

2019 HOUSE GOVERNMENT AND VETERANS AFFAIRS

HB 1191

2019 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee
Fort Union Room, State Capitol

HB 1191
1/31/2019
31928

- Subcommittee
 Conference Committee

Committee Clerk Signature Carmen Hart	By: Elaine Stromme
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Explanation or reason for introduction of bill/resolution:

Relating to the duty of the state auditor to report consecutive audit findings and the reduction of agency appropriations by the OMB

Minutes:

Attachments: 1 - 3

Chairman Kasper opened the hearing on HB 1191.

Rep. Mike Nathe, appeared in support of HB 1191. When they have been red flagged, and they don't make those changes, there is penalties in this bill. So it is kind of a hammer over the departments. Some of these findings go back years and they have never been addressed. Education hadn't filed reports for years. We rely on these to make decisions. The sponsor of the bill will have amendments, so you can address those.

Rep. Laning: Is there an appeal process? If a department disagreed with the audit findings and refused to do it because they disagreed is there an appeal process?

Rep. Nathe: I don't know.

Rep. P. Anderson: Why aren't they getting done?

Rep. Nathe: That's a good question, maybe the departments are busy with a lot of other stuff I don't think it is a high priority for them. There is not a motivation to address it.

Rep. Rohr: What Committee was that?

Rep. Nathe: Legislative Audit and Fiscal Review.

Rep. Hoverson: Is the problem here for the committees to get their reports in?

Rep. Nathe: I think that the problem is that the Departments do what they are supposed to do with the findings. When the auditor finds this is not according to code or procedure that they are corrected.

Rep. Hoverson: What has been the problem of not having those findings?

Rep. Nathe: It just keeps lingering. They are not addressing the problem.

Chairman Kasper: There has been no penalty and that is what this bill addresses?

Rep. Nathe: That is correct. They will be given plenty of time to meet these requirements.

Rep. Schauer: I find this disappointing because we are talking about professionals. How long has this been going on?

Rep. Nathe: I have only been on this for three interims. So I don't have the knowledge that someone that has been here longer has.

Rep. P. Anderson: I am looking at the penalty section, 65% of human services is federal money, can we deduct 2% of federal funds?

Rep. Nathe: I would think not, but we can deduct the remainder which would be the state funds.

9:13 **Rep. Keith Kempenich:** appeared in support. (Attachment 1) Original bill made Amendment. The auditor does not have the power to make the determination, the review committee will make the determination, that was the intent of it when I put this in. This is a last resort, it probably will get used, because it wouldn't be here if we didn't have some issues.

Rep. Laning: Is the LAPRC the place they would go if they wanted to appeal?

Rep. Kempenich: Yes. It is usually a performance audit. There is some due process here.

Rep. Hoverson: Can you give me an example of what has already happened that warrants a law to take care of this problem?

Rep. Kempenich: It is an audit Williston State College where there is a finding that has been dragging out. It is basically how they do things. It might be that they need more personnel to better track how they expend funds. We did have one with Dickinson State, there probably should have been people that went to jail on that one. As long as there is an attempt to correct the findings there isn't an issue, it is just when its year after year.

Rep. P. Anderson: In my private world at Wells Fargo I had two or three years of not doing audits, I didn't get to keep my job and reduce my budget, I got fired. Why don't we fire the manager?

Rep. Kempenich: That probably would be a better answer. We want these agencies to do better that is the whole idea behind audits. The State Land Department was a big one.

Rep. Rohr: Isn't the Intent of an audit is to demonstrate to our tax payers that we are running most efficient and effective state government possible?

Rep. Kempenich: Yes. With technology it is getting tighter. The Public arena has more transparency.

Opposition

Josh Gallion, State Auditor of North Dakota, appeared in opposition of HB 1191 as written. With the amendments this would change my opposition to neutral

Chairman Kasper: With the amendments, are you comfortable that you will be neutral or do you see anything in the amendment that you don't like? We want to hear about it.

Mr. Gallion: In just the few minutes I have had to look at them it appears to alleviate my concerns. It Puts LAPRC in charge of that process which is where that authority should lie.

Rep. Schauer: Josh, I think that this would put you in an uncomfortable situation. How do you feel about that?

Mr. Gallion: This puts the auditor's office in a judge, jury, & executioner rule and that is not our function. We are here to try to improve government, find more cost savings and improve the overall effectiveness to have this kind of authority would have a negative impact on our job.

Rep. P. Anderson: In the human services department 65% comes from federal funds which we can't reduce by two or three percent. So then the penalty goes off on the other 35% So who suffers?

Mr. Gallion: That is where the auditor's office should not be involved in that decision making process, our job is to identify areas of deficiency and report those. That is where our authority should end.

Chairman Kasper: In the amended bill it says we have to go two biennium's before action is taken. I would like to hear from you where your Audit came forward with suggestions and findings, and difficulty with agency not complying.

Mr. Gallion: There have been procurement issues, internal control issues, Williston State College has had trouble finding qualified people to work there. They have had a lot of turn over and that causes a lot of problems, that can't be resolved. Sometimes in a single audit we have had seven recommendations in a row, that's in a 14-year period, some of it is legislation, or funding or resources.

Rep. Schneider: Could this have unintended consequence if they are understaffed? Oh I have a couple years to work on this.

Chairman Casper: Is there any more opposition?

Tammy Dolan, Vice Chancellor for Administrative Affairs, appeared in opposition of the bill as written. Attachment 2. (28:56-35:55)

Rep. Schauer: If there is that punishment of losing funds, might make that cause management to move quicker, and prioritize, can't you see that this budget cut would force better decisions, based on audit reports?

Tammy Dolan: Yes, it could. There are sometimes legitimate reasons that you can't comply to.

Rep. Schauer: Hopefully, it would be the last resort. Do you feel that there could be some positives with this bill?

Tammy Dolan: Yes there could be some positive impact with the amendments.

Rep. Rohr: When you get the audit findings is there not a committee you go to to discuss the findings and recommendations, and come up with an action plan?

Tammy Dolan: We get a chance to respond and explain our position on those findings and try to build some sort of implementation plan along the way. We do that with all of our findings. Sometimes things get in the way of that well laid plan.

Rep. Rohr: When does it go to LAPRC?

Tammy Dolan: When all of the findings become official. We also say what our opinions are about the matter, and what our intended actions are.

Rep. Rohr: If you agree that is when the implication process goes into effect?

Tammy Dolan: Try very hard to not to disagree with any audit recommendations because they are generally to be helpful.

Rep. P. Anderson: Williston State Who has to suffer?

Tammy Dolan: We would never recommend it fall back on the student. But that would be a management decision at that point it would be in conjunction with chancellor and higher ed. board.

Chairman Kasper: I would like you and your department to examine the amendment. We won't take action on this bill till we hear from you on this. We do want feedback from anyone who is against this bill.

Tom Eide, Director of Field Services and Chief Financial Officer for the Department of Human Services, appeared in opposition of the bill as written. Attachment 3. (44:17-47:38)

Chairman Kasper: On page 2 item B of the amendment it talks about reduction of a current biennium appropriation. Are your grants subject to appropriation or is this dealing only with state funds that are appropriated? Which would it be?

Mr. Eide: Without having read the amendment, if the general funds are taken away, let's say there is an issue with Medicaid funding for nursing homes, let us say there is an audit compliant issue with that, and the general fund is removed from that, we will lose the federal match as well and with those kinds of dollars your only recourse would be to reduce payment to the nursing facilities, to reflect whatever is lost.

