

**2025 HOUSE GOVERNMENT AND VETERANS AFFAIRS**

**HB 1601**

# 2025 HOUSE STANDING COMMITTEE MINUTES

## Government and Veterans Affairs Committee Pioneer Room, State Capitol

HB 1601  
2/6/2025

Relating to special assistant attorney generals.
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8:32 a.m. Chairman Schauer opened the hearing.

Members present: Chairman Schauer, Vice Chairman Satrom, Representatives Bahl, Brown, Grindberg, Karls, McLeod, Rohr, Schneider, Steiner, VanWinkle, Vetter, Wolff

Members absent: Representative Christy

### Discussion Topics:

- Proposed amendments relating to appointees
- Complexity of water law
- Responsibility requires specialized knowledge of water law
- Proposed amendments relating to appointees from the insurance commissioner

8:32 a.m. Representative O'Brien, District 42, introduced the bill and submitted testimony, #35793.

8:41 a.m. Reice Haase, Director of the Department of Water Resources, testified in favor and submitted testimony, #35774.

8:53 a.m. Christopher Joseph, General Counsel to the Governor, testified in favor.

8:57 a.m. Matt Fischer, Division Director for the Company Licensing Examinations of the North Dakota Insurance Department, testified in favor on behalf of Insurance Commissioner Jon Godfread and submitted testimony, #35849.

8:59 a.m. Mary Kae Kelsch, Director of the General Counsel Division in the Attorney General's Office, testified in opposition and submitted testimony, #35847.

9:08 a.m. Chairman Schauer closed the hearing.

*Jackson Toman, Committee Clerk*

TESTIMONY OF

**Reice Haase, Director, Department of Water Resources**

Chairman Schauer, and members of the House Government and Veterans Affairs Committee – I am Reice Haase, Director of the Department of Water Resources (DWR). I am here today to testify in support of House Bill (HB) 1601, specifically in support of the proposed amendment to add the DWR to subsection 2 of North Dakota Century Code (NDCC) 54-12-08.

**1. Complexity of Re-organized Department Necessitates its Own Attorney**

The vital role of managing North Dakota's water resources was recognized by the framers of North Dakota's State Constitution, and since statehood, protection of our waters has been enshrined in our constitution:

*All flowing streams and natural watercourses shall forever remain the property of the state for mining, irrigating and manufacturing purposes. – Article XI, Section 3*

Historically, water resource management was entrusted to the Office of the State Engineer, established in 1905. The State Water Commission was later created in 1937 with its primary purpose being the development of water projects. Throughout much of its history, the Office of the State Engineer and State Water Commission had its own attorney on staff to advise it on legal issues. However, budget cuts in the mid-1990s led to the elimination of this position, and further reductions in 2017 removed the Commission's paralegal position. **Since that time, the agency has relied solely on either the Attorney General's Office or outside counsel for legal advice.**

Recognizing the growing complexities of water management, the 2021 Legislative Assembly created DWR by merging the Office of the State Water Commission and the Office of the State Engineer, elevating it to a cabinet agency directly accountable to the Governor. **Despite the expansion of responsibilities, the agency's general counsel position has yet to be restored.**

# DWR ORGANIZATIONAL CHART

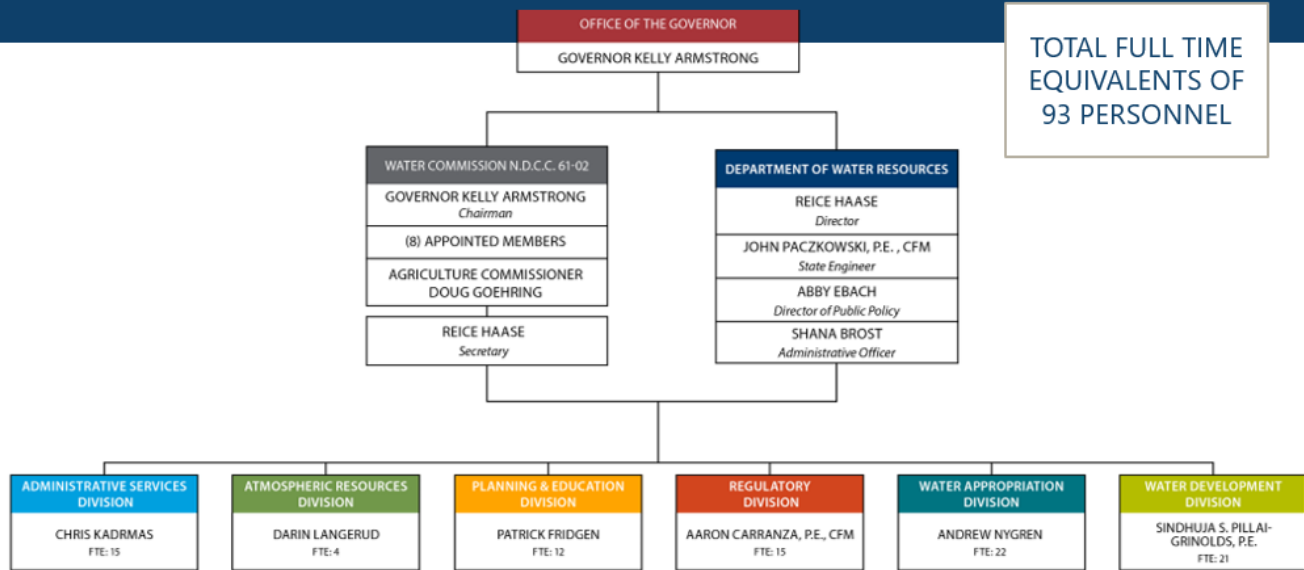


Figure 1: Organization Chart for DWR and State Water Commission. The Commission's role is primarily related to cost-share for water projects and oversight on state-owned projects, whereas DWR is tasked with regulatory oversight and management.

## GENERAL COUNSEL

AGENCY IN-HOUSE LEGAL SERVICES COMPARISON			
Agency	Attorneys	Other Legal Support	Total Legal Support In-House
Transportation	2	8 (hearing officers) (3 FTE, 5 Temp)	10
Trust Lands	1	1	2
Public Service Commission	2	0.5	2.5
Agriculture	1	0	1
Environmental Quality	0	1	1
<b>Water Resources</b>	<b>0</b>	<b>0</b>	<b>0</b>

Figure 2: Comparison of DWR to other state agencies with in-house legal counsel. Despite its increase in responsibilities and scope-of-work, DWR has not had its in-house legal counsel position restored.

