

FISCAL NOTE
Requested by Legislative Council
12/21/2018

Amendment to: HB 1079

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2017-2019 Biennium		2019-2021 Biennium		2021-2023 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2017-2019 Biennium	2019-2021 Biennium	2021-2023 Biennium
Counties	\$0	\$0	\$0
Cities	\$0	\$0	\$0
School Districts	\$0	\$0	\$0
Townships	\$0	\$0	\$0

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Allows the State Auditor to employ a special AG assistant.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

No fiscal impact.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

None

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

None

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

None

Name: Donald LaFleur

Agency: State Auditor

Telephone: 328-4744

Date Prepared: 12/27/2018

FISCAL NOTE
Requested by Legislative Council
12/21/2018

Bill/Resolution No.: HB 1079

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- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

None

Name: Donald LaFleur

Agency: State Auditor

Telephone: 328-4744

Date Prepared: 12/27/2018

2019 HOUSE GOVERNMENT AND VETERANS AFFAIRS

HB 1079

2019 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Fort Union, State Capitol

HB 1079
1/10/2019
30661

- Subcommittee
 Conference Committee

Committee Clerk: Carmen Hart

Explanation or reason for introduction of bill/resolution:

Relating to special assistant attorneys general

Minutes:

Attachments 1, 2

Chairman Kasper opened the hearing on HB 1079.

Joshua Gallion, State Auditor, appeared in support of HB 1079. Attachment 1. 1:24-3:58

Rep. Louser: Has the attorney general's office weighed in on this?

Mr. Gallion: We went through the process of reclassifying a position to an attorney, and someone from the attorney general's office came in and said we can't do that. If we fill the classified position as an attorney, the understanding would be that they would be able to do "lawyering" which without being a part of this section of law, I am unable to do.

Rep. Louser: Are there instances where your office would place the attorney general's office in a conflict with another agency?

Mr. Gallion: We have run into that situation in the past. We recently conducted an audit where veterans' preference came into question. The agency had nine applicants sitting at the hiring practices. There was a five way tie for fifth place. The agency went to their attorney general point of contact and received one answer. We took all the information to our attorney general point of contact and were told they should have interviewed all nine. There was a veteran in the top four. There also was a veteran in the five way tie for fifth place. They excluded the five way tie and just interviewed the four. That is not the intent of veterans' preference laws. Again, our vision is to have a diverse team of professionals within the auditor's office.

Rep. Laning: Assume you had a special attorney general, and there was a conflict between you and the attorney general's office. Who would settle that conflict?

Mr. Gallion: There are still designated special assistant attorney generals even within the agency, so they have to work with the attorney general's office. If the attorney general comes down with their opinion, that applies everywhere.

Rep. Laning: This special attorney would be in coordination with the attorney general's office, or would he be a separate entity under your office?

Mr. Gallion: What we are looking for is to have the ability to recruit and hire attorneys that would work within the auditor's office.

Rep. Rohr: Are you trying to avoid a potential conflict of interest?

Mr. Gallion: Yes, the attorney general's office is one of our audit clients. To go to one of our clients and seek legal advice does pose a potential conflict independence, and independence is the key principle in auditing standards.

Rep. Schauer: Are you talking about a full-time employee or contracting out this service? If it is full-time, are you talking about one attorney or attorney with staff?

Mr. Gallion: We are trying to think forward to see what potential could exist. If we were to classify an attorney, we would be looking for one. We are looking for the ability to diversifying our team.

Chairman Kasper: There is no fiscal note on this bill?

Mr. Gallion: No, because this just allows us the opportunity to hire. Any hiring would be done within current appropriations, FTE levels funding.

Chairman Kasper: Please send a note stating that. Attachment 2.

Opposition

Troy Seibel, Chief Deputy Attorney General, appeared in opposition. This bill essentially reverses a trend of 30 years in which this legislative body has been consolidating the lawyers into the attorney general's office. This process has worked well. There is a problem that exists when your client is also your boss. You tend to have the pressure of maybe providing advice in a certain way because the person is not only your client but also your boss. In the event of a conflict in our office, we will tell the agency to employ a private attorney that we will appoint as a special assistant.