Chairman Kasper: What percent of your funds is general funds compared to the other sources you have cited?

Mr. Eide: Generally, about 65% that is the range of federal funds versus general funds.

Rep. Rohr: Risk that if you're not compliant you could lose a portion of federal dollars?

Mr. Eide: Those funds are always at risk, should we have a finding that we don't respond to. I am glad we have an opportunity here to come into a state finding.

Rep. Rohr: Getting back to the Medicaid fraud control unit, don't you contract that service out right now?

Mr. Eide: No, we do not have a fraud unit right now, we are the only state in the United States that does not have a Medicaid fraud unit right now.

Rep. Rohr: I realize that, but don't you contract for that service?

Mr. Eide: We do sampling but that is internal process only.

Vice Chair Steiner: Don't you think that a legislative committee could look at this? There has to be some trust that this committee is using their best judgement.

Mr. Eide: My concern is that we are putting mandated funds at the review of a subcommittee not an entire legislative body. There is concerns in general of putting those funds at risk. Representative Michael Howe are we going to address that shortfall, who is going to pay for that? Management not properly executing their job at all levels. Having LAPRC deal with this is better than risking funding for the state.

Rep. Schauer: This bill deals with bad management and accountability. So if this becomes law and you would have that shadow hanging over you in your department would that change priorities and your management team?

Mr. Eide: We are prioritizing, like fraud, taking care of the poor and vulnerable. We are reallocating resources to address the audit concerns. I won't change my staff we have done what we need to do to make ourselves better at our jobs.

Rep. P. Anderson: So do you think the bad manager ought to be fired?

Mr. Eide: In the private sector, yes.

Neutral

Don La Fleur, Director of Auditor's Office, appeared in a neutral position. Overview of an audit. Financial statement audit yearly for those provide funding's, operational audits, once every two years' performance audits purely operational Mr. Gallion can call for it state and university to the board of higher ed. or OMB single audit by the federal government, service organization audit, only ITD. Different recommendations, violation of accounting standard Government Accounting Standards Board internal control, operational findings, areas where they can improve findings violation of laws. 1:06:10

Chairman Kasper: Give us a summary of your testimony?

Rep. Schauer: Don, how many years have you been at this job?

Mr. Don La Fleur: Twenty-seven years.

Rep. Schauer: With your experience and knowledge, do you think that this bill would help in these situations?

Mr. Don La Fleur: The state auditor does not like to be in the position of judge, jury and executioner.

Rep. P. Anderson: Are the repeated audit findings more lumped into one area?

Mr. Don La Fleur: Operational disagree Cases, internal control, violation of accounting standards,

Chairman Kasper: Could you provide this committee an actual audit, with the concerns and recommendations so we can see what those look like?

Mr. Don La Fleur: Yes. All of our audits are up on our website.

Chairman Kasper: Would you object to putting in an appeal process right before the final act. Or would that be unnecessary because of the process it has already gone through?

Rep. Kempenich: First page committee may do it is a hoghouse amendment to the bill. I think the amendment addresses the due process.

Subcommittee Chair Rep. Steiner, Rep. Rohr, Rep. Anderson to discuss with the interested stakeholders in the room the amendment and see if there is any tweaking that needs to be done working with **Rep. Kempenich**.

Closed the hearing

2019 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee
Fort Union Room, State Capitol

HB 1191
2/8/2019
32424

- Subcommittee
 Conference Committee

Committee Clerk Signature Carmen Hart by Donna Whetham

Explanation or reason for introduction of bill/resolution:

Relating to the duty of the state auditor to report consecutive audit findings and the reduction of agency appropriations by the OMB

Minutes:

Attachment 1

Vice Chairman Steiner: Opened the subcommittee hearing on HB 1191. Handed out copy of proposed amendment. (See Attachment 1).

Subcommittee members present: Rep. P.Anderson, Rep Steiner, Rep Rohr.

Rep Kempenich: Is present to explain amendment. Basically it leaves it up to the committee to determine if there should be these sanctions moving forward. The whole idea of the bill is that the audits have basically run out. It is year 5 on this audit. It targets the salary and wages and operating expense. It doesn't go into grants or federal funds. (See Attachment 1).

Vice Chairman Steiner: So it does take out the federal, so that takes care of that concern. I know Tom Eide has a concern about Medicaid funds.

Tom Eide, CEO Department of Human Services: 3:30 Even though there are salary and wages that are identified in here. Within the Medicaid budget 50% of our General funds are matched for administration cost too. If we targeted the Medicaid and we gave up General Funds to support salary we would have to give up the matching Federal funds. It would still be the loss of the Federal funds as well.

Vice Chairman Steiner: Is there a process where it stops the Federal funds from coming in or are you saying you could not do that?

Tom Eide: You can't separate the two. Let's say this is the 4th time we found a 2% cut and it is going to be restricted, if we had \$10 million dollars that we use for administration in Medicaid so 1% of that we would take out and we would have to take the amount of out of the entire budget including both General and Federal. The minute we reduce the General Fund we have automatically reduced the Federal fund.

Rep. Pam Anderson: Our most vulnerable are hurt by that in that agency from a management issue.

Rep Kempenich: That is the whole point of this, it is not something that happened today. It is something that happened 4 or 6 years ago. If there is a finding there has to be a compelling reason not to do this. Human services wasn't the objective of this it might be consequence of it. The idea behind this is to get it fixed. We have to move on from these, some of these are management issues. 5:19- 7:40

Vice Chairman Steiner: To get 3 audit reports is that 6 years?

Rep Kempenich: The shortest time would be 3 years and it could be a 6 year process. Sometimes it is on year 5 by the time we hear it. This is just one of the last options to push this along, if it is management issue then they should figure out how to do this.

Rep Rohr: When you saying take them off are you saying stop the audits?

Rep Kempenich: Yes, for the Higher Education Foundation the Auditor was going after that, we had a vote and the auditor lost and so out went the audit. That is the way this works. This committee does have a lot of discretion on this. 10:04

Vice Chairman Steiner: Does everyone understand the amendment. For me what is important is the phrase "the committee may" and there is more flexibility in the bill.

Rep Rohr: Made a motion to Adopt amendment 19:0659.01002.

Vice Chairman Steiner: Seconded

Voice vote: Motion carried

Rep Rohr: Made a motion for a Do Pass as amended on HB 1191.

Vice Chairman Steiner: Seconded. Any Discussion?

Rep. P. Anderson: I have some concerns. We go through this whole appropriations process and the OMB can say "no" it's done, 2% gone. There is nothing in here that says management is an issue. I talked to the auditors, in my banking world, we have minor findings and major findings. I think audit findings are important but they are not all equal and he said they are all equal. The audit findings for abandoned property, there is at least 3 pages, to reduce that funding 2%. There is no amendment that reduces a budget that I can support.

Vice Chairman Steiner: Any further discussion? Seeing none. We will call the Roll on a Do Pass as amended.

Roll Call Vote: Yes 2 No 1 Absent 0.

Motion carried for a Do Pass as amended on HB 1191. Hearing closed.

2019 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee
Fort Union Room, State Capitol

HB 1191
2/8/2019
32481

- Subcommittee
 Conference Committee

Committee Clerk Signature Carmen Hart By: Elaine Stromme

Explanation or reason for introduction of bill/resolution:

Relating to the duty of the state auditor to report consecutive audit findings and the reduction of agency appropriations by the OMB

Minutes:

Attachments: 1

Chairman Kasper: opened the meeting on HB 1191.

