited, or maybe for ten to fifteen year?

**Gordy Smith:** No. Even with the permissive language, there are still rules in effect for each political subdivision. If I may use the example of a city of 300 and a school district of 100, or a political subdivision of \$200K mark, if you are under those limits you currently just fill out a form listing revenue, expenditures, and thing like that, and send it into us. Any other the entities on

this list that would fall below that threshold are now not obligated because they are not required to be, and that would not change. The larger ones would still be required to be audited.

**Senator Anderson:** Townships are not on the list. Can you address that and the repeal on page 4?

**Gordy Smith:** I cannot address townships. We don't say who is and who is not on the list. The repeal in section 4 hasn't changed since 1967. Basically, what it says is there is already a requirement for us to audit or the entity to be audited. The language is 42 years old and needs to reflect the current practices.

**Senator Andrist:** Under the language adopted by the House in the engrossed bill, it seems to me it would prohibit them from hiring a private CPA firm to do the auditing.

**Gordy Smith:** There other sections in the century code that specifically gives the political subdivisions the right to choose. That is the major difference between state agencies and sub-state agencies.

**Senator Anderson:** On page two, it states the fee is not to exceed \$80 for reviewing. So that would have no effect on how much you are charging when you actually do the audit in the subdivision.

**Gordy Smith:** That is correct. It is not our intent to all of a sudden charge \$80. We want to figure what the cost is and charge accordingly. We don't do these audits for profit, so with regards to that, if it cost \$54, then we would bill \$54. We just don't want to come back and ask for little incremental increases.

**Senator Dotzenrod:** Page 1, section 2 states "shall" audit and your proposing to use we take "shall" out and put "may" in and it seems to me that it is a significant change in state policy. Are you asking for something that is fairly significant? The State has put a burden on your

department with no wiggle room, if we do this and go to “may”, does the Legislature really have authority to require these entities to get audited?

**Gordy Smith:** Line 27 of the existing code states that a political subdivision can select a private CPA firm rather than have us do it. Because we don’t have the experience to have these audits done correctly, we would rather have the firms do it and then the audit would be done correctly. Each political subdivision entity has to have an audit done every two years. That will not change. The more serious crimes such as fraud are usually discovered by the entity’s themselves rather than by an auditor.

**Connie Spryncynatyk:** North Dakota League of Cities supports this bill. It is a financial burden for cities to have either private firms or the auditor’s office to do these services.

**Senator Anderson:** Does the League of Cities have a problem with the change from \$50 to \$80?

**Connie Spryncynatyk:** No, not at all. There is a prevailing attitude in this state that if private practice can handle it, the government ought not to impede. Fair is fair, if it is costing more than \$50 to do those reports, then we should make that payment. Every \$\$\$ that these cities spend here is money that they cannot spend somewhere else, but it is still an investment in sound financial duties.

**Senator Olafson:** Do you have any knowledge of why the house changed the bill from what it was intended to do?

**Connie Spryncynatyk:** My initial response is “they did it because they can”.

**Senator Olafson:** The reason I ask is because if we put these back in, we are going to have an interesting conference committee!

**Chairman Andrist:** Did they make these changes with your knowledge or without talking to you?

**Gordy Smith:** It was done without consulting with us. What I heard was that there was concern that political subdivisions would be left to fend for themselves. I think that was a concern and that is not our intentions.

**Senator Anderson:** If we can get Gordy and Connie together and come up with an acceptable amendment, that might make things work.

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1129

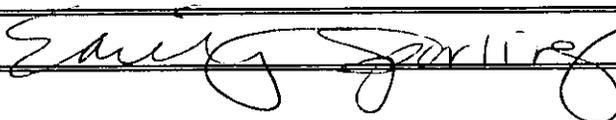
Senate Political Subdivisions Committee

Check here for Conference Committee

Hearing Date: 03/05/2009

Recorder Job Number: 10289, 10301

Committee Clerk Signature



Minutes:

**Chairman Andrist** Opened the discussion on HB 1129

**Jerry Hjelmstad** ND League of Cities. Provided information on the amendments. My understanding is that Gordy Smith was unhappy with the way the bill came out of the house.

This amendment states that the following political subdivisions will be audited at least once every two years in 1 of 3 ways. It could be done by a CPA or an LPA. We also incorporated language about the size of the political subdivisions.

**Senator Olafson** Are you aware if the amendments today were submitted in addition to the amendments submitted earlier?

**Hjelmstad** My understanding is that these amendments are related to the engrossed bill.

**Senator Lee** I think that the stuff we were just handed is related to a discussion we had in our committee requesting audits but allows the political subs some options on choosing the auditor. I think Gordy wants the other amendments included as well.

**Chairman Andrist** Should we have act on both amendments? Or we could have the Intern put the 2 amendments together and act after the floor session.