Rep. Laning: You have a person that is normally assigned when the auditor's office needs legal help?

Mr. Seibel: That is correct.

Rep. B. Koppelman: Could that special assistant attorney assigned to the auditor's office be there full time? If so, would that come at a higher cost?

Mr. Seibel: We would need additional resources if that person was assigned to the auditor full time to provide legal advice. If the auditor chooses to hire an employee that is not practicing law but has a law degree, we have no objection. If the person is going to provide legal advice to you, then that person needs to have an appointment from the attorney general.

Rep. B. Koppelman: In the past, besides efficiency of cost, were there other conflicts because they didn't have to answer to the attorney general?

Mr. Seibel: Yes. When your client is also your boss, there is always pressure to provide the right answer whether it is the actual right answer. Our lawyers are able to provide frank and fair legal advice without the fear of being punished by a client who doesn't like to hear that.

Rep. Schauer: It makes me very uncomfortable when you say we have done this for 30 years and we continue. I don't think the state auditor would be in this room right now presenting this unless he was concerned about the type of service he is getting from you and your department. Does the attorney that you have assigned to the state auditor specialize in auditing, and if so, what is her background in that area?

Mr. Seibel: She is a lawyer, not an auditor. She is there to provide legal advice to the auditor when he has questions about state statues, his internal operations, etc. Starting in the late 80s, there was an effort undertaken to move in this direction and as recent as 2015, the legislature moved the lawyers from higher ed. under the attorney general.

Rep. Vetter: Do other agencies have attorneys?

Mr. Seibel: The agencies that are authorized to have lawyers in house are listed in the bill.

Rep. Vetter: Why is it a big deal the auditor can't have one?

Mr. Seibel: Each agency has its own unique circumstances. In my personal opinion, I do think there are some of those agencies that should be removed from the list. We do not feel those same circumstances apply to the auditor's office.

Rep. Louser: Could you give an example specific to the auditor's office where outside counsel was necessary and reimbursed and then one that was not necessary.

Mr. Seibel: I do not recall an instance where the auditor's office has been required to go out and employ outside counsel.

Chairman Kasper: Is the word represent on Page 3, Line 7 concern to you?

Mr. Seibel: Partially. I can't stop the auditor from hiring an individual that possess a law degree, but we have issues when they are providing legal advice. Represent would be part of it.

Chairman Kasper: Is it your contention that any attorney that the auditor's office might hire would not have the capacity to properly give legal advice even though they have a law degree

and abide by all the continuing ed. requirements of attorneys and may be the top of their class?

Mr. Seibel: We have no qualms with a qualified lawyer providing legal advice to the auditor. It just requires that person have an appointment from the attorney general to do so. We feel it makes sense to have a certain level of oversight on the part of the attorney general when he gives those appointments out.

Chairman Kasper: Doesn't that sound a little impractical? Are you suggesting they have to talk to your office every time they want to talk about a legal situation and get clearance to discuss that.

Mr. Seibel: No, they would not have to do that if they had the appointment from the attorney general.

Chairman Kasper: If this bill passes and the auditor hired an attorney, would that attorney then have to interview with the ag's office and get a special appointment?

Mr. Seibel: No. The bill would give that authority to the auditor. The auditor would interview the lawyer, select the lawyer, and submit that lawyer's name to our office. This bill would require the attorney general to give that person the appointment.

Chairman Kasper: Unless the ag has a good reason?

Mr. Seibel: Correct. The ag has to have a good cause.

Chairman Kasper: If these other departments are working that way, your only heartburn is that we are changing tradition?

Mr. Seibel: I think this would reverse the trend which has been moving that. There are inherent problems when your client is also your boss.

