

Sixty-ninth
Legislative Assembly
of North Dakota

**PROPOSED AMENDMENTS TO
FIRST ENGROSSMENT**

ENGROSSED HOUSE BILL NO. 1601

Introduced by

Representatives O'Brien, McLeod, Satrom, Nelson, Bahl

Senators Lee, Roers

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 ~~attorney generals~~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~~Except as provided under subsection 2, after consultation with the head of the
9 state department or institution or with the state board, commission, committee, or
10 agency affected, the attorney general may appoint assistant or special assistant
11 attorneys general to represent the state board, commission, committee, or agency.

12 a. A state officer, head of any state department, whether elected or appointed, or
13 state department, board, commission, committee, or agency may not employ
14 legal counsel, and no person may act as legal counsel in any matter, action, or
15 proceeding in which the state or any state department, board, commission,
16 committee, or agency is interested or is a party, except upon written appointment
17 by the attorney general.

18 b. Workforce safety and insurance, the department of transportation, the state tax
19 commissioner, the public service commission, the ethics commission, the
20 insurance commissioner, the agriculture commissioner, and the securities

commissioner may employ attorneys to represent them. These entities shall pay the salaries and expenses of the attorneys they employ within the limits of legislative appropriations.

c. The attorneys that represent these entities must be special assistant attorneys general appointed by the attorney general pursuant to this section. Absent good cause, the attorney general shall appoint as special assistant attorneys general licensed attorneys selected by these entities. The attorney general may revoke the appointment only for good cause ~~or~~ and upon the request of the entity. Good cause means an inadequate level of experience, competence, or ethical standards.

2. ~~Notwithstanding any other provisions of this section, the attorney general may not refuse to appoint a special attorney general and may not revoke the appointment of a special assistant attorney general licensed to practice law in the state, in good standing, and employed by the:~~

~~a. Governor;~~

~~b. Agriculture commissioner;~~

~~c. State auditor;~~

~~d. Insurance commissioner;~~

~~e. Public service commissioner;~~

~~f. Secretary of state;~~

~~g. Superintendent of public instruction;~~

~~h. Tax commissioner; or~~

~~i. State treasurer.~~

Notwithstanding any other provisions of this section, if an attorney is employed by the governor, state auditor, or ethics commission, the attorney general may not:

a. Refuse to appoint the attorney as a special assistant attorney general upon request from the entity; or

b. Revoke the appointment as special assistant attorney general absent good cause and upon the request of the entity.

3. 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.

3.4. 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 health and human services, department of environmental quality, and the state hospital.

4.5. 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.