**Senator Bakke** The amendment is not making major changes, it is more language shifts. One amendment would perhaps be cleaner and easier.

**Chairman Andrist** Suspended the discussion until after the floor session.

**Job # 10301**

**Chairman Andrist** Reopened the discussion on HB 1129

**Senator Lee** I move the amendment

**Senator Bakke** Second

Discussion about language in the amendment. The Intern spoke with Gordy Smith who then approved the latest version of the amendment. The Intern explained why the amendment was drafted in its latest form.

The Clerk called the role on the motion to move the amendment. **Yes: 6, No: 0, Absent: 0.**

**Senator Bakke** I move **Do Pass as Amended.**

**Senator Lee** Second.

The Clerk called the role on the motion to **Do Pass as Amended. Yes: 6, No: 0, Absent: 0.**

**Senator Dotzenrod** will carry the bill.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL 1129

Page 1, after line 4, insert:

**“SECTION 1. AMENDMENT.** Section 54-10-13 of the North Dakota Century Code is amended and reenacted as follows:

**54-10-13. Political subdivisions – Audits – State auditor powers.** The state auditor ~~shall~~may 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.”

Page 1, line 5, replace “1” with “2”

Page 1, line 8, overstrike “state auditor shall audit the” and after “subdivisions” insert “shall be audited at least”

Page 2, line 14, overstrike “three” and insert immediately thereafter “five”

Page 3, line 18, replace “must” with “may”

Page 3, after line 19, insert:

**“SECTION 3. AMENDMENT.** Section 54-10-15 of the North Dakota Century Code is amended and reenacted as follows:

**54-10-15. Audits of political subdivisions by order of governor or the legislative audit and fiscal review committee, or upon petition.** 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. Fees for the audits must be paid in accordance with the provisions of section 54-10-14.”

Page 3, line 20, replace “2” with “4”

Re-number accordingly





**REPORT OF STANDING COMMITTEE**

**HB 1129, as engrossed: Political Subdivisions Committee (Sen. Andrist, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1129 was placed on the Sixth order on the calendar.

Page 1, line 1, after "sections" insert "54-10-13," and after "54-10-14" insert ", 54-10-15,"

Page 1, after line 4, insert:

**"SECTION 1. AMENDMENT.** Section 54-10-13 of the North Dakota Century Code is amended and reenacted as follows:

**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."

Page 1, line 8, overstrike "state auditor shall audit the" and after "subdivisions" insert "must be audited at least"

Page 2, line 14, overstrike "three" and insert immediately thereafter "five"

Page 3, line 18, replace "must" with "may"

Page 3, after line 19, insert:

**"SECTION 3. AMENDMENT.** Section 54-10-15 of the North Dakota Century Code is amended and reenacted as follows:

**54-10-15. Audits of political subdivisions by order of governor or the legislative audit and fiscal review committee, or upon petition.** 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. Fees for the audits must be paid in accordance with the provisions of section 54-10-14."

Re-number accordingly

2009 HOUSE POLITICAL SUBDIVISIONS

CONFERENCE COMMITTEE

HB 1129

# 2009 HOUSE STANDING COMMITTEE MINUTES

## Bill No. HB 1129

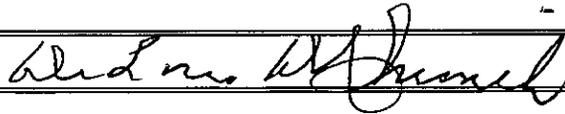
### House Political Subdivisions Committee

Check here for Conference Committee

Hearing Date: April 14, 2009

Recorder Job Number: 11853

Committee Clerk Signature



Minutes:

**Rep. Koppelman:** Called the conference committee on HB 1129 to order.

Asked Senate to explain the amendment.

**Sen. Andrist:** Essentially the bill is to let the State auditor further withdraw so they don't have to do something they cannot do as far as perform auditor of political subdivisions. They do not have the resources to do the audits so we didn't go far enough so we need to find a way to get them the resources to do this. The cities can't find the people to do the work. Our concern is that the subdivisions don't really need a CPA audit but that is the only way they can do them now because the State Auditor's office is not staffed. I am proposing an Interim Study to work with the Auditor's office and figure out how to get the resources to get this accomplished. I don't know what that involves?

**Rep. Jerry Kelsh:** If I remember the bill it come to us we changed on line 9 shall to may and that is not what I understood Sen. Andrist to say.

**Sen. Andrist:** It came to you originally changing the shall to may; and you didn't like that. We did change it to may. On second thought we would concur. We are trying to figure out a way to help them get it done.

**Rep. Jerry Kelsh:** Someplace in here didn't we raise the rate from \$50 to \$80. Did you think that was not enough?

**Sen. Andrist:** We did not think it is enough. We think we did not know how to go in order to get the people we need and trained. When you are looking at CPA's you are looking at a \$200/hr.