Rep. B. Koppelman: How would you suggest that the attorney general's office provide a special assistant attorney general for as much as consistent need as the auditor's office would have? How would that work if we didn't pass this bill but still achieve the auditor's goals of going the extra mile on trying to do audits and reviews?

Mr. Seibel: I disagree that the auditor's office requires legal services much more than any other agency.

Rep. Louser: The auditor is auditing another government agency. Other agencies listed here deal with citizens of the state.

Mr. Seibel: I agree with your point. Recently, the labor department just finished investigating the department of corrections and has found that the department of corrections has violated the statue. We have said to both of those agencies our office is conflicted out, so both agencies will go for outside counsel.

Rep. Rohr: If that occurred with Josh's department, whatever process you have in place, he would probably have to fill out some kind of written document that he is requesting an attorney general's opinion. Both of you look at it and you decide there is a conflict. You say there is no conflict, and he says there is. What happens then?

Mr. Seibel: For an agency to make a request for a special assistant, they send me an email, and we look at it and decide on a recommendation.

Rep. Rohr: Has this happened since Mr. Gallion has been in office?

Mr. Seibel: No.

Chairman Kasper closed the hearing.

2019 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Fort Union, State Capitol

HB 1079
1/18/2019
31044

- Subcommittee
 Conference Committee

Committee Clerk: Carmen Hart

Explanation or reason for introduction of bill/resolution:

Relating to special assistant attorneys general

Minutes:

Attachment 1

Chairman Kasper opened the meeting on HB 1079.

Rep. B. Koppelman: He handed out the proposed amendment. Attachment 1. He reviewed the situation and read the amendment. (2:00-4:05) **I move the amendment.**

Rep. Johnston seconded the motion.

Rep. Laning: My understanding this does not allow the auditor to have his own attorney?

Rep. B. Koppelman: No, just the opposite. This bill including the amendment would allow the auditor to have his own attorney. This would work like it does in the tax department. The amendment clarifies that the attorney in the auditor's office would not be involved in legal defense if somebody was to sue their department.

Chairman Kasper: He pointed out the key part of the bill is on Page 3, Line 4. (6:12-7:25)

Rep. P. Anderson: How does the auditor and attorney general feel about this?

Rep. B. Koppelman: The auditor was fine with the amendment.

Josh Gallion, State Auditor, appeared. This bill with the amendment does essentially accomplish everything we are aiming to accomplish. That is to have legal counsel in house that we can deploy onto audits to help improve and streamline the flow of information and the compliance of legislative intent of laws. The auditor's office does not try and convict people. We identify deficiencies and make recommendations. Auditing standards requires us to refer those to somebody else for the actual litigation. This amendment clarifies what the relationship is. I believe having attorneys in house will help strengthen the relationship.

Rep. Schneider: Are you confident that there are other policies and procedures in place that if the litigation involved the attorney general's office, that the conflict of interest would be handled by outside counsel?

Mr. Gallion: Yes.

Rep. Rohr: Would that change the job description of the attorney that is in your office now?

Mr. Gallion: It would allow him to do more than just read laws to us. He would be able to do research, provide his advice, and send him on audits to look at compliance.

Rep. Louser: In the instance where litigation occurs between two state agencies, does the auditor's office and the attorney general's office interpret that the attorney general based on the language will represent the auditor's office as opposed to recommending outside counsel? How do we interpret shall seek the assistance?

Mr. Gallion: We would essentially defer to the AG's office to make that determination, just like we would now if we had any instance of potential referral for violation of law.

Chairman Kasper: When there is a situation, this amendment states you must go to the attorney general and seek their counsel first. Once they look at the circumstances, they may say we have a conflict and you need to go to outside counsel, but they are going to make that call. Is that the way you see it?

Mr. Gallion: That is how I understand it.

