



North Dakota Legislative Council

Prepared for the Government Administration Committee
LC# 23.9062.01000
September 2021

STUDY OF ATTORNEY AND LEGAL-RELATED POSITIONS IN STATE GOVERNMENT - BACKGROUND MEMORANDUM

Pursuant to Section 24 of House Bill No. 1003 (2021), the Legislative Management assigned the 2021-22 interim Government Administration Committee to study the feasibility and desirability of consolidating attorney and legal-related positions in state government. The study must include an analysis of the number of attorney and legal-related positions in state government, the agency to which the positions are assigned, the type of work performed by the positions, and any efficiencies that may be gained through the consolidation of these positions into the Attorney General's office. The study must include consultation with the Attorney General and any agency with attorney and legal-related positions in state government for the 2021-23 biennium.

North Dakota Century Code Section 54-12-01(6) provides the Attorney General shall consult with and advise the Governor and all other state officers and when requested give written opinions on all legal or constitutional questions related to the duties of such officers respectively.

Section 54-12-08(1) provides that after consultation with the head of the state department or institution or with the state board, commission, committee, or agency affected, the Attorney General may appoint assistant or special assistant attorneys general to represent the state board, commission, committee, or agency. A state officer, head of any state department, whether elected or appointed, or state department, board, commission, committee, or agency may not employ legal counsel, and no person may act as legal counsel in any matter, action, or proceeding in which the state or any state department, board, commission, committee, or agency is interested or is a party, except upon written appointment by the Attorney General. Workforce Safety and Insurance, the Department of Transportation, the Tax Commissioner, the Public Service Commission, the Insurance Commissioner, the 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. 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 upon the request of the entity. Good cause means an inadequate level of experience, competence, or ethical standards.

Section 54-12-08(1) was amended by the 2015 Legislative Assembly to remove the State Board of Higher Education, and by the 2021 Legislative Assembly to include the Agriculture Commissioner. Prior to 2021, no agency had been added to Section 54-12-08(1) since 1995. In testimony submitted to the Senate Appropriations Committee's Subcommittee on House Bill No. 1003 in March 2021, the Attorney General stated nine executive branch agencies employ attorneys, including the Department of Human Services, the Department of Corrections and Rehabilitation, the Department of Transportation, the Insurance Commissioner, the Office of Management and Budget, the Public Service Commission, the Securities Commission, the Tax Commissioner, and Workforce Safety and Insurance.

STUDY PLAN

The following is a proposed study plan for the committee's consideration in its study of attorney and legal-related positions in state government:

1. Receive and review information from representatives of the Attorney General's office regarding attorney and legal-related positions in state government, including potential efficiencies from consolidation of the positions in the Attorney General's office.
2. Receive and review information from representatives of Workforce Safety and Insurance, the Department of Transportation, the Tax Commissioner, the Public Service Commission, the Insurance Commissioner,

the Agriculture Commissioner, and the Securities Commissioner regarding the agencies' authorization to employ attorneys.

3. Receive and review information regarding attorney and legal-related positions in state government in other states.
4. Receive and review information from interested persons regarding the committee's study of attorney and legal-related positions in state government.
5. Develop recommendations and any bill drafts necessary to implement the recommendations.
6. Prepare a final report for submission to the Legislative Management.