



North Dakota House of Representatives

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COMMITTEES:

Appropriations
Appropriations - Human Resources Division

02/06/2025

House Bill 1601

House Government and Veterans Affairs Committee

Chairman Schauer and members of the House Government and Veterans Affairs Committee,

I am Representative Emily O'Brien, representing District 42 in Grand Forks. I am here today to introduce House Bill 1601, relating to special assistant attorney generals. This bill deals with the hiring of Special Assistant Attorney Generals employed by state agencies. This legislation is not just a matter of administrative efficiency—it is about protecting the integrity of state government, ensuring accountability, and upholding the separation of powers.

Historical Context & Lessons Learned

North Dakota has a long history of adjusting its legal representation framework, and each phase has provided critical lessons.

- **Before 1987**, agencies and elected officials had full control over their legal counsel, ensuring that attorneys were aligned with their mission and day-to-day needs. They had the ability to retain in-house expertise, request assistance from the Attorney General's Office, or hire outside counsel when necessary.
- **In 1987**, the Legislature consolidated legal services under the Attorney General's Office. This shift resulted in widespread dissatisfaction as agencies lost control over legal representation and experienced gaps in litigation support and administrative law services.
- **By 1995**, agencies began adjusting to these inefficiencies, but the core issue remained—agencies had little to no control over their assigned attorneys. The quality of legal representation should never be dictated by political shifts, yet conflicts between agencies and the Attorney General's Office turned legal services into a political tool rather than an operational necessity.

House Bill 1601 restores fairness, accountability, and sound governance for the following key reasons:

1. **Preserving Separation of Powers** – Each elected official represents a separate authority within our government. Allowing the Attorney General to control their legal representation undermines the checks and balances that prevent the concentration of power.
2. **Eliminating Conflicts of Interest** – The Attorney General may have political motivations or legal interests that are at odds with an elected official. Legal counsel must be loyal to the entity they serve—not an outside office that may have competing priorities.
3. **Ensuring Legal and Ethical Accountability** – Elected officials are directly accountable to the people. They must have the ability to choose their own legal counsel, ensuring that legal strategies align with their constitutional and statutory responsibilities.
4. **Preventing Undue Political Influence** – The Attorney General’s Office is a political entity. Granting it unchecked authority to assign legal representation opens the door to politically motivated legal actions, decisions, and restrictions on other state officials. Legal decisions should be driven by law, not partisanship.
5. **Restoring Control and Fiscal Responsibility** – Agencies should not be forced to rely on attorneys they do not choose and who may not fully understand their legal needs. House Bill 1601 ensures agencies can seek competent legal counsel aligned with their mission, leading to better efficiency and cost savings.

House Bill 1601 is **good governance**. It restores accountability, ensures fiscal responsibility, and prevents the politicization of legal services. It is time to put an end to an outdated and ineffective system that undermines agency autonomy and puts legal decisions in the hands of political appointees rather than those responsible for governing.

On the following page are amendments I am requesting the committee put on the bill. I had requested from Legislative Council, but had not received the draft back yet.

Thank you, Mr. Chairman and members of the committee. I am happy to answer any questions.

Amendment: Page 2, Line 6, Subsection

2. ~~The~~ Notwithstanding any other provisions of this section the attorney general may not refuse to appoint as a special assistant attorney general and may not revoke the appointment of a special assistant ~~with good cause.~~ an appointed 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;
- i. State treasurer
- j. Department of water resources
- k. Ethics commission;
- l. Workforce safety and insurance