Vice Chair Steiner: (Attachment 1) Our subcommittee met this morning at 7:15 AM, we reviewed this amendment, the sponsor of the bill was also there, we also had Tom Eide from the Department of Human Services. This is the bill that comes from frustration. After an audit the agencies do not fix the problem, so they want to add penalties.

Rep. P. Anderson: Come from the banking world. Major findings and minor findings. What is the risk? Most of the issues are management? There is nothing in this bill to reprimand, no salary increases, or termination. It is the Appropriations Budget do we have the authority to do that?

Chairman Kasper: Did you discuss the penalty with the Attorney General or Legislative Council?

Vice Chair Steiner: No we did not. It was stated earlier today. We are the managers these are our employees, and we need to manage our business. In this case we know state agencies are responsible for their budget, there isn't a manager who wants to see a cut because of something that LPRC wants to get done, we have veteran Legislatures on here who are trying to manage and do things according to the law. Some of these findings could be serious. It doesn't say they have to do it; it just says they have the option to do it. It was stated today that they had findings that were serious and they would not have the auditor pursue and they have let it go.

Rep. Rohr: They do not do this after the first audit, if there is a finding, sometimes it is two or three times which could take from three to six years. There has to be some accountability to these state agencies if there are three or four audits with the same finding. I am supporting this amendment.

Rep. Schneider: I can understand the frustration and putting teeth behind an audit. I think that these are the wrong teeth, because I see it through the Human Services Lens, and the money does not belong to the personal who are not doing this, the money belongs to children who are abused, or sexually assaulted, families that don't have enough to eat, it belongs to poor people that might lose their housing. It is punishing the wrong people. I would go after these people, like a disciplinary action, a reprimand, a letter that would be reviewed when they come up for wage increases. I would go after the people not the money we appropriate for the needs of others.

Vice Chair Steiner: This is not about poor people. If you look at page 2, Section B. It is affecting state employees. Through reductions in their wages or budget.

Chairman Kasper: I would agree.

Rep. Koppelman: Motion was made to adopt the amendment

Rep. Rohr: Seconded

Rep. Schauer: This is a management problem.

Chairman Kasper: Voice Vote

Voice Vote was taken: Motion carries to adopt the amendment.

Chairman Kasper: We have the HB 1191 as amended before the committee what are your wishes?

Rep. Rohr: Moves a Do Pass as amended for HB 1191

Rep. B. Koppelman: Seconded

A Roll call Vote was taken: Yes – 9 No – 3 Absent – 2

Do Pass Carries

Rep. Steiner will carry HB 1191

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1191

Page 1, line 4, after "budget" insert "; and to amend and reenact section 54-35-02.2 of the North Dakota Century Code, relating to the powers and duties of the legislative audit and fiscal review committee"

Page 1, line 9, replace "Within ninety days of the completion of a state agency audit, the" with "The"

Page 1, line 10, remove "and the director of the budget"

Page 1, after line 11, insert:

"SECTION 2. AMENDMENT. Section 54-35-02.2 of the North Dakota Century Code is amended and reenacted as follows:

54-35-02.2. Powers and duties of the legislative audit and fiscal review committee.

1. The legislative audit and fiscal review committee shall study and review audit reports as selected by the committee from those submitted by the state auditor, confer with the auditor and deputy auditors in regard to such reports, and when necessary, confer with representatives of the department, agency, or institution audited in order to obtain full and complete information in regard to any and all fiscal transactions and governmental operations of any department, agency, or institution of the state. Each department, agency, or institution shall furnish to the committee ~~such~~ aid, information, and assistance in regard to fiscal transactions and governmental operations as it may from time to time request. Whenever
2. ~~If the committee may determinedetermines or havehas~~ reason to believe that there may have been a violation of law relating to the receipt, custody, or expenditure of public funds by any state officer or employee, the committee shall present ~~suchthe~~ evidence or information as may be in its possession to the attorney general. The attorney general shall receive and accept ~~suchthe~~ evidence or information and shall immediately commence ~~suchan~~ additional investigation as the attorney general determines necessary. Upon completion of the investigation, if the evidence supplied by the committee and through the investigation indicates the probability of a violation of law by any state official or employee, the attorney general immediately shall prosecute ~~suchthe~~ official or employee as provided by law. Whenever
3. ~~If the committee may determinedetermines that a state agency, department, or institution has failed to correct an audit finding within two bienniums which the committee determines critically important, the:~~
 - a. ~~The committee may recommend the legislative assembly reduce the state agency, department, or institution's appropriation as compared~~

- CM
2 of 2
2/8/19
- with the amount appropriated to the agency, department, or institution for the previous biennium;
- b. The committee may direct the office of management and budget to reduce the state agency, department, or institution's current biennial appropriation, excluding federal funds, for salaries and wages and operating expenses as determined by the office of management and budget proportionally as follows:
- (1) By one percent if the same finding is identified in three audit reports; or
- (2) By two percent if the same finding is identified in four or more audit reports.
- c. If the state agency, department, or institution takes action to address the audit findings, the committee may direct the office of management and budget to reinstate the agency, department, or institution's appropriation previously reduced under subdivision b of this subsection.
- d. Reductions to appropriations under subdivision b of this subsection do not affect the agency, department, or institution's base budget used for budget preparation purposes.
4. The legislative management, through its committee on legislative audit and fiscal review, or such persons as may be directed or employed by the legislative council, is authorized, within the limits of legislative appropriations, to make such audits, examinations, or studies of the fiscal transactions or governmental operations of departments, agencies, or institutions of the state as the legislative management may determine necessary."

Page 1, line 14, remove "- Report"

Page 1, line 15, remove "to the legislative audit and fiscal review committee"

Page 1, replace lines 16 through 23 with "The office of management and budget shall reduce or reinstate a state agency, department, or institution's current biennial appropriation for salaries and wages and operating expenses, as determined by the office of management and budget, proportionally within thirty days of notification from the legislative audit and fiscal review committee, in accordance with the provisions of section 54-35-02.2."

Renumber accordingly

Date: 2/8/2019
Roll Call Vote #: 1

**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1191**

House Government and Veterans Affairs Committee

Subcommittee

Amendment LC# or Description: 19.0659.01002

Recommendation:	<input checked="" type="checkbox"/> Adopt Amendment	<input type="checkbox"/> Do Pass <input type="checkbox"/> Do Not Pass	<input type="checkbox"/> Without Committee Recommendation
	<input type="checkbox"/> As Amended	<input type="checkbox"/> Rerefer to Appropriations	
	<input type="checkbox"/> Place on Consent Calendar		
Other Actions:	<input type="checkbox"/> Reconsider	<input type="checkbox"/>	

Motion Made By Rep. Rohr Seconded By Vice Chairman Steiner

Total (Yes) _____ No _____

Absent _____

Floor Assignment

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

Voice Vote: Motion carried.