**Sen. Olafson:** We took the liberty of getting more information from the State Auditor and his staff after we acted on this bill. The concern is that the prospect of auditing the political subdivisions is intended to be a self funding process and the \$50/hr hasn't been enough. Right now the staff is not adequate in order to do these audits and the \$80/hr is certainly a move in the right direction. The immediate problem is that in order to be able to charge \$80/hr. we have to have the staff there to do the audits in the first place. After this bill we had discussions with county commissioners in particular who are troubled about the prospect of going to the higher priced CPA firms to do these audits. They would like to continue to have the auditing done by the State Auditor's office if we can find a way to do that. When we visited with the state auditor and staff they said it would take a significant increase in staff in order to continue with the state auditor doing them. What the legislature is going to have to do is to decide whether we are going to put the cost on to the political subdivisions to do the audits using the private sector or whether we are going to increase the staff in the state auditor's office to provide those opportunities for the audits to be done by the auditor. Maybe we will have to charge a higher rate for the audits so we can continue to do them out of the auditor's office.

**Rep. Jerry Kelsh:** Was there any indication of what the cost would be of a private auditor would be? Did they give you any indication when you were up there?

**Sen. Andrist:** We asked them to become more proactive and give us a vision of who this should be done and we are disappointed that we haven't heard anything from them.

**Rep. Koppelman:** If I remember right I believe the bill came from the auditor's office. It changed the shall to a may; saying we don't want to have to do this anymore and the reason given for that was that they would shut down the division of this office because they had lost staff to retirement and had not spent time replacing them and secondly that their perception was that some political subdivisions were coming to the state auditor as sort of the cheapest route because they were charging \$50/hr. and that was a lot cheaper than anywhere else. So they had a double whammy where they didn't have the staff to do it; and they weren't authorized to charge a higher fee. I don't think we in the House had any problem raising the \$50 to \$80. We did have some heartburn about the idea of changing the shall to a may. We the Legislature has taken that we will audit the political subdivisions. There is not an excuse to say we are sorry; we shut down that operation and we are not going that anymore. You had a good point. We have to find out how to make that viable. I don't think we are far apart; at least in my view of where this should go.

**Sen. Dotzenrod:** I was the bill carrier. They had the direction to get this done, but did not have the resources to get this done. After the action on the Senate side I was bothered by it. They do not have the ability to get this done and our committee was concerned about it. People out there want the state auditor to his job. I talked to an auditor from the city of Wahpeton and he remembers the day when you had to do private audits and they had this ability a number of years back. Things really got better because it took less time because the people in the office knew what materials had to gathered ahead of time; they had a routine established, and doing more procedure; where private auditors they sometimes each one would do it different and it took a lot more time. We could see it is a real benefit by bringing

the cost down and making them more efficient. They had a routine set up so I felt afterward maybe we didn't do this quite right. Regardless of the fact that the state auditor needs to find more resources and get this done right. There was another change; the population on the third engrossment from 300 to 500.

**Rep. Koppelman:** that is in a separate bill so I think we should just make it consistent so they would be the same.

**Rep. Jerry Kelsh:** there is another situation. If the local subdivision has to hire a private auditor the state auditor has to review that audit at the end at an additional expense. I think that is what was testified to.

**Gordy Smith:** That is true. That \$50 to \$80 is only for the review function. For those entities that are 500; they can fill out a form; report, and send it into us and we review it. If they have an audit done they send that in and we review that. There are over 700 of those that we review so that rate increase from \$50 to \$80 would help cover the cost of those. The actual cost of the audit; is what the hourly rate is to recover the cost of that person. The real problem we had in Bismarck office and also in the Fargo office. When Bob closed the Bismarck office, the person in charge had 1-2 years of experience; the other three people had under 6 months. In Fargo the head guy had 7 years of experience; and we have an individual with 2 and one with 1.5 and three people left in 6 months. What we are scared about is someone with that 2 years experience I don't have a lot of confidence in the work they are going to be doing out there.

**Rep. Koppelman:** It seems that you charge for actually doing the audit. Are you stuck with any particular figure in statue or do you charge based upon recovery?

**Gordy Smith:** Based upon the recovery of the cost.

**Rep. Koppelman:** You have the statutory flexibility to do that now?

**Rep. Jerry Kelsh:** that seven year person in Fargo; what would be his rate to come out 100 miles and do an audit?

**Gordy Smith:** We would charge \$60-\$70/hr. plus mileage.

**Rep. Koppelman:** Some of these political subdivisions have expressed to us that it is difficult for some of them to even find a CPA firm that can or will do this.

