

Sixty-sixth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1079

Introduced by

Government and Veterans Affairs Committee

(At the request of the State Auditor)

1 A BILL for an Act to amend and reenact section 54-12-08 of the North Dakota Century Code,
2 relating to special assistant attorneys general.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. AMENDMENT.** Section 54-12-08 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **54-12-08. Assistant and special assistant attorneys general - Appointment -**
7 **Revocation - Compensation.**

8 1. After consultation with the head of the state department or institution or with the state
9 board, commission, committee, or agency affected, the attorney general may appoint
10 assistant or special assistant attorneys general to represent the state board,
11 commission, committee, or agency. A state officer, head of any state department,
12 whether elected or appointed, or state department, board, commission, committee, or
13 agency may not employ legal counsel, and no person may act as legal counsel in any
14 matter, action, or proceeding in which the state or any state department, board,
15 commission, committee, or agency is interested or is a party, except upon written
16 appointment by the attorney general. Workforce safety and insurance, the state
17 auditor, the department of transportation, the state tax commissioner, the public
18 service commission, the insurance commissioner, and the securities commissioner
19 may employ attorneys to represent them. These entities shall pay the salaries and
20 expenses of the attorneys they employ within the limits of legislative appropriations.
21 The attorneys that represent these entities must be special assistant attorneys general
22 appointed by the attorney general pursuant to this section. Absent good cause, the
23 attorney general shall appoint as special assistant attorneys general licensed
24 attorneys selected by these entities. The attorney general may revoke the appointment

only for good cause or upon the request of the entity. Good cause means an inadequate level of experience, competence, or ethical standards.

2. The powers conferred upon special assistant attorneys general are the same as are exercised by the regular assistant attorneys general, unless the powers are limited specifically by the terms of the appointment. Except as otherwise provided by this section, an appointment is revocable at the pleasure of the attorney general. The appointment may be made with or without compensation, and when compensation is allowed by the attorney general for services performed, the compensation must be paid out of the funds appropriated therefor.

3. The attorney general may require payment for legal services rendered by any assistant or special assistant attorney general to any state official, board, department, agency, or commission and those entities shall make the required payment to the attorney general. Moneys received by the attorney general in payment for legal services rendered must be deposited into the attorney general's operating fund. General fund moneys may not be utilized for the payment of legal services provided by the attorneys employed by the attorney general, except for those payments required of the department of human services, state department of health, and the state hospital.

4. An assistant or special assistant attorney general appointed to represent the state board of higher education or an institution under the control of the state board of higher education may access and examine any record under the control of the state board of higher education. For purposes of reviewing records under the Family Educational Rights and Privacy Act [20 U.S.C. 1232g; 34 CFR 99] or any other federal privacy law, the assistant or special assistant attorney general is considered a state educational official authorized to access student records.

5. Except as otherwise provided in this section, the state auditor may seek the assistance of the attorney general for legal issues affecting the state auditor; however, the state auditor shall seek the assistance of the attorney general for issues of the state auditor involving litigation. The state auditor may request an opinion from the attorney general as provided in section 54-12-01.

Assistant and special assistant attorneys general - Appointment - Revocation - Compensation. (Contingent effective date - [See note](#))

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2 board, commission, committee, or agency affected, the attorney general may appoint
3 assistant or special assistant attorneys general to represent the state board,
4 commission, committee, or agency. A state officer, head of any state department,
5 whether elected or appointed, or state department, board, commission, committee, or
6 agency may not employ legal counsel, and no person may act as legal counsel in any
7 matter, action, or proceeding in which the state or any state department, board,
8 commission, committee, or agency is interested or is a party, except upon written
9 appointment by the attorney general. Workforce safety and insurance, the state
10 auditor, the department of transportation, the state tax commissioner, the public
11 service commission, the insurance commissioner, and the securities commissioner
12 may employ attorneys to represent them. These entities shall pay the salaries and
13 expenses of the attorneys they employ within the limits of legislative appropriations.
14 The attorneys that represent these entities must be special assistant attorneys general
15 appointed by the attorney general pursuant to this section. Absent good cause, the
16 attorney general shall appoint as special assistant attorneys general licensed
17 attorneys selected by these entities. The attorney general may revoke the appointment
18 only for good cause or upon the request of the entity. Good cause means an
19 inadequate level of experience, competence, or ethical standards.
- 20 2. The powers conferred upon special assistant attorneys general are the same as are
21 exercised by the regular assistant attorneys general, unless the powers are limited
22 specifically by the terms of the appointment. Except as otherwise provided by this
23 section, an appointment is revocable at the pleasure of the attorney general. The
24 appointment may be made with or without compensation, and when compensation is
25 allowed by the attorney general for services performed, the compensation must be
26 paid out of the funds appropriated therefor.
- 27 3. The attorney general may require payment for legal services rendered by any
28 assistant or special assistant attorney general to any state official, board, department,
29 agency, or commission and those entities shall make the required payment to the
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13 assistance of the attorney general for legal issues affecting the state auditor; however,
14 the state auditor shall seek the assistance of the attorney general for issues of the
15 state auditor involving litigation. The state auditor may request an opinion from the
16 attorney general as provided in section 54-12-01.