Date: 2/8/2019
Roll Call Vote #: 2

**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1191**

House Government and Veterans Affairs Committee

Subcommitee

Amendment LC# or Description:

Recommendation:	<input type="checkbox"/> Adopt Amendment	<input checked="" type="checkbox"/> Do Pass <input type="checkbox"/> Do Not Pass	<input type="checkbox"/> Without Committee Recommendation
	<input checked="" type="checkbox"/> As Amended	<input type="checkbox"/> Rerefer to Appropriations	
	<input type="checkbox"/> Place on Consent Calendar		
Other Actions:	<input type="checkbox"/> Reconsider	<input type="checkbox"/>	

Other Actions: Reconsider

Motion Made By Rep. Rohr **Seconded By** Vice Chairman Steiner

Total (Yes) 2 No 1

Absent 0

Floor Assignment

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

Date: 2-8-19
Roll Call Vote #:

**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1191**

House Government and Veterans Affairs Committee

Subcommittee

Amendment LC# or Description:

Recommendation:	<input checked="" type="checkbox"/> Adopt Amendment <input type="checkbox"/> Do Pass <input type="checkbox"/> Do Not Pass <input type="checkbox"/> As Amended <input type="checkbox"/> Place on Consent Calendar <input type="checkbox"/> Reconsider	<input type="checkbox"/> Without Committee Recommendation <input type="checkbox"/> Rerrefer to Appropriations <input type="checkbox"/>
Other Actions:		

Other Actions: **Reconsider**

Motion Made By Rep. Doppelman Seconded By Rep. Mohr

Representatives	Yes	No	Representatives	Yes	No
Chairman Jim Kasper			Rep. Pamela Anderson		
Vice Chair Vicky Steiner			Rep. Mary Schneider		
Rep. Jeff Hoverson					
Rep. Craig Johnson					
Rep. Daniel Johnston					
Rep. Karen Karls					
Rep. Ben Koppelman					
Rep. Vernon Laning					
Rep. Scott Louser					
Rep. Karen Rohr					
Rep. Austen Schauer					
Rep. Steve Vetter					

Absent

Floor Assignment

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

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

Date: 2-8-19
Roll Call Vote #: 2

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1191

House Government and Veterans Affairs Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerrefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Rep. Gohn Seconded By Rep. B. Koppelman

Representatives	Yes	No	Representatives	Yes	No
Chairman Jim Kasper	X		Rep. Pamela Anderson		X
Vice Chair Vicky Steiner	X		Rep. Mary Schneider		X
Rep. Jeff Hoverson	A				
Rep. Craig Johnson	X				
Rep. Daniel Johnston	A				
Rep. Karen Karls	X				
Rep. Ben Koppelman	X				
Rep. Vernon Laning	X				
Rep. Scott Louser	X				
Rep. Karen Rohr	X				
Rep. Austen Schauer	X				
Rep. Steve Vetter		X			

Total (Yes) 9 No 3

Absent _____

Floor Assignment Rep. Steiner

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

REPORT OF STANDING COMMITTEE

HB 1191: Government and Veterans Affairs Committee (Rep. Kasper, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (9 YEAS, 3 NAYS, 2 ABSENT AND NOT VOTING). HB 1191 was placed on the Sixth order on the calendar.

Page 1, line 4, after "budget" insert "; and to amend and reenact section 54-35-02.2 of the North Dakota Century Code, relating to the powers and duties of the legislative audit and fiscal review committee"

Page 1, line 9, replace "Within ninety days of the completion of a state agency audit, the" with "The"

Page 1, line 10, remove "and the director of the budget"

Page 1, after line 11, insert:

"SECTION 2. AMENDMENT. Section 54-35-02.2 of the North Dakota Century Code is amended and reenacted as follows:

54-35-02.2. Powers and duties of the legislative audit and fiscal review committee.

1. The legislative audit and fiscal review committee shall study and review audit reports as selected by the committee from those submitted by the state auditor, confer with the auditor and deputy auditors in regard to such reports, and when necessary, confer with representatives of the department, agency, or institution audited in order to obtain full and complete information in regard to any and all fiscal transactions and governmental operations of any department, agency, or institution of the state. Each department, agency, or institution shall furnish to the committee such aid, information, and assistance in regard to fiscal transactions and governmental operations as it may from time to time request. Whenever
2. If the committee may determine determines or have has reason to believe that there may have been a violation of law relating to the receipt, custody, or expenditure of public funds by any state officer or employee, the committee shall present such the evidence or information as may be in its possession to the attorney general. The attorney general shall receive and accept such the evidence or information and shall immediately commence such an additional investigation as the attorney general determines necessary. Upon completion of the investigation, if the evidence supplied by the committee and through the investigation indicates the probability of a violation of law by any state official or employee, the attorney general immediately shall prosecute such the official or employee as provided by law. Whenever
3. If the committee may determine determines that a state agency, department, or institution has failed to correct an audit finding within two bienniums which the committee determines critically important, the:
 - a. The committee may recommend the legislative assembly reduce the state agency, department, or institution's appropriation as compared with the amount appropriated to the agency, department, or institution for the previous biennium;
 - b. The committee may direct the office of management and budget to reduce the state agency, department, or institution's current biennial appropriation, excluding federal funds, for salaries and wages and

operating expenses as determined by the office of management and budget proportionally as follows:

- (1) By one percent if the same finding is identified in three audit reports; or
 - (2) By two percent if the same finding is identified in four or more audit reports.
 - c. If the state agency, department, or institution takes action to address the audit findings, the committee may direct the office of management and budget to reinstate the agency, department, or institution's appropriation previously reduced under subdivision b of this subsection.
 - d. Reductions to appropriations under subdivision b of this subsection do not affect the agency, department, or institution's base budget used for budget preparation purposes.
4. The legislative management, through its committee on legislative audit and fiscal review, or such persons as may be directed or employed by the legislative council, is authorized, within the limits of legislative appropriations, to make such audits, examinations, or studies of the fiscal transactions or governmental operations of departments, agencies, or institutions of the state as the legislative management may determine necessary."

Page 1, line 14, remove "- Report"

Page 1, line 15, remove "**to the legislative audit and fiscal review committee**"

Page 1, replace lines 16 through 23 with "The office of management and budget shall reduce or reinstate a state agency, department, or institution's current biennial appropriation for salaries and wages and operating expenses, as determined by the office of management and budget, proportionally within thirty days of notification from the legislative audit and fiscal review committee, in accordance with the provisions of section 54-35-02.2."

Renumber accordingly

2019 SENATE GOVERNMENT AND VETERANS AFFAIRS

HB 1191

2019 SENATE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee
Sheyenne River Room, State Capitol

HB1191
3/7/2019
33408

- Subcommittee
 Conference Committee

Committee Clerk: Pam Dever

Explanation or reason for introduction of bill/resolution:

Relating to the powers & duties of the legislative audit & fiscal review committee.

Minutes:

Att #1 – Chris Jones; Att #2-;Rep Kempenich; Att # 3-Tammy Dolan

Chairman Davison: Let's open the hearing on HB1191. We will wait a bit for Rep. Kempenich. Any Agencies here?

Chris Jones, Ex. Dir. of Dept. of Human Services: I will read testimony of Tom Eide, (see att # 1) (2.05-5.41)

Chairman Davison: We just completed our audit for the company I work for. We get the same two findings on a regular basis. We don't have enough people to handle the money because we don't have enough staff our accounting. As I read the bill, we are trying to correct what we can correct. The committee is not going to take away 1% from H.S., do you?

Chris: It is unclear as the bill is written. (7.00)

Vice Chair Meyer: (takes over) Support for this bill. The sponsor is here.

Rep. Kempenich: This bill has come up a few times. It is a frustration about findings. The bill puts some teeth in the LAPRC committee. It takes a year and sometimes two to get the audit done. This bill is 5-6 years out before it would work. This sets up a process where the committee can take a percentage of general fund and without it until the finding is fixed. The money can be reinstated once the agency fixes stuff. I had an amendment to soften the bill. (see att #2) Because of the time line, there is nothing done quickly here. This bill would put pressure on to get things done. (11.29) The committee caught the big DSU issue and that was a performance audit and regular audit. It got deeper than any of us thought it would. So some things get done.