## 2. An Attorney is Needed Due to Increasing Complexity in Water Law

DWR requires substantial legal expertise to fulfill its core responsibilities, which include:

- Water project development
- Appropriation of surface and groundwater
- Regulation of drainage, dams, floodplain management and sovereign lands

**All of these responsibilities require a specialized knowledge of water law.**

The Assistant Attorney General currently supporting DWR is also tasked with representing other agencies and boards like the Dept. of Environmental Quality, Game & Fish, Parks and Recreation, Dept. of Agriculture, Dept. of Trust Lands, and the Public Service Commission. These agencies all play an important and increasingly complex role in the management of North Dakota's natural resources, which in turn places more demand on the Attorney General's (AG) Office. **An in-house attorney at DWR would not replace the important work of the AG's Office, but would complement and enhance it, granting DWR the specialized and dedicated legal advice it needs to continue management of North Dakota's water resources.**

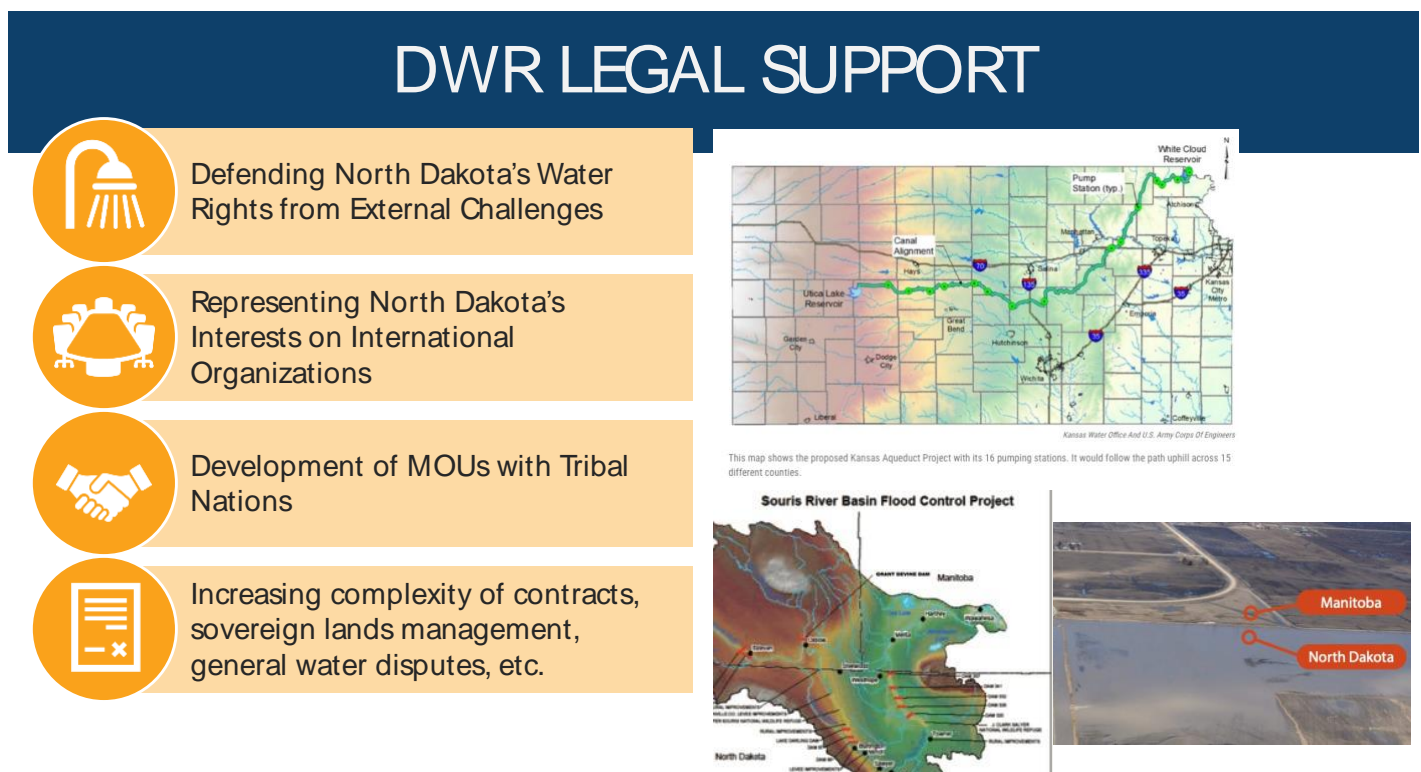


Figure 3: Summary of DWR legal support needs.

DWR is currently requesting funding for a General Counsel position as part of HB 1020, our agency's appropriation bill. The necessity for this addition is underscored by increasing legal complexities in:

- Construction management and contracting
- Development of Memoranda of Understanding (MOUs) with Tribal Nations
- Federal challenges to North Dakota's water rights
- Representation in international water management organizations
- Sovereign lands management and water-related disputes

**Approval of the proposed amendment adding DWR to NDCC 54-12-08 will ensure that DWR receives the legal support necessary to effectively safeguard North Dakota's water resources.**

### **3. The Requested Attorney for DWR Has Overwhelming Support from Stakeholders**

Key stakeholders from North Dakota's agriculture and energy industries have testified in strong support of DWR's request for restoring the in-house general counsel position. These industries contribute over 63% of the state's tax revenues, funding critical infrastructure, education, and public services. They recognize that water resource management is integral to North Dakota's future.

*North Dakota is involved in continual international discussions over water. **While we participate politically, we've lacked continual, constant legal representation to support DWR attendance.** Additionally, North Dakota experiences numerous agricultural land drainage legal issues regarding local government compliance and interpretation of existing state law and Water Commission policy. **These are legal issues, not engineering issues, and the Commission/DWR usually gets included in these issues.** Based on my experiences, I support a DWR full time staff lawyer.*

- Former Rep. Jim Schmit



*This is not just about protecting a resource; it's about defending North Dakota's sovereignty, securing economic stability, and preserving our ability to grow and innovate. **Without this investment in legal counsel, we risk losing the ability to effectively counter regulatory and legal challenges that could have far-reaching consequences for our state.***

- Jonathan Fortner, Lignite Energy Council

*An in-house general counsel will give the Department of Water Resources the expertise and capacity to protect our water rights.*

***We strongly encourage you to make this investment and protect our state's most vital resource.***

- Matt Perdue, North Dakota Farmers Union



*North Dakota Grain Growers Association strongly supports the addition of a new attorney position within the Department of Water Resources as proposed in HB 1020. Water is a critical resource for our state's agriculture industry, and **having adequate legal expertise within the department is essential for addressing the complex water issues that impact our members.***

- Dan Wogsland, North Dakota Grain Growers Association

***The inclusion of a general counsel for the ND Department of Water Resources is an essential step in protecting North Dakota's water sovereignty, infrastructure investments, and long-term economic growth.*** *Without dedicated legal expertise, the state is at risk of losing control over its water resources to out-of-state interests and facing costly legal battles that could delay or derail critical water projects.*

- Duane DeKrey, Garrison Diversion Conservancy District





# 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

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.