**Gordy Smith:** The Nation moved and ND went along with them; if you are going to be a CPA it changed to a five year degree. That dropped down the number of people going into this profession. The other thing that happened; once we allowed these smaller subdivisions to get federal funds; if you go over the maximum limit of total federal funds is now \$500,000 and that would be any federal money coming from DPI or anything else. They have to have an audit and what the problem is if you are a small person and you do this rate; the problem is the feds require 80 hours of DPD; they require a formal review and gets so costly that you can't make up the money so a number of those people quite doing government audits. So then it is supply and demand so the costs have gone up tremendously. In the Senate three counties came up and talked to us and said they one of them, sent out a RSP to 21 firms and got 2 responses. One wanted \$45,000 to do an audit.

**Sen. Andrist:** The auditor's office has to figure out how to get the job done. That is the bottom line.

**Rep. Koppelman:** Number one, we want your office to keep doing these audits. We see a problem and are concerned about that. We don't mind increasing the fee here. Do you think a study to help determine what you need is a good way to go about this?

**Gordy Smith:** I think it is a very good idea. I want to apologize to Senator Andrist. When we looked at that with them up to 1991 the general fund paid all of this. In 1991 the legislature said you guys rely on your own and we will help you. They were doing OK; the thing we had

going for us is we had the long time employees. There were three people in Bismarck that resigned that had 25 or more years of service and experience so you could do it faster and you don't have a lot of questions. So in the end we simply did not have the money to go and hire. Those of us supported by general funds. I talked to the two largest firms in the state and both have offices in Bismarck; they are paying \$800 more a month just to start. One of the things the senator asked is what if we started off with 3 people. What if we could hire, with pay, computers, space etc. we came up with about \$495,000. We need of general funds to begin with. I think the study would help the legislature solve is if they feel that the state should bear some of the costs of the political subdivision audit we certainly have no problem doing it. We simply cannot survive the way it is set up so I think that would be a good discussion.

**Rep. Koppelman:** That \$495,000; that is not all new money is it? You have been appropriated the money to maintain this office although it is too little?

Gordy Smith: The local money that these guys make they put into a fund and then they spend out of that fund. That fund over the last five years probably has about anywhere from \$80,000-\$110,000. That is all we carry over. That is how close we operate. That would include that review money that we were getting from the \$50 to \$80. From our prospective; when we get this money from the legislature we could participate to some degree to try and get this thing going. We will gladly advertise for it, but I am concerned if I am going to have to hire someone with 3-4 years experience I am going to have to hire someone from above and I will have to pay at least what a firm does or a little more in order to get someone. Another problem we have with hiring is the amount of travel involved with the positions. We have had very good relations with political subdivisions and in the audits we have done; we have provided advice to them. If they call a private auditor they pay where if they call us for an opinion we just try to help them.

**Rep. Jerry Kelsh:** It requires that all these political subdivision have an audit and I think any time we require something it is probably be a little something that comes along to help them. \$45,000 to a smaller school district is prohibitive or a smaller town. You are thinking you are going to need \$100/hr. at the minimum to make this work. Is that a fair assesment?

Gory Smith: I am sure that is right, but that certainly doesn't mean to try and work on it. Something else I want to stress. We did not ask for this shall or may to try to get out of doing this. We were concerned; once that office was closed, what if five counties come to us and want an audit and we don't have the people. We don't want to be in a position where the Attorney General or somebody comes out with an opinion that we are breaking the law. If we can find a way to do a study or how ever we do it the auditor in no way shape or form we do not want to do what is necessary.

**Rep. Koppelman:** this provision requirement that the auditor review the audits done by other entities for political subdivisions, what is the purpose of that? Just to make sure they are in order?

Gordy Smith: yes. I think 5 or 10 years ago when the federal government had auditing requirements there was a fear that the local firms would increase their prices and this way it kept the costs down. They also want to be sure they are doing all the things they are suppose to be doing because of the federal funds involved.

**Rep. Koppelman:** Is that still a concern?

**Gordy Smith:** I think at one point in time that should be looked at. The only way we can accomplish this done is two of the three gentlemen that retired after 20 some years; we hired as temporary employees and they come in about two days a week to review those 700 and some. One of them just had heart surgery so I am nervous about what would happen if they both decided to not work.

**Rep. Koppelman:** do you feel at this point it is still necessary for the auditor to do these reviews?

**Gordy Smith:** I think it could be something that could be discussed. I think that would be part of the study. There is not much to see in the audit except that they are using the right format without something to look at.

**Senator Olafson:** It seems to me we had some questions; whether a study should be done. I don't think we should let it set for two years. We did have a discussion with the auditor's office to what it would take to keep the auditors office in the business of doing audits and if there would be any type of appropriation for new staff and put it into an appropriation bill. I think that is the question we need to discuss.

**Senator Andrist:** I would like to see us go out and do a study. The political subdivision should be able to have the State auditor do their audits.