Sen. Kristin Roers: Do you know what section the amendment referred to? The last page, I hear. Changing it from OMB 'shall' to 'may'. That language concerned me. I like the softer.

Rep Kempenich: It requires OMB to give a report if they did not follow the recommendation.

Sen. Kristin Roers: Is this permissive language to OMB. Right now OMB can't restrict funds?

Rep. Kempenich: No. It would allow the option. We are dealing with agencies. Sometimes it does not get taken seriously. You see in appropriations that the green sheets tell if there are any audit findings. It is hard to remember two years.

Sen. Erin Oban: If part of the problem is the longevity of remembering all the information and the two years on the green sheets, why not require more history be included?

Rep. Kempenich: Could be on that angle, but what do you do about it? Guess we could hold funds in appropriations. If OMB rejected, then it would have to be addressed in appropriations.

Sen. Erin Oban: Doing it through the legislative process is more appropriate. Better than delegating to 14 rather than 141 legislators. Right now, LAFRC can make the recommendation to legislative assembly to reduce a budget due to audit issues and not fixing. This would give 14 legislators great authority. (18.02)

Rep Kempenich: Yes, it would. It is more onerous for the agency.

Sen. Erin Oban: I feel there may be better way to flag this issue. Those audits carry more weight in appropriation in an agencies budget. The budget section had too much power, and that was very troublesome to many. Now this is again taking more authority away from the assembly. (20.17)

Rep. Kempenich: We are a citizen legislature. When you are at hearings, it can get pretty detailed. There has been due process to fix this for a long time.

Rep Marvin Nelson. Dist. 9: I am here against this bill. I serve on LAFRC for years now. There is an audit and then a follow up audit. That is normal. We have some on a third audit. This committee is turning to be its own legislature. We need to address this issue with the full legislature. This takes place over a period of years. Not efficient. I did not even know about the green sheet. I think this bill may be even unconstitutional. (26.46)

Vice Chair Meyer: Any more agency testimony?

Tammy Dolan, Vice Chancellor for Administrative Affairs: (see att #3) We believe in the value of audits, so support that part. We have our own audit department. We are concerned about other things in this bill. Do not understand how the budget reductions would work. Would all of the budgets be cut? Confusing. Any questions?

Vice Chair Meyer: Any more against? We will close the hearing. (34.00)

2019 SENATE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee
Sheyenne River Room, State Capitol

HB1191
3/8/2019
33426

- Subcommittee
- Conference Committee

Committee Clerk: Pam Dever

Explanation or reason for introduction of bill/resolution:

Relating to the powers and duties of the legislative audit and fiscal review committee

Minutes:

Att #1 – Kempenich amend.

Chairman Davison: We have a few minutes. Look at HB1191. Anyone have anything?

Sen. Kristin Roers: In section 3, the ‘shall’ was removed and ‘may’ was put in. That is OK.

Sen. Erin Oban: The sponsor had an amendment that was to soften the bill. Takes out ‘direct’ and puts in ‘recommend’. (see att #1-Kempenich’s)

Vice Chair Meyer: I move to adopt amendment .02001. **Sen. Kristin Roers:** I second.

Chairman Davison: Discussion? We have the audit and review committee. They come up with findings thought out the interim. Some are frustrated because they don’t have any leverage. There is no penalty for not doing anything. They want a tool, which is this bill.

Sen. Kristin Roers: I like the ‘may’ in the amendment gives an option. (5.37)

Sen. Erin Oban: I am fine with the amendment.

Chairman Davison: Take the roll: YES -- 7 NO -- 0 -0-absent. Amendment passed.

Sen. Erin Oban: I still think this bill gives too much authority to 14 people. More history should be done. (6.45) I think LAFRC should go before appropriations. They should reduce the agency in question, but is anything ever done, is the problem. The green sheet in appropriations s is a two-year reflection. This is giving a small number authority over budgets. Rep Kempenich identified a number of things we could be doing better. He mentioned that members of LAFRC committee change. Of course they do. The should go in front of the appropriations committee and say these are the things we found and you should take under consideration. I will be voting against this.

Chairman Davison: Did he recommend a penalty in any report?

Sen. Erin Oban: Current law allows this committee to recommend to the legislature to reduce their budget. I wonder if that committee ever has done that. Rep Kempenich said the green sheets come before appropriations but they only contain that last two years. I believe it should show longer time frame with audit findings.

Sen. Kristin Roers: Tammy Dolan from University systems spoke that this bill is written and it's all audits rather than compliance or fiscal audits. Performance audits are often more subjective and consultant format. These are things you could do better. Before the amendment, this bill had no latitude. I felt there were other options than this bill, to fix the process without a change in statute.

Chairman Davison: We will wait to vote on this. I need to catch up on this in amended form.
(11.00)

2019 SENATE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee
Sheyenne River Room, State Capitol

HB1191
3/15/2019
#33807

- Subcommittee
 Conference Committee

Committee Clerk: Pam Dever

Explanation or reason for introduction of bill/resolution:

Relating to the powers and duties of the legislative audit and fiscal review committee.

Minutes:

Chairman Davison: I was not here for the hearing. We adopted the amendment? I don't remember. Can we discuss? This bill allows for LAFRC committee to recommend holding dollars by a certain percentage. What are your thoughts?

Sen. Erin Oban: I amendment was passed the next day. The amendment made it better, but it still gives 14 people too much power instead of the legislature. I think there are lots of things that LAFRC could be doing and are not. I think more history on the green sheets would be good. Maybe add more than two years on the sheets of audit findings. (3.08)

Chairman Davison: In my job, I know how many schools that do not get their papers in when requested and nothing is ever done. I get the argument that we can't hurt the kids because there is some dumb administrator that can't get their work done. I am torn on this bill.

Sen. Erin Oban: Current law already says that LAFRC can recommend reduce the state agency appropriation. Wonder how many times LAFRC has done this.

Sen. Richard Marcellais: Never. I am on the committee. (4.34) We are going to have a meeting before this session ends. I noticed we did have opposition from the N.D. University system. They are being audited. I agree with Sen. Erin Oban that it should not be left up to 14 individuals. We have lots of legislators. (5.33)

Sen. Jay Elkin: It looks like we have a group of 14 that want to micro-manage all departments. That is the way it appears to me.

Chairman Davison: What are the committee wishes?

Sen. Erin Oban: I move a DO NOT PASS as amended.

Vice Chair Meyer: I second.

Chairman Davison: Discussion? Roll: YES -- 5 NO -- 2 0-absent
DO NOT PASS as amended – passed.

Sen. Erin Oban will carry the bill.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1191

Page 1, line 4, remove the second "and"

Page 1, line 6, after "committee" insert "; and to provide for a report"

Page 2, line 17, replace direct with recommend"

Page 2, line 17, remove to"

Page 2, line 24, replace direct with recommend"

Page 2, line 24, remove to"

Page 3, line 7, after findings insert "- **Report to legislative audit and fiscal review committee**"

Page 3, line 8, replace shall with may"

Page 3, line 12, after 54-35-02.2 insert ". The office of management and budget shall report to the legislative audit and fiscal review committee if an agency, department, or institution's budget is not adjusted as recommended by the committee"

Renumber accordingly

3-819

Date:

Roll Call Vote #:

2019 SENATE STANDING COMMITTEE

ROLL CALL VOTES

BILL/RESOLUTION NO.