Troy Seibel, Chief Deputy Director, Attorney General's Office, appeared. Even with the amendment, the attorney general still opposes this bill. The auditor's office has used 522.7 hours of attorney time in two years, about 5 hours per week. In that same time period the secretary of state's office has 3,262.7 hours of attorney time. Superintendent Baesler has used 4,907 hours of attorney time. We do not see a pressing need for the auditor to have an in house lawyer. This is a u turn from the trend that this body has been going over the last several years. As recent as 2015, you removed the higher ed. lawyers back into our office. Also, any time you have a lawyer whose client is also their boss, you always have a potential for conflicts and pressure. (15:31)

Rep. Louser: What happens in the instance where the litigation would involve two agencies in the state? Does this language require that the attorney general represent the auditor?

Mr. Seibel: Typically when we have two agencies in conflict, we will ask both to employ outside counsel.

Rep. Louser: Do you interpret this new language to read any process change?

Mr. Seibel: I do not think this language would change anything from what we do now.

Rep. B. Koppelman: He is not asking for advice on how he should proceed on whether his office is doing the right thing? Can you expand on how you specifically think that would be a problem in the auditor's office?

Mr. Seibel: We hear frequently from agencies that the auditor's office will come in and they will say that we think the law says X and you are doing Y, and they are wrong. Because we have given advice to the agency saying the way we have interpreted it, you should do it Y. Then the auditor's office will contact their lawyer, and their lawyer will tell them the same thing. We get pushback from the auditor's office. The lawyer feels pressure to provide advice in a certain manner because of the fact that the entity is also his or her employer. At the end of the day, if the auditor's lawyer says A and the AG's office says B, it would be B. The attorney general that gets the final say in what the law says in ND unless the court says otherwise or until you change it.

Rep. B. Koppelman: I don't know if I am quite in agreement with you in terms of policy how that should work on the front end. I do agree with you, though, that when the attorney general does a formal opinion, that would be the way it is until the legislature says otherwise or something of that effect.

Rep. P. Anderson: There are six other agencies that have lawyers. Have you thought about doing an amendment from your office that no agency has a lawyer?

Mr. Seibel: At one time everybody had their own, and that list has continued to be narrowed. These are the remaining agencies that have attorneys.

Chairman Kasper: Where is the difference with the auditor having an in house attorney compared to the tax commissioner?

Mr. Seibel: There is very little difference.

Rep. P. Anderson: Do you have an example of why you say one agency makes sense to have a lawyer and the auditor doesn't?

Mr. Seibel: WSI has a lot of legal work that is very specialized. They are agencies that have very specialized work. The auditor is looking at every agency, general legal interpretation of all sorts of statutes.

Rep. Schneider: Isn't the attorney in the auditor's office recently hired?

Mr. Seibel: They recently hired. The auditor has always been assigned an assistant ag and has always had the ability to come to our office and seek legal advice when appropriate.

Rep. Schneider: You described a situation where the auditor was saying something was the law and the agency they were dealing with disagreed with them. It seems like that should be positively affected by them having actual counsel within the auditor's office.

Mr. Seibel: I would disagree. This happens all the time.

Rep. Schneider: If anybody should have an independent voice, it probably should be an auditor for just the reasons that you have described. People do not like performance audits. They take it hard when there is some criticism of the way they are doing things. The auditor might be better advised to have an actual attorney in the auditor's office to be able to speak to that. If you think an attorney is compromising their opinions just because they are giving advice to their boss, I would say there is an ethical issue that needs to be addressed, and I think that most attorneys would be able to speak truth to power. I assume they do that in your office. Do you see that differently?

Mr. Seibel: I agree with you that it would be an ethical issue for the lawyer in that instance, but we have seen examples where lawyers that are housed in an agency would provide advice in a certain light that they might otherwise not simply because they were employed by the agency.

Chairman Kasper: The insinuation about there are examples certainly could not have been in the auditor's office because they did not have that in house attorney. Is that correct?

Mr. Seibel: That is correct.

Rep. Rohr: Do these departments that are listed in the bill use more than 4,900 hours of attorney time and that is why they have their own?