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**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

HOUSE GOVERNMENT AND VETERANS AFFAIRS  
FEBRUARY 6, 2025

TESTIMONY OF MARY KAE KELSCH  
OFFICE OF ATTORNEY GENERAL  
HOUSE BILL NO. 1601

Mr. Chairman, members of the Committee.

I am Mary Kae Kelsch, the Director of the General Counsel Division in the Attorney General's Office, and I appear on behalf of the Attorney General to oppose House Bill 1601.

Powers and Responsibilities of the Attorney General

The attorney general is a constitutional officer; he is the law officer of the state and the head of its legal department. Const. Art. 5, § 2. *State v. Hagerty*, 1998, 580 N.W.2d 139. Given the duties of the attorney general, he is the chief law officer of the state. *State ex rel. Johnson v. Baker*, 21 N.W.2d 355, 364 (1945). Additionally, it is well established that the attorney general is vested with important powers and duties by common law,<sup>1</sup> as expressed by courts, and the North Dakota Supreme Court has recognized that the power of the Attorney General's office is established in common law. *State v. Hagerty*, 1998, 580 N.W.2d 139, 146.

Along with the authority vested in the attorney general come the solemn responsibilities to protect the state's legal interests and defend the constitutionality

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<sup>1</sup> See also, National Association of Attorneys General, *State Attorneys Powers and Duties*, Ch. 3, 4<sup>th</sup> ed. (2018).

of the statutes passed by you, our elected legislators. These duties fall to the state's chief legal officer because he is the accountable, elected official with the necessary training and legal education to carry them out.

The responsibility of ensuring that our state is represented by competent and ethical attorneys has been the duty of the office of attorney general since the drafting of our state constitution. The law provides that the attorney general may appoint assistants or special assistant attorneys general to represent the state and that no person may act as legal counsel in any matter, action, or proceeding in which the state is a party without written appointment by the attorney general. N.D.C.C. 54-12-08(1). It would be a disservice to the state and its electors if the attorney general did not have any influence over the employment of these attorneys. After all, their authority is delegated from the attorney general to carry out his constitutional and other duties to the state.

#### Special Assistant Attorney General Appointment and Revocation

This legislation seems to arise from misunderstandings about the employment of special assistant attorneys general. One of the cosponsors told our office that she signed onto the bill because she was told by a legislator that the current Attorney General was revoking multiple special assistant attorney general designations around state government. This is not true. When the cosponsor was informed that it is not true, she said she changed her mind about being a cosponsor. She also said we could share that information.

I am not aware of any instance where an attorney hired by an authorized state agency was denied a special assistant designation by the attorney general. The process of obtaining the designation is straightforward. Following the process diligently is necessary to ensure the state hires attorneys with good ethics records and the credentials to provide competent legal counsel.

I am aware of only one instance where the current Attorney General revoked an appointment of a special assistant attorney general. In that case, a long-time assistant attorney general and a long-time special assistant attorney general working in another agency identified serious ethical violations by the attorney at issue. They raised their concerns through the senior leadership of the Attorney General's office and advised the head of the affected agency. After an extensive review of the facts and multiple meetings with staff attorneys, senior office leadership, and the affected agency leader, the Attorney General advised the individual of the ethical concerns about him and gave him an opportunity to respond. After reviewing and discussing the response within the office and with the affected agency leader, the Attorney General revoked the special assistant attorney general authorization from the individual.<sup>2</sup>

To be clear, this is the only revocation of a special assistant designation by the current Attorney General, and the Attorney General has never revoked a special assistant designation against the wishes of an agency head or public official. The revocation of an appointment by the attorney general is extremely rare, but the

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<sup>2</sup> The attorneys agreed that, under North Dakota Rule of Professional Conduct 8.3, the office had an obligation to report the matter to the State Bar of North Dakota.

ability to do so is necessary to ensure that our state is represented by experienced, competent, and ethical attorneys.

The Attorney General's office urges a Do Not Pass on House Bill 1601.



**NORTH DAKOTA**  
Insurance Department

## 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**  
Sixty-ninth  
Legislative Assembly  
of North Dakota

**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.

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. AfterExcept 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. ~~The~~Notwithstanding 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.

# 2025 HOUSE STANDING COMMITTEE MINUTES

## Government and Veterans Affairs Committee Pioneer Room, State Capitol

HB 1601  
2/21/2025

Relating to special assistant attorney generals.
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9:44 a.m. Chairman Schauer opened the meeting.

Members present: Chairman Schauer, Vice Chairman Satrom, Representatives Bahl, Brown, Christy, Grindberg, Karls, McLeod, Rohr, Schneider, Steiner, VanWinkle, Vetter, Wolff

### Discussion Topics:

- Committee action
- Proposed amendments relating to revocation of appointees
- Proposed amendments relating to constitutional office holders
- Proposed amendments relating to appointees

9:47 a.m. Mary Kae Kelsch, Assistant Attorney General, testified and answered questions.

9:57 a.m. Representative Brown introduced amendments LC#25.1329.01003, #45239.

10:01 a.m. Representative Rohr moved to adopt the LC#25.1329.01003 amendment.

10:01 a.m. Representative Grindberg seconded the motion.

Representatives	Vote
Representative Austen Schauer	N
Representative Bernie Satrom	Y
Representative Landon Bahl	AB
Representative Collette Brown	Y
Representative Karen Grindberg	Y
Representative Karen Karls	N
Representative Carrie McLeod	Y
Representative Karen Rohr	Y
Representative Mary Schneider	N
Representative Vicky Steiner	N
Representative Lori VanWinkle	Y
Representative Steve Vetter	Y
Representative Christina Wolff	Y

10:02 a.m. Motion passed 8-4-1.

10:03 a.m. Chairman Schauer recessed the committee.

10:28 a.m. Chairman Schauer opened the meeting.

10:29 a.m. Insurance Commissioner Godfread testified and answered questions.

10:40 a.m. Representative Steiner moved to further amend by removing non-constitutional office holders.

10:42 a.m. Representative VanWinkle seconded the motion.

<b>Representatives</b>	<b>Vote</b>
Representative Austen Schauer	Y
Representative Bernie Satrom	Y
Representative Landon Bahl	Y
Representative Collette Brown	N
Representative Karen Grindberg	Y
Representative Karen Karls	Y
Representative Carrie McLeod	Y
Representative Karen Rohr	Y
Representative Mary Schneider	N
Representative Vicky Steiner	Y
Representative Lori VanWinkle	Y
Representative Steve Vetter	Y
Representative Christina Wolff	Y

10:43 a.m. Motion passed 11-2-0.