DB 1191

Senate Government and Veterans Affairs Committee

Subcommittee

Amendment LC# or Description: 19.0459.05001

Other Actions: **Reconsider**

Motion Made By Sen. Merger Seconded By Sen. Rivers

Total (Yes) 1 No 0

Absent — 0

Floor Assignment

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

Amend as passed

375-19

Date:

Roll Call Vote #:

1

**2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. AB 1191**

Senate Government and Veterans Affairs

Committee

Subcommittee

Amendment LC# or Description: 19.0659.02001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerrefer to Appropriations
 Place on Consent Calendar
 Reschedule

Other Actions: Reconsider

Motion Made By Sen. Oban Seconded By Sen. Meyer

Total (Yes) 5 No 2

Absent _____

Floor Assignment Sen. Obama

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

(Amendment passed on 3/8/19)

REPORT OF STANDING COMMITTEE

HB 1191, as engrossed: Government and Veterans Affairs Committee (Sen. Davison, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1191 was placed on the Sixth order on the calendar.

Page 1, line 4, remove the second "and"

Page 1, line 6, after "committee" insert ";" and to provide for a report"

Page 2, line 17, replace "direct" with "recommend"

Page 2, line 17, remove "to"

Page 2, line 24, replace "direct" with "recommend"

Page 2, line 24, remove "to"

Page 3, line 7, after "findings" insert "- **Report to legislative audit and fiscal review committee**"

Page 3, line 8, replace "shall" with "may"

Page 3, line 12, after "54-35-02.2" insert ". The office of management and budget shall report to the legislative audit and fiscal review committee if an agency, department, or institution's budget is not adjusted as recommended by the committee"

Renumber accordingly

2019 TESTIMONY

HB 1191

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1191

Page 1, line 4, after "budget" insert "; and to amend and reenact section 54-35-02.2 of the North Dakota Century Code, relating to the powers and duties of the legislative audit and fiscal review committee"

Page 1, line 9, replace "Within ninety days of the completion of a state agency audit, the" with "The"

Page 1, line 10, remove "and the director of the budget"

Page 1, after line 11, insert:

"SECTION 2. AMENDMENT. Section 54-35-02.2 of the North Dakota Century Code is amended and reenacted as follows:

54-35-02.2. Powers and duties of the legislative audit and fiscal review committee.

1. The legislative audit and fiscal review committee shall study and review audit reports as selected by the committee from those submitted by the state auditor, confer with the auditor and deputy auditors in regard to such reports, and when necessary, confer with representatives of the department, agency, or institution audited in order to obtain full and complete information in regard to any and all fiscal transactions and governmental operations of any department, agency, or institution of the state. Each department, agency, or institution shall furnish to the committee such aid, information, and assistance in regard to fiscal transactions and governmental operations as it may from time to time request. Whenever
2. If the committee may determinedetermines or havehas reason to believe that there may have been a violation of law relating to the receipt, custody, or expenditure of public funds by any state officer or employee, the committee shall present suchthe evidence or information as may be in its possession to the attorney general. The attorney general shall receive and accept suchthe evidence or information and shall immediately commence suchan additional investigation as the attorney general determines necessary. Upon completion of the investigation, if the evidence supplied by the committee and through the investigation indicates the probability of a violation of law by any state official or employee, the attorney general immediately shall prosecute suchthe official or employee as provided by law. Whenever
3. If the committee may determinedetermines that a state agency, department, or institution has failed to correct an audit finding within two bienniums which the committee determines critically important, the:
 - a. The committee may recommend the legislative assembly reduce the state agency, department, or institution's appropriation as compared

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1-31-19

with the amount appropriated to the agency, department, or institution for the previous biennium; or

b. The committee may direct the office of management and budget to reduce the state agency, department, or institution's current biennial appropriation, proportionally by line item as follows:

(1) By one percent if the same finding is identified in three audit reports; or

(2) By two percent if the same finding is identified in four or more audit reports.

4. The legislative management, through its committee on legislative audit and fiscal review, or such persons as may be directed or employed by the legislative council, is authorized, within the limits of legislative appropriations, to make such audits, examinations, or studies of the fiscal transactions or governmental operations of departments, agencies, or institutions of the state as the legislative management may determine necessary."

Page 1, line 14, remove "- Report"

Page 1, line 15, remove "to the legislative audit and fiscal review committee"

Page 1, remove lines 16 through 22

Page 1, line 23, replace "to the legislative audit and fiscal review committee." with "The office of management and budget shall reduce a state agency, department, or institution's current biennial appropriation, proportionally by line item within thirty days of notification from the legislative audit and fiscal review committee of consecutive audit findings, in accordance with the provisions of section 54-35-02.2."

Renumber accordingly



2
ATB 1091
1-31-19

House Bill 1191

Government and Veterans Affairs Committee

January 31, 2019

Tammy Dolan, Vice Chancellor for Administrative Affairs

701.328.4116 | tammy.dolan@ndus.edu

Chair Kasper and Committee Members: My name is Tammy Dolan, and I am here today to present the NDUS' concerns with HB1191. The bill requires the State Auditor to notify the Legislative Audit and Fiscal Review Committee (LAFRC) and the Office of Management and Budget (OMB) of significant audit findings occurring in two or more consecutive audits. Additionally, the bill directs OMB to reduce agency appropriations by predetermined percentages based upon the number of consecutive years in which an audit finding has occurred.

NDUS is supportive of the accountability reporting requirement. In fact, the NDUS believes so strongly in the value of audits that we have established our own internal audit department. The department conducts multiple audits across the system each year, in addition to those conducted by the Office of the State Auditor. Additionally, the State Board of Higher Education has established an Audit Committee to monitor audit results and progress towards compliance with audit recommendations.

The NDUS does have significant concerns with the automatic budget reduction process for several reasons.

1. The bill appears to include findings from performance audits, as well as financial and compliance audits. Performance audits are defined as the review of the efficiency and effectiveness of processes and procedures. These subject areas are oftentimes not as straightforward as compliance or financial audits. Many more judgement calls are made by both auditors and agencies when evaluating and determining desired outcomes or intended results. Recommendations may be more complex, less straightforward and take longer to implement. In these cases, the bill, as written, may lead to automatic budget reductions even when an institution or agency is working to comply, but needs additional time to come into compliance.

2. There may be times when for valid reasons an agency or institution disagrees with the auditors' recommendation, or at the very least, does not fully agree with the recommendation or suggested corrective action. In these cases, the bill, as written, may lead to automatic budget reductions even if the agency or institution has a valid reason for noncompliance.
3. Financial or operational audits are generally not completed until six months after the end of a fiscal year. In these cases, there may not be enough time to institute corrections before the end of the next fiscal year, which means they would automatically be a repeat finding.
4. There are also times when an institution or agency has been working diligently to implement recommended changes but for various reasons (staff turnover, resource limitations due to budget cuts, complexity of the change) the recommendation has not been fully addressed. HB1191, as written, does not provide any allowance for OMB to exercise discretion in these situations before reducing an appropriation.
5. The NDUS is comprised of 11 institutions and the System Office. Consolidated financial statements are prepared and audited that contain all entities. It is possible that a condition may exist at one or two institutions, but not at all 12 NDUS entities, that results in a significant audit finding that repeats for multiple years. In this case, would the systemwide appropriation be reduced, even for those institutions that were not a party to the finding? The bill does not specify how situations like this would be handled.
6. Finally, budget cuts may result in a reduction in staff resources at agencies or institutions, which may further inhibit the ability to come into compliance with the audit recommendations. This would be contrary to the bill's intended purpose.