Mr. Seibel: I do not have the time in those agencies listed, because they do not report to us. I would say their hours would exceed that number, because they have a lot of very specialized legal work.

Rep. Vetter: What six agencies have their own attorney?

Chairman Kasper: It starts on Page 3, Lines 4-5.

Rep. Hoverson: If the auditor's office did not have a lawyer, they would defer to your office for interpretation of the law outside litigation?

Mr. Seibel: Yes.

Rep. Hoverson: Are there plenty of things where it is practically better to just have somebody right there where you can make faster movement?

Mr. Seibel: Every agency would like to have a lawyer. It just is not fiscally feasible for us to do so.

Chairman Kasper: You said there would be no increased cost to have this attorney in your office?

Mr. Josh Gallion, State Auditor, appeared. We would use existing appropriations and staff within the office.

Chairman Kasper: No fiscal impact?

Mr. Gallion: No.

Rep. B. Koppelman: Is it possible that this could result in a cost savings?

Mr. Gallion: It is possible. There are many times we don't go to their office, because we don't have the time. We cannot delay an audit and extend this for the client. We have limited resources we are trying to maximize every hour that we have. Having this resource in house allows us to keep that speed up which limits our impact on our audit to clients. We look at this as a skills set which we are trying to diversify in the auditor's office.

Rep. P. Anderson: I am having a disconnect with you using 522.7 hours in the last two years, and a full time lawyer in two years would be over 4,000 hours.

Mr. Gallion: That is purely looking at legal advice. I am actually looking for resources within the office that we can deploy on audits. We see a need for this. This will enhance and expand the scopes and our capabilities.

Rep. Hoverson: In your best judgement is there any part of the package of reasons that could be because the auditor's office does not agree with or like the opinions of the AG office?

Mr. Gallion: No, we have a wonderful working relationship with the attorney general's office. My personal opinion is this will not change that. I believe something like this will enhance that relationship.

A roll call vote was taken on the adoption of the amendment. 12-1, 1 absent.

Rep. C. Johnson made a motion for a DO PASS AS AMENDED.

Rep. B. Koppelman seconded the motion.

A roll call vote was taken. 12-1, 1 absent.

Rep. B. Koppelman will carry the bill.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1079

Page 2, after line 24, insert:

- "5. Except as otherwise provided in this section, the state auditor may seek the assistance of the attorney general for legal issues affecting the state auditor; however, the state auditor shall seek the assistance of the attorney general for issues of the state auditor involving litigation. The state auditor may request an opinion from the attorney general as provided in section 54-12-01."

Page 4, after line 7, insert:

- "5. Except as otherwise provided in this section, the state auditor may seek the assistance of the attorney general for legal issues affecting the state auditor; however, the state auditor shall seek the assistance of the attorney general for issues of the state auditor involving litigation. The state auditor may request an opinion from the attorney general as provided in section 54-12-01."

Renumber accordingly

Date: 1-18-19
 Roll Call Vote #: 1

**2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1079**

House Government and Veterans Affairs Committee

Subcommittee

Amendment LC# or Description: 19.8035.01001

- Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
- Other Actions: Reconsider _____

Motion Made By Rep Koppelman Seconded By Rep. Johnston

Representatives	Yes	No	Representatives	Yes	No
Chairman Jim Kasper	X		Rep. Pamela Anderson		X
Vice Chair Vicky Steiner	X		Rep. Mary Schneider	X	
Rep. Jeff Hoverson	X				
Rep. Craig Johnson	X				
Rep. Daniel Johnston	X				
Rep. Karen Karls	X				
Rep. Ben Koppelman	X				
Rep. Vernon Laning	X				
Rep. Scott Louser	X				
Rep. Karen Rohr	X				
Rep. Austen Schauer	A				
Rep. Steve Vetter	X				

Total (Yes) 12 No 1

Absent 1

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 1-18-19
 Roll Call Vote #: 2

**2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1079**

House Government and Veterans Affairs Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep. C. Johnson Seconded By Rep. B. Koppelman