10:44 a.m. Mary Kae Kelsch, Assistant Attorney General, testified and answered questions.

10:46 a.m. Representative Steiner moved to further amend by changing 'or' to 'and' on line 3.

10:46 a.m. Representative VanWinkle seconded the motion.

<b>Representatives</b>	<b>Vote</b>
Representative Austen Schauer	Y
Representative Bernie Satrom	Y
Representative Landon Bahl	Y
Representative Collette Brown	Y
Representative Karen Grindberg	Y
Representative Karen Karls	Y
Representative Carrie McLeod	Y
Representative Karen Rohr	Y
Representative Mary Schneider	Y
Representative Vicky Steiner	Y
Representative Lori VanWinkle	Y
Representative Steve Vetter	Y
Representative Christina Wolff	Y

10:47 a.m. Motion passed 13-0-0.

10:47 a.m. Representative Bahl moved a Do Pass as three times amended.

10:47 a.m. Representative VanWinkle seconded the motion.

<b>Representatives</b>	<b>Vote</b>
Representative Austen Schauer	Y
Representative Bernie Satrom	Y
Representative Landon Bahl	Y
Representative Collette Brown	N
Representative Karen Grindberg	Y
Representative Karen Karls	N
Representative Carrie McLeod	Y
Representative Karen Rohr	Y
Representative Mary Schneider	Y
Representative Vicky Steiner	Y
Representative Lori VanWinkle	Y
Representative Steve Vetter	Y
Representative Christina Wolff	Y

10:49 a.m. Motion passed 11-2-0.

Representative Steiner will carry the bill.

10:49 a.m. Chairman Schauer closed the meeting.

*Jackson Toman, Committee Clerk*

Sixty-ninth  
Legislative Assembly  
of North Dakota

**PROPOSED AMENDMENTS TO**

**HOUSE BILL NO. 1601**

Introduced by

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

Senators Lee, Roers

2-21-25

JB 10/3

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 54-12-08 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



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

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

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

- 14 a. Governor;  
15 b. Agriculture commissioner;  
16 c. State auditor;  
17 d. Insurance commissioner;  
18 e. Public service commissioner;  
19 f. Secretary of state;  
20 g. Superintendent of public instruction;  
21 h. Tax commissioner; or  
22 i. State treasurer.

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

30 ~~3.4.~~ The attorney general may require payment for legal services rendered by any  
31 assistant or special assistant attorney general to any state official, board, department,

1           agency, or commission and those entities shall make the required payment to the  
2           attorney general. Moneys received by the attorney general in payment for legal  
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4           General fund moneys may not be utilized for the payment of legal services provided by  
5           the attorneys employed by the attorney general, except for those payments required of  
6           the department of health and human services, department of environmental quality,  
7           and the state hospital.

8       4.5.   An assistant or special assistant attorney general appointed to represent the state  
9           board of higher education or an institution under the control of the state board of  
10          higher education may access and examine any record under the control of the state  
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12          Educational Rights and Privacy Act [20 U.S.C. 1232g; 34 CFR 99] or any other federal  
13          privacy law, the assistant or special assistant attorney general is considered a state  
14          educational official authorized to access student records.

**REPORT OF STANDING COMMITTEE  
HB 1601**

**Government and Veterans Affairs Committee (Rep. Schauer, Chairman)** recommends **AMENDMENTS** ([25.1289.01001](#)) and when so amended, recommends **DO PASS** (11 YEAS, 2 NAYS, 0 ABSENT OR EXCUSED AND NOT VOTING). HB 1601 was placed on the Sixth order on the calendar.

25.1329.01003  
Title.02000

Prepared by the Legislative Council  
staff for Representative Brown  
February 6, 2025

Sixty-ninth  
Legislative Assembly  
of North Dakota

## PROPOSED AMENDMENTS TO

### HOUSE BILL NO. 1603

Introduced by

Representatives Brown, Davis, Finley-DeVille, Ista, Nelson

Senators Boschee, Braunberger, Mathern

1 A BILL for an Act to provide an appropriation to the state historical society for Native American  
2 ~~grave protection and repatriation projects.~~for an Act to provide an appropriation to the state  
3 ~~historical society for Native American grave protection and repatriation compliance efforts.~~

4 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

5 ~~SECTION 1. APPROPRIATION - STATE HISTORICAL SOCIETY - NATIVE AMERICAN~~  
6 ~~GRAVE PROTECTION AND REPATRIATION PROJECTS.~~

7 ~~1. There is appropriated out of any moneys in the general fund in the state treasury, not~~  
8 ~~otherwise appropriated, the sum of \$5,000,000, or so much of the sum as may be~~  
9 ~~necessary, to the state historical society for projects to allow the state to comply with~~  
10 ~~the federal Native American Graves Protection and Repatriation Act, for the biennium~~  
11 ~~beginning July 1, 2025, and ending June 30, 2027.~~  
12 ~~2. The state historical society may use the funding provided under this section to:~~  
13 ~~a. Provide grants to tribal entities to consult with museums, federal agencies, and~~  
14 ~~institutions to facilitate the repatriation of Native American human remains;~~  
15 ~~funerary objects, sacred objects, and objects of cultural patrimony.~~  
16 ~~b. Provide grants to museums and cultural institutions for the purpose of improving~~  
17 ~~the identification, inventory, and repatriation of Native American cultural items.~~  
18 ~~c. Enhance state and tribal capacity to manage and oversee compliance efforts;~~  
19 ~~including funding for staffing, training, and consultation with affected~~  
20 ~~communities.~~



- ~~1 d. Conduct field surveys, inventories, and documentation of cultural items.~~
- ~~2 e. Pay for administrative, legal, and training costs related to compliance with federal~~
- ~~3 requirements and for the development of training materials and workshops.~~
- ~~4 3. The state historical society shall prioritize the use of funding for projects that directly~~
- ~~5 address the repatriation of culturally significant human remains and funerary objects,~~
- ~~6 provide consultation opportunities between tribes and institutions holding Native~~
- ~~7 American collections, and assist tribes in the development of long-term cultural~~
- ~~8 preservation plans.~~
- ~~9 4. The state historical society shall establish a timeline for the repatriation of~~
- ~~10 identified items to tribal communities.~~

**SECTION 1. APPROPRIATION - STATE HISTORICAL SOCIETY - NATIVE AMERICAN  
GRAVE PROTECTION AND REPATRIATION COMPLIANCE.**

1. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$500,000, or so much of the sum as may be necessary, to the state historical society for the purpose of providing compliance with the federal Native American Graves Protection and Repatriation Act, for the biennium beginning July 1, 2025, and ending June 30, 2027.
2. The state historical society shall use the funds provided under this section to establish a compliance committee consisting of tribal historic preservation officers or their designees from each North Dakota tribe with an agreement pursuant to chapter 54-40.2. The committee must consist of representatives from the state historical society, Indian affairs commission, and the attorney general's office. Each tribe participating on the committee may provide matching funds of up to \$100,000 for committee efforts. All funds received for compliance efforts under this section must be placed into a separate account with oversight by the office of management and budget.
3. The committee must identify and prioritize compliance efforts for the repatriation of culturally significant human remains, funerary objects, sacred objects, and objects of cultural patrimony, including funding for staffing, training, and consultation with the tribal historic preservation offices. The compliance committee shall develop policies to facilitate meetings, grant usage, training, consultation, compliance timelines, training,

- 1           and documentation requirements that directly address the repatriation of culturally
- 2           significant items to North Dakota tribal nations.
- 3        4.   The appropriation provided in this section does not authorize any new scientific study
- 4           of Native American ancestral remains or burial property, as outlined in the federal
- 5           Native American Graves Protection and Repatriation Act, nor may the funds be
- 6           appropriated for such studies.

**2025 SENATE STATE AND LOCAL GOVERNMENT**

**HB 1601**

# 2025 SENATE STANDING COMMITTEE MINUTES

## State and Local Government Committee Room JW216, State Capitol

HB 1601  
3/28/2025

Relating to special assistant attorney generals.
--

10:24 a.m. Chair Roers called the hearing to order.

Members Present: Chairman Roers; Vice Chair Castaneda; Senators: Barta, Braunberger, Lee and Walen.

### Discussion Topics:

- Protecting state government integrity
- Ensuring accountability
- Separation of powers
- Eliminates conflict of interest
- Department of Water Resources
- Provides clarity and protection
- Preservation of knowledge and continuity
- Possible dual loyalty conflict

10:24 a.m. Representative O'Brien, District #42, introduced the bill and submitted testimony #44378.

10:29 a.m. Reice Haase, Director Department of Water Resources, testified in favor and submitted testimony #44359.

10:34 a.m. Chris Joseph, General Council Governor's Office, testified in favor.

10:38 a.m. Jon Godfread, ND Insurance Commissioner, testified in favor and submitted testimony #44380.

10:50 a.m. Rebecca Binstock, Executive Director ND Ethics Commission, testified in favor.

10:53 a.m. Claire Ness, Chief Deputy Attorney General, testified in opposition and submitted testimony #44384.

11:22 a.m. Chair Roers closed the hearing.

*Susan Helbling, Committee Clerk*



TESTIMONY OF

**Reice Haase, Director, Department of Water Resources**

Chair Roers, and members of the Senate State and Local Government Committee – I am Reice Haase, Director of the Department of Water Resources (DWR). I am here today to testify in support of House Bill (HB) 1601, specifically in support of the proposed amendment to add the DWR to subsection 2 of North Dakota Century Code (NDCC) 54-12-08.

DWR is currently requesting funding for a General Counsel position in HB 1020, our agency's appropriation bill. This request is also tied to the passage of the amended version of HB 1601.

**Approval of both HB 1601 and our General Counsel request in HB 1020 would enhance our work with the Attorney General's Office in ensuring that North Dakota's water rights are protected.**

**1. Complexity of State Water Commission and Re-organized Department Necessitates the Addition of DWR to HB 1601**

Historically, water resource management was entrusted to the Office of the State Engineer, established in 1905. The State Water Commission was later created in 1937 with its primary purpose being the development of water projects. Throughout much of its history, the Office of the State Engineer and State Water Commission had its own attorney on staff to advise it on legal issues. However, budget cuts in the mid-1990s led to the elimination of this position, and further reductions in 2017 removed the Commission's paralegal position. **Since that time, the State Water Commission and the agency have relied solely on either the Attorney General's Office or outside counsel for legal advice.**

Recognizing the growing complexities of water management, the 2021 Legislative Assembly created DWR by merging the staffing role of the State Water Commission and the Office of the State Engineer, elevating it to a cabinet agency directly accountable to the Governor. **Despite the expansion of responsibilities, the agency's general counsel position has yet to be restored.**

# DWR ORGANIZATIONAL CHART

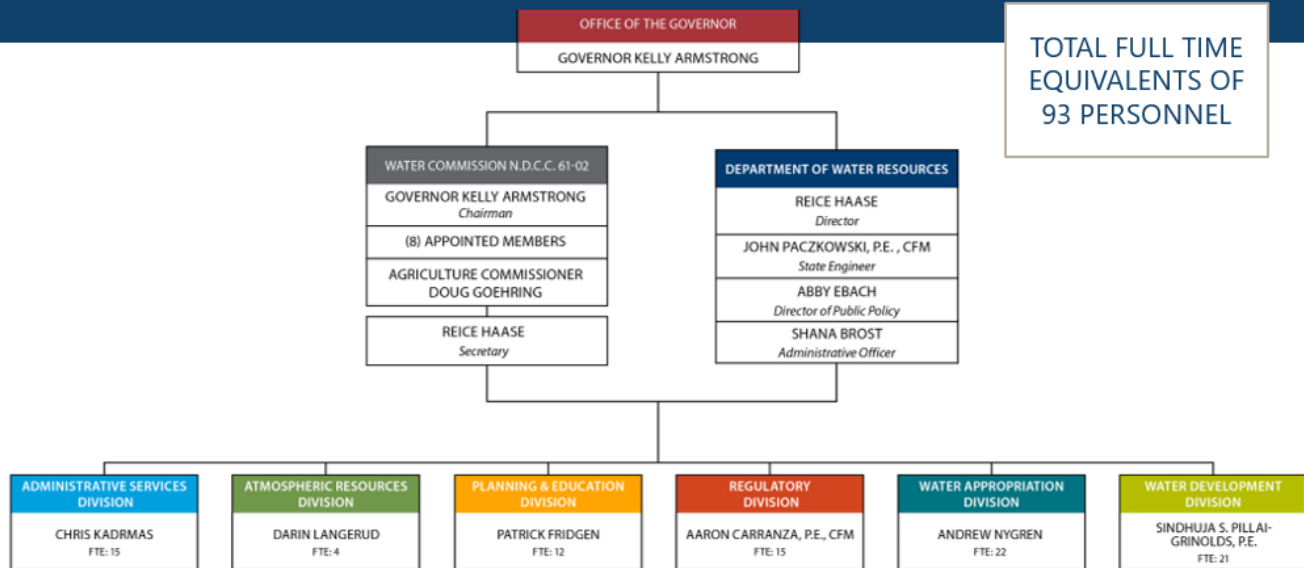


Figure 1: Organization Chart for DWR and State Water Commission. The Commission's role is primarily related to cost-share for water projects and oversight on state-owned projects, whereas DWR is tasked with regulatory oversight and management.



