

**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

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

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

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

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

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

27          1. After consultation with the head of the state department or institution or with the state  
28          board, commission, committee, or agency affected, the attorney general may appoint  
29          assistant or special assistant attorneys general to represent the state board,  
30          commission, committee, or agency. A state officer, head of any state department,  
31          whether elected or appointed, or state department, board, commission, committee, or

1 agency may not employ legal counsel, and no person may act as legal counsel in any  
2 matter, action, or proceeding in which the state or any state department, board,  
3 commission, committee, or agency is interested or is a party, except upon written  
4 appointment by the attorney general. Workforce safety and insurance, the state  
5 auditor, the department of transportation, the state tax commissioner, the public  
6 service commission, the insurance commissioner, and the securities commissioner  
7 may employ attorneys to represent them. These entities shall pay the salaries and  
8 expenses of the attorneys they employ within the limits of legislative appropriations.  
9 The attorneys that represent these entities must be special assistant attorneys general  
10 appointed by the attorney general pursuant to this section. Absent good cause, the  
11 attorney general shall appoint as special assistant attorneys general licensed  
12 attorneys selected by these entities. The attorney general may revoke the appointment  
13 only for good cause or upon the request of the entity. Good cause means an  
14 inadequate level of experience, competence, or ethical standards.

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

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

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