Representatives	Yes	No	Representatives	Yes	No
Chairman Jim Kasper	X		Rep. Pamela Anderson		X
Vice Chair Vicky Steiner	X		Rep. Mary Schneider	X	
Rep. Jeff Hoverson	X				
Rep. Craig Johnson	X				
Rep. Daniel Johnston	X				
Rep. Karen Karls	X				
Rep. Ben Koppelman	X				
Rep. Vernon Laning	X				
Rep. Scott Louser	X				
Rep. Karen Rohr	X				
Rep. Austen Schauer	A				
Rep. Steve Vetter	X				

Total (Yes) 12 No 1

Absent 1

Floor Assignment Rep. B. Koppelman

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1079: Government and Veterans Affairs Committee (Rep. Kasper, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 1 NAYS, 1 ABSENT AND NOT VOTING). HB 1079 was placed on the Sixth order on the calendar.

Page 2, after line 24, insert:

"5. Except as otherwise provided in this section, the state auditor may seek the assistance of the attorney general for legal issues affecting the state auditor; however, the state auditor shall seek the assistance of the attorney general for issues of the state auditor involving litigation. The state auditor may request an opinion from the attorney general as provided in section 54-12-01."

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Renumber accordingly

2019 SENATE GOVERNMENT AND VETERANS AFFAIRS

HB 1079

2019 SENATE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Sheyenne River Room, State Capitol

HB1079
2/28/2019
#32972

- Subcommittee
 Conference Committee

Committee Clerk: Pam Dever

Explanation or reason for introduction of bill/resolution:

Relating to special assistant attorney's general.

Minutes:

Att #1 – Josh Gallion

Chairman Davison: Let's open hearing on HB1079.

Josh Gallion, State Auditor: (see att #1) (1.00-4.50) The auditor's office needs different kind of legal advice. I am asking for a change in law for my office to be able to hire a lawyer. Any questions?

Chairman Davison: You already hired an attorney as a deputy state auditor, Brian Johnson. He worked with Attorney General's office and found a solution. How did this not work as it currently stands? (5.22)

Josh: I tried to hire a classified as attorney. We were informed we could not do that. I did hire a deputy that just happened to be an attorney. But they cannot function as attorney. Changing the law would allow us to hire a classified attorney in the auditor's office to deploy onto audits in the field. We would not have to rely on the AG's office. We still would get opinions.

Chairman Davison: Are you allowed to hire an outside attorney outside the AG's office? (6.55)

Josh: No, not without approval from the fiscal audit review committee.

Vice Chair Meyer: You say you have questions daily and it is not answered in a timely fashion. What is the average turnaround time? (7.16)

Josh: Some informal opinions can take up to months. Formal opinions can take months and years. Our audit clients don't like to wait that long. Having that ability to have a lawyer in house would improve our outcome.

Vice Chair Meyer: Would they be under the AG's office or auditor umbrella?

Josh: They would be employed by auditor's office. The AG has the final say. We are looking for legal mindset in the field.

Chairman Davison: Any more in support? Any agency testimony? Any against?

Troy Seibel, Chief Deputy Attorney General: I appear on AG's behalf. This bill goes against decades of what we always have done. We use to all of our lawyer housed out in the various agencies. In the 80's, there was an effort to consolidate all of the lawyers in the AG's office. It is in a more efficient manner. If we have an agency that does not need much legal, we can shift them around to agencies that need more legal. In 2015, the legislature pulled the lawyers from higher ed into the AG's office. The higher ed people thought that would be a disaster, but it has been the opposite. (11.27) This bill really bucks that trend and changes good action. When you have a lawyer that has a client that is his or her boss, that lawyer feels pressured. He m or she may decide to do what the boss may want to hear. The lawyer should provide sound legal advice to the client. We have seen that happen. We don't see the idea behind this bill. We looked at Josh's first two years in office. (12.36) He used 522 hours of attorney time in two years. 4160 hours would be a years' worth of hours in a full-time attorney. We looked at Secretary of State and he used 3,262 hours of attorney time in two years. Our Supt. Of Public Instruction, Baszler used 4,907 hours in two years. We have agencies that are using us much more than the Auditor's office. Last week, Allison, from our office, provided a response time of less than a day to get back to the auditor's office. The auditor complimented her himself because she was so fast. There was an amendment in the House, but it does nothing.