**Rep. Koppelman:** Either one of us can have an amendment drafted or we can come back and look at it together or if we all agree the committee will just ask that one be drafted and take a look at it the next time we meet. Is that acceptable? We need the main shell that they shall do the audit. We need the population change that is in the bill from 2-500. We leave the \$50-\$80 dollar change per hour. That we pass study language as follows: That the Legislative Council shall study the auditing of political subdivisions by the State Auditors and the costs necessary to respond to it and how it should be funded.

**Rep. Jerry Kelsh:** I think we should demand the study.

**Rep. Koppelman:** I think we will have to look at the charging to be whatever the traffic will bear. I don't think we need to think about an appropriation. I agree with Sen. Andrist; this should be something that is self funded or primarily so. I think those changes will go a long way in taking care of the policy side.

**Senator Dotzenrod:** The bill originally introduced struck out the section otherwise request by the governing board and the House put it back in and we stuck it out again. Personally I don't know what the ramifications would be, but I would like to be able to leave that in there. I am thinking about circumstances where the mayor switched or a person who is an auditor for subdivisions leaves and you want to request an audit done other than these other conditions being met. I can see circumstances where the study may want to request it. Maybe we should have that put back in there. That is what the law says right now is they can request it.

**Rep. Jerry Kelsh:** I think that totally deals with improprieties. Maybe fraud and I think it should be in there. If the governing board requests it it can get going. Otherwise it has to be requested by the governor or fiscal review committee or on petition.

**Sen. Dotzenrod:** The petition is quite high, like 30%.

**Rep. Koppelman:** 54-10-13 is a different section of law. Reviewed the section in code. 54-10-15 has to do with the audits by order of the Governor or the legislative audit and fiscal review committee. That was part of the original bill.

**Gordy Smith:** 54-10-14 while it says we shall do political subdivision audits; later that sections says that the political subdivisions will pick a petition. The article on improprieties; here is an avenue that it is 35% of the vote. I think what the section was saying is you are going to do these auditor's office and let the political subdivision decide if they want someone else to do them. The other section taken out was at least 30 years old.

**Senator Andrist:** I would like to see the amendment drafted. We can review them and put language in for a study.

**Rep. Koppelman:** I would ask that the committee get a copy of the draft and then we could just set down and look at it together and see if we need some changes and then call the committee back together. If any of the members see anything let us know.



Hearing closed.



# 2009 HOUSE STANDING COMMITTEE MINUTES

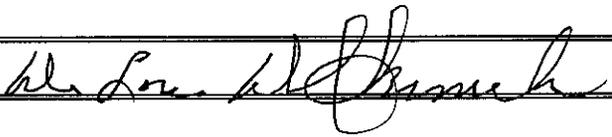
## Bill No. HB 1129

### House Political Subdivisions Committee

Check here for Conference Committee

Hearing Date: April 16, 2009

Recorder Job Number: 11904

Committee Clerk Signature 

Minutes:

**Chairman Koppelman** called the hearing to order on HB1129.

Clerk took the roll with the following people present: Rep. Koppelman, Rep. Pietsch, Rep. J. Kelsh, Sen. Andrist, Sen. Olafson, Sen. Dotzenrod.

**Rep. Koppelman:** the way we left things the last time was that Sen. Andrist and I were going work on an amendment that captured what we talked about at our last meeting and did what we agreed needs to be done on the bill. Handed out the proposed amendment #1.

**Sen. Andrist:** I would move that the Senate recede from its amendments and to further amend 1129; **Seconded By Sen. Olafson.**

Discussion:

**Rep. Koppelman:** Went over the amendment. Included the study in Section 4.

**Sen. Olafson:** Can we have Gordy Smith come up here and see how he feels about this. We are removing shall in there so how will this work going forward the next two years so we are still requiring your office to do the audits?

**Gordy Smith: State Auditor's office:** At this point what I would propose that we do; we have three counties approach us and ask that we do that. The Fargo bunch is books through June but what we did was we committed to do those counties and put them on the list. If any

others come to us and ask us to do the audits we would put them on the list and get to them as fast as we can get to them.

**Sen. Olafson:** Would it be helpful to you if put an emergency clause in so that we can raise that fee from \$50 to \$80 an hour right away instead of waiting until the law becomes effective.

**Gordy Smith:** Certainly that would help because we are ongoing reviewing those reports right now. We have over 720 of them. We have two individuals working for us that had retired and are very experienced and they could do those so certainly that would be additional funds that would help.

**Rep. Koppelman:** I think the point in restoring the shall because it is current law is that it represents the policy position that we are taking as the legislature to say that it is our intention that the auditor's office do these. The reason we are increasing the fees for the reviews is to make it more financial pliable for that office. The reason we are doing the study is to study the issue and the fact that the auditor's office has had some problems with staffing and other issues in order to accomplish this and what can we do to insure that is resolved. What do we have to do in the next session to be sure they are self funding.