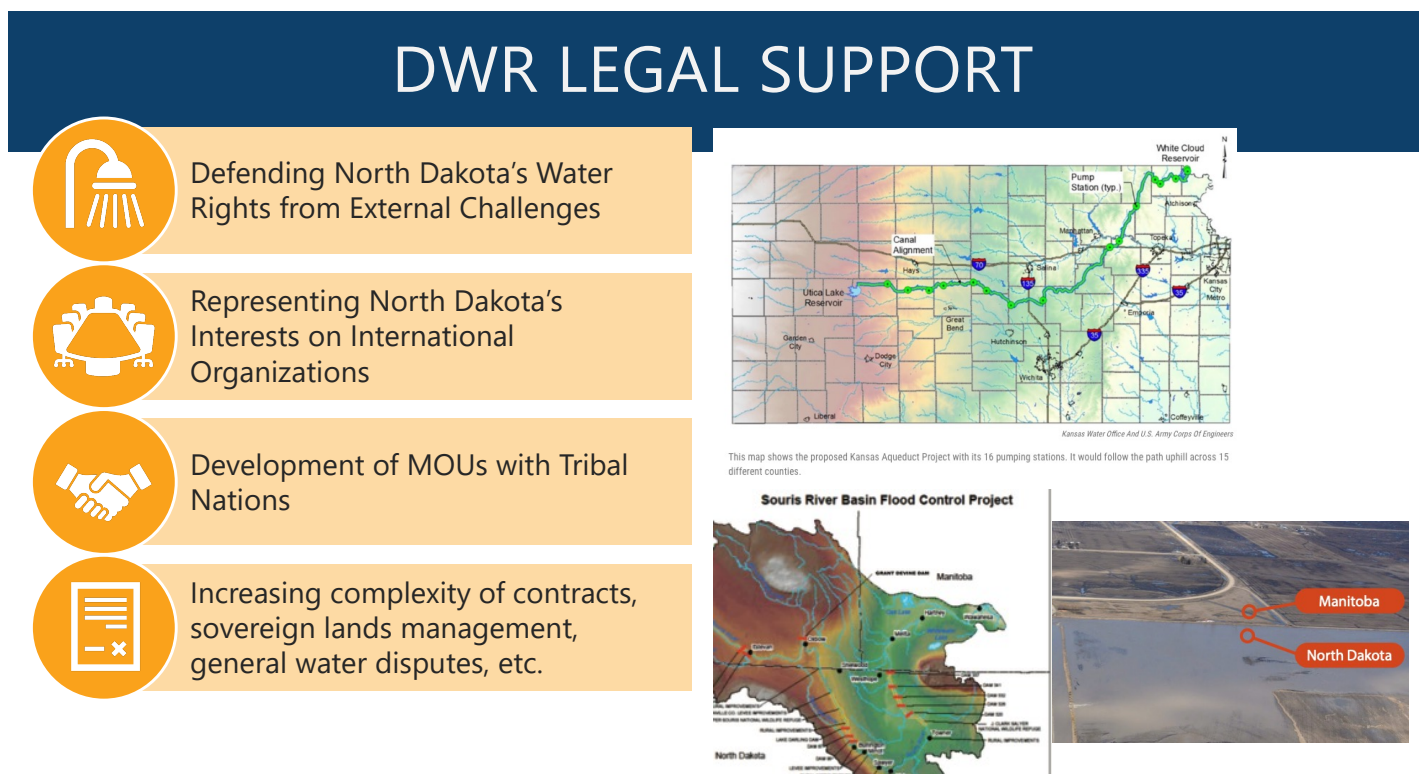
Figure 2: The State Water Commission is made up of the Governor as Chairman, the Agriculture Commissioner, and 8 appointees representing the State's major drainage basins.

## 2. An Attorney is Needed Due to Increasing Complexity in Water Law

DWR requires additional legal support to fulfill its core responsibilities, which include:

- Water project development
- Appropriation of surface and groundwater
- Regulation of drainage, dams, floodplain management and sovereign lands

**All of these responsibilities require a specialized knowledge of water law. Having the certainty provided by HB 1601 is needed to allow the Commission and Department access to this specialized expertise.**



*Figure 3: Summary of DWR legal support needs.*

## 3. The Requested Attorney Would Continue to Work Closely with the AG's Office

The Assistant Attorneys General currently supporting DWR are also tasked with representing other agencies and boards like the Dept. of Environmental Quality, Game & Fish, Parks and Recreation, Dept. of Agriculture, Dept. of Trust Lands, and the Public Service Commission. These agencies all play an important and increasingly complex role in the management of North Dakota's natural resources, which in turn places more demand on the Attorney General's (AG) Office.

The Attorney General's Office has expertise in constitutional law and contractual law, and currently provides the Department with those legal services. The Department's requested in-house attorney would focus on operational law and would provide technical, water-specific advice.

**An in-house attorney at DWR would not replace the important work of the AG's Office, but would complement and enhance it, focusing solely on the technical nature of water law.**

#### **4. The Requested Attorney for DWR Has Overwhelming Support from Stakeholders**

Key stakeholders from North Dakota's agriculture and energy industries have testified in strong support of DWR's request for restoring the in-house general counsel position. These industries contribute over 63% of the state's tax revenues, funding critical infrastructure, education, and public services. They recognize that water resource management is integral to North Dakota's future.

*North Dakota is involved in continual international discussions over water. **While we participate politically, we've lacked continual, constant legal representation to support DWR attendance.** Additionally, North Dakota experiences numerous agricultural land drainage legal issues regarding local government compliance and interpretation of existing state law and Water Commission policy. **These are legal issues, not engineering issues, and the Commission/DWR usually gets included in these issues.** Based on my experiences, I support a DWR full time staff lawyer.*

- Former Rep. Jim Schmidt



*This is not just about protecting a resource; it's about defending North Dakota's sovereignty, securing economic stability, and preserving our ability to grow and innovate. **Without this investment in legal counsel, we risk losing the ability to effectively counter regulatory and legal challenges that could have far-reaching consequences for our state.***

- Jonathan Fortner, Lignite Energy Council

*An in-house general counsel will give the Department of Water Resources the expertise and capacity to protect our water rights. **We strongly encourage you to make this investment and protect our state's most vital resource.***

- Matt Perdue, North Dakota Farmers Union





*North Dakota Grain Growers Association strongly supports the addition of a new attorney position within the Department of Water Resources as proposed in HB 1020. Water is a critical resource for our state's agriculture industry, and **having adequate legal expertise within the department is essential for addressing the complex water issues that impact our members.***

