



TESTIMONY

Jon Godfread, Insurance Commissioner
House Government and Veterans Affairs Committee
February 6, 2025

Chairman Schauer, Vice Chairman Satrom, members of the House Government and Veterans Affairs Committee, I am North Dakota Insurance Commissioner Jon Godfread, and I appreciate this opportunity to submit testimony in strong support for House Bill No. 1601, which seeks to amend Section 54-12-08 of the North Dakota Century Code concerning the appointment and revocation of Special Assistant Attorneys General (SAAGs).

Rationale for Support:

House Bill No. 1601 proposes a critical amendment to ensure that the Attorney General cannot revoke the appointment of a SAAG, who is licensed, in good standing, and employed by specified state officials or entities. We believe this is essential for two core reasons:

1. **Preservation of Institutional Knowledge and Continuity:** SAAGs employed within our department possess specialized knowledge and experience pertinent to our operations. Unwarranted revocation of their appointments disrupts ongoing projects and hampers the continuity of legal counsel, adversely affecting our department's efficiency and effectiveness.
2. **Safeguarding Against Unwarranted Revocation:** The bill ensures that SAAGs can perform their duties without fear of arbitrary dismissal. This protection fosters an environment where legal advisors can provide candid and objective counsel, which is indispensable for informed decision-making within state agencies.

Enhancing House Bill No. 1601

The current framework of House Bill No. 1601 is a step in the right direction. By removing the ability of the Attorney General to revoke a SAAG appointment arbitrarily, the bill ensures stability, fairness, and the uninterrupted legal functioning of state agencies. However, I urge the committee to go further by explicitly recognizing the constitutional authority and independence of state officers to appoint their own legal counsel as an inherent function of their office.

As constitutional officers duly elected by the people of North Dakota, we are entrusted with the authority and responsibility to carry out the duties of our respective agencies effectively. A fundamental part of that duty includes having access to independent, qualified legal counsel who can provide expert guidance tailored to the complex and specific legal matters that arise within our agencies. The ability of another constitutional officer—the Attorney General—to obstruct or deny that appointment of an attorney, who is licensed and in good standing with the state bar, is an excessive concentration of discretionary power over elected officials. Such a structure has the potential to interfere

with the ability of constitutional officers to execute their legally mandated responsibilities efficiently and effectively.

To be clear, there is no question that the Attorney General is the chief legal officer of the state, responsible for representing North Dakota, and the Attorney General should be overseeing the attorneys working under his direct supervision. However, attorneys within an agency serve in the role as advisor to their agency head. My general counsel and Department attorneys primarily provide legal counsel on all matters concerning the department. This includes conducting legal research, advising on regulatory compliance, drafting and reviewing contracts, participating in administrative enforcement actions, and assisting with the investigation of potential violations of insurance laws and administrative rules. It is my role—not the Attorney General—to oversee how these duties are carried out and maintain my agency as a fully independent office.

It is important to highlight that when we seek legal services from the Attorney General's office, those services come at a cost. The agency must pay for that representation. This underscores the fact that legal services provided by the Attorney General's office are not an automatic entitlement but rather a transactional arrangement. It further reinforces the need for agencies to have their own dedicated legal counsel who understand the nuances of their operations. Agency attorneys must be independent when directing the course of legal actions taken at my direction. As the insurance commissioner, I have the responsibility of overseeing the attorneys employed by the department and I am in the best position to determine where they demonstrate and encompass the necessary character to represent the Department goals and mandates. This ensures continuity and efficiency in legal matters that do not require direct Attorney General involvement.

Rationale for Allowing Direct Appointment Authority

1. **Constitutional Powers and Responsibilities:** Each of the constitutional officers listed in House Bill No. 1601—Governor, Agriculture Commissioner, State Auditor, Insurance Commissioner, Public Service Commissioner, Secretary of State, Superintendent of Public Instruction, Tax Commissioner, and State Treasurer—has distinct, constitutionally granted powers and responsibilities. To fulfill their duties effectively, these officers must have access to legal counsel aligned with their priorities and perspectives. Requiring the Attorney General's approval in appointing attorneys to support their work creates an unnecessary dependency that undermines the autonomy of these offices.
2. **Checks and Balances:** Our system of government is built on a balance of powers, where constitutional officers operate independently within their spheres of authority. Allowing these officers to directly appoint licensed and qualified attorneys ensures they have the resources necessary to carry out their mandates, without external interference or delay, or political engagement. This approach reinforces the principle of checks and balances by preventing any single office from exerting undue influence over others.
3. **Practical Benefits:**