**Senator Andrist:** I would move we include the emergency clause as part of the amendment.  
Seconded by Sen. Olafson.

**Rep. Koppelman:** so we have an amendment before us that also includes an emergency clause. Voice Vote Carried.

Discussion:

**Rep. Jerry Kelsh:** I would like to propose that we further amend on the legislative study where it says adequately self funded. I would like to remove the self because it may be determined in the study that it needs some general fund dollars to make this work. It we have self funded the changes what the scope of the study could be. That is the only thing can

concentrate on is that they have to charge enough for that local subdivision to make it pay.

This way they could make a recommendation that there be some general fund dollars in there.

**Motion Made By Rep. Jerry Kelsh: Seconded By Sen. Dotenzrod.**

**Discussion:**

**Sen. Olafson:** I understand Rep. Kelsh's intention. Another way we could do it is to change the word how such audits could be funded to could be adequately self funded and that would not tie the hands of the study. It would state our intentions and our goal which would be to have them self funded.

**Rep. Koppelman:** I am going to resist the motion because this would be a departure from current policy. Currently the way the law is set up we have these audits available through the political subdivisions to the auditor's office and they are funded by the fees that are charged for the audits. They try to price and will to charge for these audits in a way that pays for them. I think paying for some of this through general funds and maybe charging an appropriate fee or whatever else those results. I am not sure this would tie the hands of any future study just as any future legislature can do what it wants any committee studying the issue can come to any conclusions that they will.

**Rep. Jerry Kelsh:** I think from Mr. Smith's testimony the other day; private CPA's are going to charge \$45,000 to do the work; this is something that we have mandated that cities, school districts, counties and every one do and I feel that it is an unfunded mandate. If it requires some general fund dollars to do it we shouldn't totally disregard that. There are some small taxing authorities and for them to come up with the money to do this is pretty tough. I don't know if these people are state employees but if they are they are getting their retirement, health insurance and all those things that everyone else gets and it is not going to be cheap and if we have to divide that out we want this to make it as cheap as possible for those political

subdivisions. That is the purpose of the study in my opinion to make it so they can do it as cheaply as possible because these political subdivisions can't afford to go to a CPA. I would accept the could rather than the should because it gives some latitude to it.

**Rep. Koppelman:** current law requires they be self funded. I am comfortable with the language. You hear the motion to self on self funded and it has been seconded. Voice vote failed. So we have the amendment as originally adopted with the addition of the emergency clause before us.

**Senator Andrist:** I think it is self funded. Everyone using public funding has a responsibility to account for that.

**Senator Andrist Made a Motion to accept the motion that the Senate recede from its amendments and that the conference committee further amended and the committee has a Do Pass Recommendation; Seconded By Senator Olafson.**

**Vote: 6 Yes 0 No 0 Absent; Carrier: House side Rep. Koppelman;**

**Senate carrier: Sen. Dotzenrod.**

**Hearing closed.**

April 16, 2009

VR  
4/16/09

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1129

That the Senate recede from its amendments as printed on pages 888 and 889 of the House Journal and pages 673 and 674 of the Senate Journal and that Engrossed House Bill No. 1129 be amended as follows:

Page 1, line 2, remove "and"

Page 1, line 3, after "counties" insert "; to provide for a legislative council study; and to declare an emergency"

Page 2, line 14, overstrike "three" and insert immediately thereafter "five"

Page 4, after line 2, insert:

**"SECTION 4. LEGISLATIVE COUNCIL STUDY - AUDITS OF POLITICAL SUBDIVISIONS.** During the 2009-10 interim, the legislative council shall study the structure and requirements of the state auditor's office necessary to carry out its auditing of political subdivisions, as required by law, including how such audits should be adequately self-funded. The legislative council shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-second legislative assembly.

**SECTION 5. EMERGENCY.** This Act is declared to be an emergency measure."

Renumber accordingly

**REPORT OF CONFERENCE COMMITTEE  
(ACCEDE/RECEDE)**

Bill Number 1129 (, as (re)engrossed):

Date: 4-14-09

Your Conference Committee Pol. Subs.

For the Senate:

For the House:

4/14			4/14		
4/14			4/14		
YES / NO			YES / NO		
✓ Sen Andriant ✓	✓		Rep Koppelman ✓	✓	
✓ Sen Wafson ✓	✓		Rep. Pitsch ✓	✓	
✓ Sen Dotzenrod ✓	✓		Rep Kula ✓	✓	

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE) from

the (Senate/House) amendments on (SJ/HJ) page(s) \_\_\_\_\_ -- \_\_\_\_\_

\_\_\_\_, and place \_\_\_\_\_ on the Seventh order.