- Dan Wogsland, North Dakota Grain Growers Association

***The inclusion of a general counsel for the ND Department of Water Resources is an essential step in protecting North Dakota's water sovereignty, infrastructure investments, and long-term economic growth.** Without dedicated legal expertise, the state is at risk of losing control over its water resources to out-of-state interests and facing costly legal battles that could delay or derail critical water projects.*

- Duane DeKrey, Garrison Diversion Conservancy District







# 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

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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:~~

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~~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:

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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  
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Sixty-ninth  
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~~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, ethics 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

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**NORTH DAKOTA**  
Insurance Department

## TESTIMONY

*Jon Godfread, Insurance Commissioner*

Senate State and Local Committee

March 28, 2025

Madam Chair and members of the Senate State and Local Committee,

I am North Dakota Insurance Commissioner Jon Godfread, and I appreciate the opportunity to submit testimony in strong support of House Bill 1601, as amended by the House. This legislation seeks to amend Section 54-12-08 of the North Dakota Century Code concerning the appointment and revocation of Special Assistant Attorneys General (SAAGs).

House Bill 1601, as amended, provides critical clarity and protection regarding the appointment and retention of SAAGs employed by certain constitutional officers, including the Insurance Commissioner. Specifically, it ensures that the Attorney General may not refuse to appoint or revoke the appointment of a SAAG who is licensed to practice law in North Dakota, is in good standing, and is employed by specified constitutional officers.

I support HB1601 for the following reasons:

### ***Preservation of Institutional Knowledge and Continuity***

SAAGs within our department possess deep expertise and institutional knowledge. Their continued service is vital for maintaining consistency in legal counsel, regulatory compliance, and policy implementation. Unwarranted revocation or potential refusal to appoint, disrupts agency operations and diminishes the efficiency and effectiveness of our work.

### ***Safeguarding Against Unwarranted Revocation***

The bill protects against the arbitrary dismissal of qualified legal counsel. It ensures that legal advisors can offer candid and objective guidance without the concern of political interference. This is critical for sound, transparent, and independent agency decision-making.

While the Attorney General is rightly recognized as the state's chief legal officer, attorneys employed within executive agencies serve a fundamentally different role—as trusted legal advisors to their respective agency heads. At the Insurance Department, for example, our attorneys provide counsel on complex and specialized matters such as enforcement actions, rulemaking, regulatory compliance, and administrative proceedings. Their work is deeply aligned with the Department's mission and strategic priorities and is directed solely by the Insurance Commissioner.



House Bill 1601 corrects a structural flaw that allows for divided accountability—whereby an attorney employed by one constitutional officer could be dismissed at the discretion of another. This creates a dynamic of dual loyalty that undermines the clarity and independence essential to good governance. By eliminating this discretionary revocation power, the bill ensures that attorneys serving in the Department are fully and appropriately accountable to the Insurance Commissioner—and to no one else.

Furthermore, as a special-funded agency, the Insurance Department is required to pay the Attorney General's office for any legal services it provides. These are not free or assumed entitlements—they are transactional relationships, mandated by our laws and budgeting process. This reality underscores the need for independent, in-house counsel who are deeply familiar with our operations, priorities, and statutory responsibilities.

House Bill 1601 reinforces this existing client-attorney framework by ensuring that attorneys who are employed by, and serve at the direction of, constitutional officers cannot be unilaterally removed by another constitutional office. As it stands today, the Attorney General's office could both bill us for legal services and revoke the appointment of one of our own attorneys—you can see the potential for issues and conflict, this bill rightly resolves that issue.

At its core, this bill promotes one of the most fundamental principles of legal ethics: undivided loyalty to the client. Attorneys within the Insurance Department should be accountable solely to the Insurance Commissioner—the office they serve—not subject to the control of a separate, potentially conflicting authority.

The amended bill affirms this principle by removing unnecessary layers of discretionary control and reinforcing the checks and balances foundational to North Dakota's government structure.

House Bill 1601, as amended, appropriately balances the authority of the Attorney General with the operational needs of other constitutional officers. It promotes efficiency, protects independence, and ensures legal counsel is appointed based on qualifications and merit and removes any possibility that politics or personalities would enter into the discussion.

I thank the committee for its time and respectfully urge your favorable consideration of House Bill 1601. I am happy to answer any questions you may have.



SENATE STATE AND LOCAL COMMITTEE  
MARCH 28, 2025

TESTIMONY OF CLAIRE NESS  
OFFICE OF THE ATTORNEY GENERAL  
HOUSE BILL NO. 1601

Chairman Roers and members of the Committee:

For the record, my name is Claire Ness, and I am the Chief Deputy Attorney General. The Attorney General's Office opposes House Bill 1601 in its current form and requests the committee vote for a Do No Pass recommendation on the bill or adopt the attached amendment.

Who is a Special Assistant Attorney General (SAAG)?

The Attorney General is a constitutional officer and chief legal officer<sup>1</sup> of the state. Lawyers may represent the state in legal matters only if the Attorney General delegates his or her inherent authority to them. A SAAG appointment is a delegation of that authority. For clarity, I'd like to review the distinction between an assistant attorney general (AAG) and a SAAG and describe how the SAAG appointments operate.

- AAG – An attorney for the state of the North Dakota who is employed by the Attorney General's Office is an assistant attorney general, not a SAAG.
- SAAG – (1) An attorney who is employed by another state agency is a SAAG, and (2) a private attorney who is under contract with a state entity for a specific matter also is a SAAG.

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<sup>1</sup> See e.g., *State v. Hagerty*, 1998 ND 122 (1998).

## Who Hires SAAGs?

### *SAAGs Who Are State Agency Employees*

**State agencies with authority to hire SAAGs hire their own attorneys.** Our office is not involved in that process unless the agencies ask us for input. Once the attorney is hired, the agency submits a brief request for the Attorney General to appoint the new attorney as a SAAG, along with a certificate of the attorney's good standing with the Bar. The SAAG appointment for an agency employee is broad (unless the agency requests otherwise) and allows the SAAG to provide legal services for that agency.

AAGs in our office answer questions, provide legal analyses, and give legal research advice to SAAGs in state agencies every day. We are consulted on large and small matters and are available to support SAAGs throughout state government. Because we have several AAGs working in one office, we are able to collaborate and share knowledge, resources, and expertise efficiently, allowing us to be a resource for SAAGs. Our Civil Litigation Division manages the litigation for most of their agencies as well.