In summary, the NDUS believes that the bill, as written, especially the prescribed, automatic budget reductions, does not provide the necessary discretion to the LAFRC or OMB for the situations just described. In fact, utilizing budget reductions as an enforcement tool, especially in these times of already reduced budgets, may result in further non-compliance, which is the opposite of the bill's intent. For those reasons, I ask for a Do Not Pass on HB1191 as written. Thank you.

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HB 1191
1-31-19

Testimony

House Bill 1191 - Department of Human Services House Government and Veteran Affairs Committee Representative Jim Kasper, Chairman

January 31, 2019

Chairman Kasper and members of the House Government and Veteran Affairs, I am Tom Eide, Director of Field Services and Chief Financial Officer for the Department of Human Services (Department). I appear today to testify on House Bill 1191.

The audit function of the state is an important process. The auditors provide a review of systems and processes to identify potential areas where there could be issues of compliance with state and federal guidelines or even specific department policies.

Many identified concerns are easily addressed with changes in process, retraining of staff or simply changing an authority structure. However, there are findings that may be much more complex, dealing with system changes that may be out of the direct control of the department.

One such example that is currently resulting in consecutive findings in eligibility is founded in one of our software projects. We have a specific compliance issue regarding the verification of certain entries. The solution for meeting this compliance requirement is met with the implementation of our new software solution. The challenge is that this project (using both State and contracted resources) is still not implemented. The result is that it will show as a repeat finding.

Another example is the repeated finding regarding establishment of a Medicaid Fraud Control Unit. This has been a repeated finding in the department for both the agency and the single audit and in the 2017 audit was a finding to the Governor's office. The establishment of this unit is a legislative decision and was proposed in previous sessions, including both stand-alone legislation and amendments. It is proposed again this session as Senate Bill 2347. In the prior sessions, it was

#3
HB 191
1-31-19

defeated and subsequently the department did not establish the Medicaid Fraud Control Unit – thus continuing and repeating the finding.

As this bill is written, it would result in a reduction of the appropriation for that agency by 1%. The Department of Human Services budget now approaches \$4 billion. It is unclear to what extent such a reduction would apply. In addition, the department's budget is largely grants – funding goes to provide for Medicaid, foster care services, child care support, behavioral health services and even provide for heating support.

If the penalties as identified in this bill were enacted, it would directly impact the very individuals the department is attempting to serve not just in general fund terms but the associated federal funds as well. The department would be unable to provide the benefits to citizens that we are mandated. The department without proper funding will not be able to meet its statutory obligations set forth by the legislative assembly.

The department can provide other examples of historical findings that could be a result of reliance on county personnel to complete information, disputed findings as a result of differing interpretations of federal guidelines or reliance on secondary agencies to complete work on the department's behalf. This bill could allow for any of these issues to result in citizens not receiving the support or benefits the department is required to provide.

The department understands the importance of the audit process and the need to prevent or respond to findings in that process. We work with the audit department in a cooperative fashion in an effort to constantly improve and enhance our processes. We appreciate the bill's authors intentions to emphasize the importance of responding to findings. However, the department believes the implementation of reductions in appropriations for consecutive findings would have significant unintended consequences for the very citizens we are working to serve.

This concludes my testimony and I am happy to answer any questions. Thank you.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1191

Page 1, line 4, after "budget" insert "; and to amend and reenact section 54-35-02.2 of the North Dakota Century Code, relating to the powers and duties of the legislative audit and fiscal review committee"

Page 1, line 9, replace "Within ninety days of the completion of a state agency audit, the" with "The"

Page 1, line 10, remove "and the director of the budget"

Page 1, after line 11, insert:

"SECTION 2. AMENDMENT. Section 54-35-02.2 of the North Dakota Century Code is amended and reenacted as follows:

54-35-02.2. Powers and duties of the legislative audit and fiscal review committee.

1. The legislative audit and fiscal review committee shall study and review audit reports as selected by the committee from those submitted by the state auditor, confer with the auditor and deputy auditors in regard to such reports, and when necessary, confer with representatives of the department, agency, or institution audited in order to obtain full and complete information in regard to any and all fiscal transactions and governmental operations of any department, agency, or institution of the state. Each department, agency, or institution shall furnish to the committee such aid, information, and assistance in regard to fiscal transactions and governmental operations as it may from time to time request. Whenever
2. If the committee ~~may determine~~ determines or ~~has~~ has reason to believe that there may have been a violation of law relating to the receipt, custody, or expenditure of public funds by any state officer or employee, the committee shall present ~~such~~ the evidence or information as ~~may be~~ in its possession to the attorney general. The attorney general shall receive and accept ~~such~~ the evidence or information and shall immediately commence ~~such an~~ additional investigation as the attorney general determines necessary. Upon completion of the investigation, if the evidence supplied by the committee and through the investigation indicates the probability of a violation of law by any state official or employee, the attorney general immediately shall prosecute ~~such~~ the official or employee as provided by law. Whenever
3. If the committee ~~may determine~~ determines that a state agency, department, or institution has failed to correct an audit finding within two bienniums which the committee determines critically important, the:
 - a. The committee may recommend the legislative assembly reduce the state agency, department, or institution's appropriation as compared

with the amount appropriated to the agency, department, or institution for the previous biennium;

- b. The committee may direct the office of management and budget to reduce the state agency, department, or institution's current biennial appropriation, excluding federal funds, for salaries and wages and operating expenses as determined by the office of management and budget proportionally as follows:
 - (1) By one percent if the same finding is identified in three audit reports; or
 - (2) By two percent if the same finding is identified in four or more audit reports.
 - c. If the state agency, department, or institution takes action to address the audit findings, the committee may direct the office of management and budget to reinstate the agency, department, or institution's appropriation previously reduced under subdivision b of this subsection.
 - d. Reductions to appropriations under subdivision b of this subsection do not affect the agency, department, or institution's base budget used for budget preparation purposes.
4. The legislative management, through its committee on legislative audit and fiscal review, or such persons as may be directed or employed by the legislative council, is authorized, within the limits of legislative appropriations, to make such audits, examinations, or studies of the fiscal transactions or governmental operations of departments, agencies, or institutions of the state as the legislative management may determine necessary."

Page 1, line 14, remove "- Report"

Page 1, line 15, remove "to the legislative audit and fiscal review committee"

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Renumber accordingly

#1
HB 1191
2-8-19

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1191

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2. ~~If the committee may determinedetermines or havehas reason to believe that there may have been a violation of law relating to the receipt, custody, or expenditure of public funds by any state officer or employee, the committee shall present suchthe evidence or information as may be in its possession to the attorney general. The attorney general shall receive and accept suchthe evidence or information and shall immediately commence suchan additional investigation as the attorney general determines necessary. Upon completion of the investigation, if the evidence supplied by the committee and through the investigation indicates the probability of a violation of law by any state official or employee, the attorney general immediately shall prosecute suchthe official or employee as provided by law. Whenever~~
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 - a. ~~The committee may recommend the legislative assembly reduce the state agency, department, or institution's appropriation as compared~~

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HB 1191
2-8-19

with the amount appropriated to the agency, department, or institution for the previous biennium;

- b. The committee may direct the office of management and budget to reduce the state agency, department, or institution's current biennial appropriation, excluding federal funds, for salaries and wages and operating expenses as determined by the office of management and budget proportionally as follows:
 - (1) By one percent if the same finding is identified in three audit reports; or
 - (2) By two percent if the same finding is identified in four or more audit reports.
 - c. If the state agency, department, or institution takes action to address the audit findings, the committee may direct the office of management and budget to reinstate the agency, department, or institution's appropriation previously reduced under subdivision b of this subsection.
 - d. Reductions to appropriations under subdivision b of this subsection do not affect the agency, department, or institution's base budget used for budget preparation purposes.
4. The legislative management, through its committee on legislative audit and fiscal review, or such persons as may be directed or employed by the legislative council, is authorized, within the limits of legislative appropriations, to make such audits, examinations, or studies of the fiscal transactions or governmental operations of departments, agencies, or institutions of the state as the legislative management may determine necessary."