✓, adopt (further) amendments as follows, and place \_\_\_\_\_ on the Seventh order:

\_\_\_\_, having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) \_\_\_\_\_ was placed on the Seventh order of business on the calendar. *Emergency*

DATE: 4-16-09

CARRIER: Rep. Koppelman - DOTZENROD

LC NO. _____	of amendment _____
LC NO. _____	of engrossment _____
Emergency clause added or deleted _____	
Statement of purpose of amendment _____	

MOTION MADE BY: Andriant

SECONDED BY: Sen Wafson

VOTE COUNT 2 YES 0 NO 0 ABSENT

2

**REPORT OF CONFERENCE COMMITTEE  
(ACCEDE/RECEDE)**

Bill Number 1129 (, as (re)engrossed):

Date: 4-16-09

Your Conference Committee Pol. Subs.

**For the Senate:**

**For the House:**

	YES / NO			YES / NO	
<i>Rudman</i>			<i>Koppelman</i>		
<i>Alford</i>			<i>Pitcock</i>		
<i>Doty</i>			<i>Kelch</i>		

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (SJ/HJ) page(s) \_\_\_\_\_ - \_\_\_\_\_

\_\_\_\_, and place \_\_\_\_\_ on the Seventh order.

\_\_\_\_, adopt (further) amendments as follows, and place \_\_\_\_\_ on the Seventh order:

\_\_\_\_, having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) \_\_\_\_\_ was placed on the Seventh order of business on the calendar.

DATE: \_\_\_\_\_

CARRIER: \_\_\_\_\_

LC NO. _____	of amendment
LC NO. _____	of engrossment
Emergency clause added or deleted	
Statement of purpose of amendment	

MOTION MADE BY: *T. Kelch*

SECONDED BY: *Doty*

NOTE COUNT    \_\_\_ YES    \_\_\_ NO    \_\_\_ ABSENT

*Oben  
F. J. ...*

**REPORT OF CONFERENCE COMMITTEE**

**HB 1129, as engrossed:** Your conference committee (Sens. Andrist, Olafson, Dotzenrod and Reps. Koppelman, Pietsch, S. Kelsh) recommends that the **SENATE RECEDE** from the Senate amendments on HJ pages 888-889, adopt amendments as follows, and place HB 1129 on the Seventh order:

That the Senate recede from its amendments as printed on pages 888 and 889 of the House Journal and pages 673 and 674 of the Senate Journal and that Engrossed House Bill No. 1129 be amended as follows:

Page 1, line 2, remove "and"

Page 1, line 3, after "counties" insert "; to provide for a legislative council study; and to declare an emergency"

Page 2, line 14, overstrike "three" and insert immediately thereafter "five"

Page 4, after line 2, insert:

**"SECTION 4. LEGISLATIVE COUNCIL STUDY - AUDITS OF POLITICAL SUBDIVISIONS.** During the 2009-10 interim, the legislative council shall study the structure and requirements of the state auditor's office necessary to carry out its auditing of political subdivisions, as required by law, including how such audits should be adequately self-funded. The legislative council shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-second legislative assembly.

**SECTION 5. EMERGENCY.** This Act is declared to be an emergency measure."

Renumber accordingly

Engrossed HB 1129 was placed on the Seventh order of business on the calendar.

2009 TESTIMONY

HB 1129



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**  
January 22, 2009

House Bill No. 1129

Testimony – Presented by Ed Nagel  
Director

Chairman Wrangham and members of the Political Subdivisions Committee, I am here to testify in support of HB No. 1129.

This bill changes the language in several sections of Chapter 54-10 of the ND Century Code dealing with audits of political subdivisions. Over the years our office has lost many of our local government audits to private CPA firms. In our Bismarck office we reached the point where we had many local government audits that none of the CPA firms wanted. It cost us more to do those audits than we could recover through our audit fees. The end result was that in April of 2008 we closed our Bismarck branch office which was responsible for doing local government audits. This is the primary reason for changing "shall" to "may" perform audits of political subdivisions.

This bill will also raise the maximum amount that we are allowed to charge local governments for reviewing annual reports submitted by small governments, and for reviewing audits of local governments performed by CPA firms. Current law limits the maximum hourly charge that we may assess, to fifty dollars an hour. This maximum hourly rate has remained unchanged since 1993.

We are changing the language in section 54-10-19 since this section has remained virtually unchanged since 1967. We are also deleting section 54-10-18 since this section has remained unchanged since 1967 and is no longer practical.

Changes to Chapter 54-10 of the ND Century Code.

Page 1 - lines 9-10; State Auditor "may" conduct audits of local governments, instead of "shall".

Page 1, lines 9-10; delete the words "otherwise requested by the governing board,"

Page 1 - Line 16; "shall" changed to "may".

Page 3 - line 2; change the maximum hourly rate from "\$50" to "\$80", to review annual reports. \$50 has been in place since 1993.

Page 3 - line 16; change the maximum hourly rate from "\$50" to "\$80", to review audit reports for audits done by private CPA firms.