### *SAAGs Who Are Private Attorneys Contracted For A Legal Matter*

State agencies sometimes need to hire outside counsel due to legal resource constraints or because there is a highly unusual legal matter for which very particular experience is required (*e.g.*, immigration attorneys for state universities). Agencies are able to select the attorneys they want to engage, unless, for example, the attorneys have a conflict of interest, lack the necessary malpractice insurance, are not licensed, have a license that is not in good standing, or have a history of ethical problems. Other than conflicts of interest and low levels of malpractice insurance, these issues come up very rarely if at all. When they arise, we discuss these issues with our clients before a decision is made. We can generally resolve them favorably without appreciable risk to the state.

## Engrossed House Bill 1601 and the Proposed Amendment

As a constitutional officer and steward of the Office of Attorney General, Attorney General Wrigley opposes Engrossed House Bill 1601. As written, the bill would force every Attorney General elected by the people of North Dakota to irrevocably delegate his or her essential, inherent, constitutional authority to individuals who are entirely chosen by other people. That is the entire function of the bill. – Imagine if someone said you had to delegate your constitutional authority as a legislator to an individual you had never met. You couldn't check that person's background, training, or credentials, and even if you did, it wouldn't matter what you found. And you could never revoke that delegated authority, no matter how egregious or unlawful that person's actions may be. - Our office is unaware of any similar, compulsory, nondiscretionary, irrevocable delegation in law.

The lack of anything similar is to be expected. Constitutional officers are entrusted by the people of the state to carry out their official duties and to exercise the care and discretion necessary to do so. The language on page 2, lines 6 through 17 of the engrossed bill would nullify the public's decision and set the stage for an unnecessary constitutional clash. As a compromise, the amendment we propose adds a requirement for the Attorney General to consult with the head of the state agency that employs a SAAG before the Attorney General can revoke the SAAG's appointment. This change is on page 2, lines 5-6. The "good cause" requirement would remain in the statute as well. This amendment ensures the process is as collaborative and informed as possible while not divesting a constitutional office of authority.

Thank you for your time this morning. The Attorney General's Office requests a Do Not Pass recommendation from the committee or adoption of the proposed amendment. I'll be happy to answer any questions.



**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.

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~~ After consultation with the head of  
9 the 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  
21 to represent them. These entities shall pay the salaries and expenses of the  
22 attorneys they employ within the limits of legislative appropriations.

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

8           2. ~~Notwithstanding any other provisions of this section, the attorney general may not~~  
9           ~~refuse to appoint a special attorney general and may not revoke the appointment of a~~  
10           ~~special assistant attorney general licensed to practice law in the state, in good~~  
11           ~~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

Sixty-ninth  
Legislative Assembly

1 services rendered must be deposited into the attorney general's operating fund.

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

6 4.5. An assistant or special assistant attorney general appointed to represent the state  
7 board of higher education or an institution under the control of the state board of  
8 higher education may access and examine any record under the control of the state  
9 board of higher education. For purposes of reviewing records under the Family  
10 Educational Rights and Privacy Act [20 U.S.C. 1232g; 34 CFR 99] or any other federal  
11 privacy law, the assistant or special assistant attorney general is considered a state  
12 educational official authorized to access student records.

# 2025 SENATE STANDING COMMITTEE MINUTES

State and Local Government Committee  
Room JW216, State Capitol

HB 1601  
4/10/2025

A BILL for an Act to amend and reenact section 54-12-08 of the North Dakota Century Code, relating to special assistant attorneys general.
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10:01 a.m. Chair Roers called the hearing to order.

Members Present: Chairman Roers; Vice Chair Castaneda; Senators: Barta, Braunberger, Lee and Walen.

## **Discussion Topics:**

- Schedule update

10:01 a.m. Senator Castaneda requested to wait for further testimony.

10:04 a.m. Chair Roers closed the hearing.

*Susan Helbling, Committee Clerk by Lynn Wolf, Chief Clerk*



# 2025 SENATE STANDING COMMITTEE MINUTES

## State and Local Government Committee Room JW216, State Capitol

HB 1601  
4/10/2025

Relating to special assistant attorney generals.
--

3:15 p.m. Chair Roers called the hearing to order.

Members Present: Chairman Roers; Vice Chair Castaneda; Senators: Barta, Braunberger, Lee and Walen.

### Discussion Topics:

- Elected officials
- Ethics commission
- Auditor
- Agency head

3:15 p.m. Vice Chairman Castaneda discussed his findings on this bill.

3:28 p.m. Claire Ness, Deputy Attorney General State's Attorney Office, answered questions from the committee.

3:50 p.m. Senator Walen moved to amend page 1 line 18 add Ethics Commission; line 24-27 strike everyone except Governor, Ethics Commission and State Auditor.

3:50 p.m. Senator Braunberger seconded the motion.

Senators	Vote
Senator Kristin Roers	Y
Senator Jose L. Castaneda	Y
Senator Jeff Barta	Y
Senator Ryan Braunberger	Y
Senator Judy Lee	Y
Senator Chuck Walen	Y

Motion Passed 6-0-0

3:53 p.m. Senator Braunberger moved to further amend page 2 line 7 change "and" to "or".

3:53 p.m. Senator Walen seconded the motion.

Senators	Vote
Senator Kristin Roers	Y
Senator Jose L. Castaneda	Y
Senator Jeff Barta	Y
Senator Ryan Braunberger	Y
Senator Judy Lee	Y

Senator Chuck Walen	Y
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Motion Passed 6-0-0

3:54 p.m. Senator Braunberger moved Do Pass as amended.

3:54 p.m. Senator Walen seconded the motion.

Senators	Vote
Senator Kristin Roers	Y
Senator Jose L. Castaneda	Y
Senator Jeff Barta	Y
Senator Ryan Braunberger	Y
Senator Judy Lee	Y
Senator Chuck Walen	Y

Motion Passed 6-0-0

Senator Braunberger will carry the bill.

3:58 p.m. Chair Roers adjourned the meeting.

*Susan Helbling, Committee Clerk*

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

CO  
4/10/25  
1 of 3

- 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

2 of 3

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

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

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

15 ~~a. Governor;~~

16 ~~b. Agriculture commissioner;~~

17 ~~c. State auditor;~~

18 ~~d. Insurance commissioner;~~

19 ~~e. Public service commissioner;~~

20 ~~f. Secretary of state;~~

21 ~~g. Superintendent of public instruction;~~

22 ~~h. Tax commissioner; or~~

23 ~~i. State treasurer.~~

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

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

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

30 3. The powers conferred upon special assistant attorneys general are the same as are  
31 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.



**REPORT OF STANDING COMMITTEE  
ENGROSSED HB 1601**

**State and Local Government Committee (Sen. Roers, Chairman)** recommends **AMENDMENTS** ([25.1289.02004](#)) and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT OR EXCUSED AND NOT VOTING). Engrossed HB 1601 was placed on the Sixth order on the calendar. This bill does not affect workforce development.