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Renumber accordingly

HB 1191
3-7-19
Att #1
pgk

Testimony

House Bill 1191 - Department of Human Services Senate Government and Veteran Affairs Committee

Senator Kyle Davison, Chairman

March 7, 2019

*Chris Jones
talked*

Chairman Davison and members of the Senate Government and Veteran Affairs Committee, I am Tom Eide, Director of Field Services and Chief Financial Officer for the Department of Human Services (Department). I appear today to testify on House Bill 1191.

The audit function of the state is an important process. The auditors provide a review of systems and processes to identify potential areas where there could be issues of compliance with state and federal guidelines or even specific department policies.

Many identified concerns are easily addressed with changes in process, retraining of staff or simply changing an authority structure. However, there are findings that may be much more complex, dealing with system changes that may be out of the direct control of the department.

One such example that is currently resulting in consecutive findings in eligibility is founded in one of our software projects. We have a specific compliance issue regarding the verification of certain entries. The solution for meeting this compliance requirement is met with the implementation of our new software solution. The challenge is that this project (using both State and contracted resources) is still not implemented. The result is that it will show as a repeat finding.

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Another example is the repeated finding regarding establishment of a Medicaid Fraud Control Unit. This has been a repeated finding in the department for both the agency and the single audit and in the 2017 audit was a finding to the Governor's office. The establishment of this unit is a legislative decision and was proposed in previous sessions, including both stand-alone legislation and amendments. It is proposed again this session as Senate Bill 2347. In the prior sessions, it was defeated and subsequently the department did not establish the Medicaid Fraud Control Unit – thus continuing and repeating the finding.

As this bill is written, it would result in a reduction of the appropriation for that agency by 1%. The Department of Human Services budget now approaches \$4 billion. It is unclear to what extent such a reduction would apply. In addition, the department's budget is largely grants – funding goes to provide for Medicaid, foster care services, child care support, behavioral health services and even provide for heating support.

If the penalties as identified in this bill were enacted, it would directly impact the very individuals the department is attempting to serve not just in general fund terms but the associated federal funds as well. The department would be unable to provide the benefits to citizens that we are mandated. The department without proper funding will not be able to meet its statutory obligations set forth by the legislative assembly.

The department can provide other examples of historical findings that could be a result of reliance on county personnel to complete information, disputed findings as a result of differing interpretations of federal guidelines or reliance on secondary

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agencies to complete work on the department's behalf. This bill could allow for any of these issues to result in citizens not receiving the support or benefits the department is required to provide.

The department understands the importance of the audit process and the need to prevent or respond to findings in that process. We work with the audit department in a cooperative fashion in an effort to constantly improve and enhance our processes. We appreciate the bill's authors intentions to emphasize the importance of responding to findings. However, the department believes the implementation of reductions in appropriations for consecutive findings would have significant unintended consequences for the very citizens we are working to serve.

This concludes my testimony and I am happy to answer any questions. Thank you.

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PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1191

Page 1, line 4, remove the second "and"

Page 1, line 6, after "committee" insert "; and to provide for a report"

Page 2, line 17, replace "direct" with "recommend"

Page 2, line 17, remove "to"

Page 2, line 24, replace "direct" with "recommend"

Page 2, line 24, remove "to"

Page 3, line 7, after "findings" insert "- Report to legislative audit and fiscal review committee"

Page 3, line 8, replace "shall" with "may"

Page 3, line 12, after "54-35-02.2" insert ". The office of management and budget shall report to the legislative audit and fiscal review committee if an agency, department, or institution's budget is not adjusted as recommended by the committee"

Renumber accordingly



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Engrossed House Bill 1191

Senate Government and Veterans Affairs Committee

March 7, 2019

Tammy Dolan, Vice Chancellor for Administrative Affairs

701.328.4116 | tammy.dolan@ndus.edu

Chair Davison and Committee Members: My name is Tammy Dolan, and I am here today to present the NDUS' concerns with Engrossed HB1191. The bill requires the State Auditor to notify the Legislative Audit and Fiscal Review Committee (LAFRC) of significant audit findings occurring in two or more consecutive audits. Additionally, the bill permits LAFRC to reduce agency appropriations by predetermined percentages if the entity has failed to correct critical audit findings within two biennia.

The NDUS is supportive of the accountability reporting requirement. In fact, the NDUS believes so strongly in the value of audits that we have established our own internal audit department. The department conducts multiple audits across the system each year, in addition to roughly 24 audits conducted by the Office of the State Auditor. Additionally, the State Board of Higher Education has established an Audit Committee to monitor audit results and progress towards compliance with audit recommendations.

The NDUS does have concerns with the proposed budget reduction process for several reasons.

1. The bill appears to include findings from performance audits, as well as financial and compliance audits. Performance audits are defined as the review of the efficiency and effectiveness of processes and procedures. These subject areas are oftentimes not as straightforward as compliance or financial audits. Many more judgement calls are made by both auditors and agencies when evaluating and determining desired outcomes or intended results. Recommendations may be more complex and take longer to implement. In these cases, the bill, as written, may lead to budget reductions even when an institution or agency is working to comply, but needs additional time to come into compliance.
2. There may be times when for valid reasons an agency or institution disagrees with the auditors' recommendation, or at the very least, does not fully agree with the

recommendation or suggested corrective action. In these cases, the bill, as written, may lead to budget reductions even if the agency or institution has a valid reason for noncompliance.

3. There are also times when an institution or agency has been working diligently to implement recommended changes but for various reasons (staff turnover, resource limitations due to budget cuts, complexity of the change) the recommendation has not or cannot be fully addressed. These circumstances may be outside of the agencies' control but could still be used to order budget reductions.
4. The NUS is comprised of 11 institutions and the System Office. Consolidated financial statements are prepared and audited that contain all entities. It is possible that a condition may exist at one or two institutions, but not at all 12 NDUS entities, that results in a significant audit finding that repeats for multiple years. In this case, would the systemwide appropriation be reduced, even for those institutions that were not a party to the finding? The bill does not specify how situations like this would be handled.
5. Finally, budget cuts may result in a reduction of staff resources at agencies or institutions, which may further inhibit the ability to come into compliance with the audit recommendations. This would be contrary to the bill's intended purpose.

In summary, responding to audit recommendations is an important but complex process. The nature of an audit, disagreement with recommendations, and other extenuating circumstances may delay or inhibit corrective actions taken by agencies or institutions. Utilizing budget reductions as an enforcement tool does not necessarily remedy these situations. In fact, it may unintentionally contribute to further non-compliance. For those reasons, I ask that performance audit recommendations be excluded from the bill or that the bill not be approved. Thank you.

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