



# North Dakota House of Representatives

STATE CAPITOL  
600 EAST BOULEVARD  
BISMARCK, ND 58505-0360



## Representative Emily O'Brien

District 42  
2029 Second Avenue North  
Grand Forks, ND 58203-3311  
[eobrien@ndlegis.gov](mailto:eobrien@ndlegis.gov)

## COMMITTEES:

Appropriations  
Appropriations - Human Resources Division

03/28/2025

## House Bill 1601

### Senate State and Local Government Committee

Chair Roers and members of the Senate State and Local Government 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 attorneys general. This bill deals with the hiring of special assistant attorneys 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**
2. **Eliminating Conflicts of Interest**
3. **Ensuring Legal and Ethical Accountability**
4. **Preventing Undue Political Influence**
5. **Restoring Control and Fiscal Responsibility**

Before you are two amendments.

**Amendment 25.1289.02001**

Page 2, Line 7 - would remove the word 'or' to 'and'. The attorney general may revoke the appointment only for good cause ~~or~~and upon the request of the entity.

Page 2, Lines 10-22 would remove this language. And restating it below:

2.-Notwithstanding any other provisions of this section, if an attorney is employed by the governor, agriculture commissioner, state auditor, insurance commissioner, public service commission, secretary of state, superintendent of public instruction, tax commissioner, state treasurer, or department of water resources, 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.

**Amendment 25.1289.02002**

This is the exact same amendment above, but would add in ethics commission on page 2, line 25.

The reasoning for adding the ethics commission, is this is another special assistant attorneys general position and they fall under the justification of separation of powers between these branches of government.

House Bill 1601 is good governance. I believe it will bring accountability, fiscal responsibility, and control to agencies. Thank you, Chair Roers and members of the committee. I am happy to answer any questions.

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 insurance commissioner, the  
20 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, agriculture commissioner, state auditor, insurance commissioner, public service commission, secretary of state, superintendent of public instruction, tax commissioner, state treasurer, or department of water resources, 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.

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

8       ~~3.4.~~   The attorney general may require payment for legal services rendered by any  
9           assistant or special assistant attorney general to any state official, board, department,  
10          agency, or commission and those entities shall make the required payment to the  
11          attorney general. Moneys received by the attorney general in payment for legal  
12          services rendered must be deposited into the attorney general's operating fund.  
13          General fund moneys may not be utilized for the payment of legal services provided by  
14          the attorneys employed by the attorney general, except for those payments required of  
15          the department of health and human services, department of environmental quality,  
16          and the state hospital.

17       ~~4.5.~~   An assistant or special assistant attorney general appointed to represent the state  
18          board of higher education or an institution under the control of the state board of  
19          higher education may access and examine any record under the control of the state  
20          board of higher education. For purposes of reviewing records under the Family  
21          Educational Rights and Privacy Act [20 U.S.C. 1232g; 34 CFR 99] or any other federal  
22          privacy law, the assistant or special assistant attorney general is considered a state  
23          educational official authorized to access student records.

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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  
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20 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.

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~~i. State treasurer.~~

Notwithstanding any other provisions of this section, if an attorney is employed by the governor, agriculture commissioner, state auditor, insurance commissioner, public service commission, ethics commission, secretary of state, superintendent of public instruction, tax commissioner, state treasurer, or department of water resources, the attorney general may not:

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