Page 3 - line 26; change "shall" to "may". We have never used this paragraph.

Page 4 - line 3; delete "requested by the governing board,".

Page 4 - lines 11 through 14; the language that is being deleted has been in place since 1967. To the best of my knowledge, it has never been used by the State Auditor's Office.

Page 4, last 2 lines; repeal section 54-10-18 which dealt with supervising the fiscal affairs of counties. To the best of my knowledge, that section of the code has never been used by the State Auditor's Office.

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

#2

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1129

Page 1, line 1, remove "54-10-13" and remove "54-10-15"

Page 1, remove lines 6 through 12

Page 1, line 16, remove the overstrike over "~~shall~~" and remove "may"

Page 3, line 26, replace "may" with "must"

Page 3, remove lines 28 through 31

Page 4, remove lines 1 through 8

Renumber accordingly



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 26, 2009

House Bill No. 1129

Testimony – Presented by Gordy Smith, CPA  
Audit Manager

Chairman Andrist and members of the Senate Political Subdivisions Committee, I am here to testify in support of HB No. 1129, with the proposed amendments the State Auditor's Office is offering.

The original bill changed "shall" to "may" in several locations in Chapter 54-10. In addition, the bill raises the limit of what the State Auditor's Office can charge political subdivisions for reviewing reports from \$50 an hour to \$80 an hour. The House amended the bill and changed "may" to "shall" or "must."

The majority of political subdivisions select private CPA firms to conduct their audits. In the most recent audit cycle, CPA firms conducted over 70% of the audits. In the past couple of years, experienced political subdivision audit staff has either retired or found employment elsewhere. We were unable to hire and retain the necessary staff to continue auditing political subdivisions from the Bismarck branch office. As a result, in April, 2008 the State Auditor closed the Bismarck political subdivision branch office. This is the primary reason for changing "shall" to "may" perform audits of political subdivisions.

This bill will also raise the maximum amount that we are allowed to charge local governments for reviewing annual reports submitted by small governments, and for reviewing audits of local governments performed by CPA firms. Current law limits the maximum hourly charge that we may assess to \$50 an hour. This maximum hourly rate has remained unchanged since 1993 while the related costs have increased.

We are changing the language in section 54-10-19 since this section has remained virtually unchanged since 1967. We are also deleting section 54-10-18 since this section has remained unchanged since 1967 and is no longer practical.

**PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1129**

Page 1, line 7, insert "**54-10-13. Political subdivisions – Audits – State auditor powers.** The state auditor shall may 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."

Page 1, line 8, remove "shall" and insert "may"

Page 3, line 18, remove "must" and insert "may"

Page 3, line 20, insert "**SECTION 2. AMENDMENT.** Section 54-10-14 of the North Dakota Century Code is amended and reenacted as follows:

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

The state auditor shall may audit the following political subdivisions once every two years, except as provided in this section or otherwise by law:

1. Counties.
2. Cities.
3. Park districts.
4. School districts.
5. Firefighters relief associations.
6. Airport authorities.
7. Public libraries.
8. Water resource districts.
9. Garrison Diversion Conservancy District.
10. Rural fire protection districts.
11. Special education districts.
12. Area career and technology centers.
13. Correction centers.
14. Recreation service districts.

15. Weed boards.
16. Irrigation districts.
17. Rural ambulance service districts.
18. Southwest water authority.
19. Regional planning councils.
20. Soil conservation districts.

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.

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 three hundred population; park districts and soil conservation districts with less than two hundred thousand dollars of annual receipts; and other political subdivisions subject to this section, or otherwise provided by law, with less than one hundred thousand dollars of annual receipts, excluding any federal funds passed through the 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 fifty eighty dollars an hour for the costs of reviewing the annual report.

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 standard. 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 fifty eighty dollars an hour, but not to exceed five hundred dollars per review, for the related costs of reviewing the audit report and workpapers.

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.

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 ~~shall~~ may result in audits being resumed by the state auditor until the irregularities, objectionable accounting procedures, or illegal actions are corrected."

Century Code is amended and reenacted as follows:

**54-10-15. Audits of political subdivisions by order of governor or the legislative audit and fiscal review committee, or upon petition.** 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 boards,~~ 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. Fees for the audits must be paid in accordance with the provisions of section 54-10-14."

Renumber accordingly.

**To: Senate Political Subdivisions Committee**  
**Date: March 3, 2009**  
**Re: House Bill No. 1129**

(Please contact Gordy Smith at the State Auditor's Office, 328-2241,  
or Jerry Hjelmstad at the North Dakota League of Cities, 223-3518, if you  
have any questions)

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1129

Page 1, line 8, overstrike "state auditor shall audit the" and after "subdivisions" insert

"shall be audited at least"

Page 2, line 14, overstrike "three" and insert immediately thereafter "five"

Renumber accordingly