- **Efficiency:** Allowing constitutional officers to appoint licensed attorneys in good standing without the unnecessary oversight removes bureaucratic delays and ensures immediate access to legal expertise tailored to their needs.
- **Alignment with Priorities:** Removing Attorney General discretion over attorneys already licensed and in good standing can provide counsel fully aligned with the office's strategic objectives and unique challenges.
- **Specialization:** Constitutional officers often require legal advice in specialized areas. By empowering them to appoint counsel with specific expertise, we enhance the effectiveness of state governance.
- **Bias:** Ensures the removal of any potential influence allowing the Attorney General discretion to appoint or not appoint a Special Assistant Attorney General based on political or other biases, thereby safeguarding against the use of such appointments for personal or ideological motives.

Proposed Amendment

The bill could be further strengthened by explicitly granting constitutional officers the authority to appoint licensed attorneys in good standing to work in their offices. This amendment would align with the constitutional powers granted to these offices and reflect their unique operational needs.

Benefits of the Proposed Amendment

1. **Strengthening Accountability:** Constitutional officers are directly accountable to the people of North Dakota. Providing them with the autonomy to appoint legal counsel ensures that they can fulfill their responsibilities without constraints that may dilute their accountability.
2. **Promoting Independence:** Independent legal counsel enhances the ability of constitutional officers to advocate for the interests of their constituents and departments without undue reliance on external offices.
3. **Supporting Good Governance:** Streamlined legal appointment processes reduce inefficiencies, enhance operational clarity, and enable constitutional officers to address issues proactively.

House Bill No. 1601 provides a necessary safeguard for the appointment and retention of agency SAAGs, by granting these officers the authority to appoint licensed attorneys in good standing without the unnecessary discretion of the Attorney General, we can strengthen their ability to serve the people of North Dakota efficiently, independently, and effectively.

I respectfully urge the committee to support this bill and consider the proposed amendment to ensure that our constitutional officers have the tools they need to fulfill their mandates. Thank you for your time and attention, and I am happy to answer any questions.

PROPOSED AMENDMENT

HOUSE BILL NO. 1601

Sixty-ninth
Legislative Assembly
of North Dakota

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.

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

4 **SECTION 1. AMENDMENT.** Section 54--120--8 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
13 appointed, or state department, board, commission, committee, or agency may
14 not employ legal counsel, and no person may act as legal counsel in any matter,
15 action, or proceeding in which the state or any state department, board,
16 commission, committee, or agency is interested or is a party, except upon written
17 appointment by the attorney general.

18 b. Workforce safety and insurance, the department of transportation, the
19 state tax commissioner, the public service commission, the insurance
20 commissioner, the agriculture commissioner, and the securities commissioner
21 may employ attorneys to represent them. These entities shall pay the salaries
22 and expenses of the attorneys they employ within the limits of legislative
23 appropriations.

Legislative Assembly

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

8 2. TheNotwithstanding any other provisions of this section, the attorney general may not refuse
9 to appoint an attorney as a special assistant attorney general and may not revoke the
10 appointment of a special assistant with good cause, an appointed attorney general licensed to
11 practice law in the state, in good standing, and employed by the:

12 a. Governor;

13 b. Agriculture commissioner;

14 c. State auditor;

15 d. Insurance commissioner;

16 e. Public service commissioner;

17 f. Secretary of state;

18 g. Superintendent of public instruction;

19 h. Tax commissioner; or

20 i. State treasurer.

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

28 3.4. The attorney general may require payment for legal services rendered by any
29 assistant or special assistant attorney general to any state official, board, department,
30 agency, or commission and those entities shall make the required payment to the
31 attorney general. Moneys received by the attorney general in payment for legal
32 services rendered must be deposited into the attorney general's operating fund.

Legislative Assembly

1 General fund moneys may not be utilized for the payment of legal services provided by
2 the attorneys employed by the attorney general, except for those payments required of
3 the department of health and human services, department of environmental quality,
4 and the state hospital.

5 4-5. An assistant or special assistant attorney general appointed to represent the
6 state board of higher education or an institution under the control of the state board of
7 higher education may access and examine any record under the control of the state
8 board of higher education. For purposes of reviewing records under the Family
9 Educational Rights and Privacy Act [20 U.S.C. 1232g; 34 CFR 99] or any other federal
10 privacy law, the assistant or special assistant attorney general is considered a state
11 educational official authorized to access student records.