Chairman Davison: Do you know of an elected official that does have their own lawyer?

Troy: The Insurance Commissioner does. He has three house there. That is very specialized legal advice. They have not been consolidated back into our office yet. (16.29) They answer to the Insurance Commission.

Chairman Davison: Do you go back to SOS for their hours. Is there a charge back?

Troy: We don't charge general fund agencies. The federally funded ones we bill back.

Vice Chair Meyer: You have consolidated high ed. How many other agencies have a special attorney?

Troy: Starting on page 1, line 16 plus, they are listed. WSI has four special assistant AG's. DOT has three. The Tax Commissioner has three. PSC has two, and the Securities Commissioner has one. These agencies are different than the Auditor's Office. (18.33)

Sen. Kristin Roers: Can you see a benefit to having a lawyer doing audits?

Troy: It is difficult for a lawyer to do an audit. If we appoint a SAG, we expect them to work full-time. Working a few hours, does not make sense.

Sen. Kristin Roers: It feels like more have a special lawyer, than do not have it, right now. I am struggling with, why not?

Troy: There are many more agencies that use AG's services than this list.

Chairman Davison: The auditor has a lawyer, Brian. Has that worked out to solve the legal issue?

Troy: Brian has a law degree, but is not operating in a legal capacity. Our office is providing legal advice. We think it is working out well.

Chairman Davison: Isn't part of being a lawyer, doing the research?

Troy: It may be. He may be prohibited by law to provide legal advice.

Chairman Davison: Any other testimony against? Hearing is closed. (23.00)

2019 SENATE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee
Sheyenne River Room, State Capitol

HB1079
3/14/2019
33753

- Subcommittee
- Conference Committee

Committee Clerk: Pam Dever

Explanation or reason for introduction of bill/resolution:

Relating to special assistant attorneys' general.

Minutes:

Chairman Davison: Let's look at HB1079. We will ask Attorney Stenehjem to come forward.

Wayne Stenehjem, N.D. Attorney General: I appreciate this opportunity. My office testified in opposition to this bill. I sat in a chair like you did awhile back. Way back then, we had lawyer populated everywhere. They finally asked if there would be one place they could get legal advice. It needs to be one official elected to provide legal advice to state agencies in N.D. That is the A's office. We did bring almost all in to our office. We were unable to accomplish all like PSC, Highway Dept. University System because of political reasons. The bill would have been killed if we had forced the above named. Four years ago, the continuous issue of Board of High Education and their lawyers. They were located separately and independently and employed by the University system. The legislature decided that was not good and they should follow the template. They claimed this would never work. The seven lawyer that were brought over to our office, like it hits way. The university system like it this way. State officials sometime need to hear what they need to hear, not what they want to hear. That is what independent legal advice can provide for those agencies. If you have a lawyer employed by and his job depends on the satisfaction on his employer, you will destroy the legal advice that they are giving to their agency. The auditor's office does not use that many legal hours. They got 522 hours of our time and compare that with SOS which is 3,282 hours. Why wouldn't SOS be asking for his own lawyer. Not sure what compelling reason this was requested. I have to tell my lawyers, that they are not lobbyists. Please DO NOT PASS this bill. (6.33)

Sen. Kristin Roers: When talking to the state auditor, he wanted more of a lawyer auditor. He would go on an audit. Can you see a way to do this? We have legal nurse consultants. They have the medical knowledge. Can you see a way that there could be a position of legal auditor?

Wayne: (7.15) I don't think that they need that. I have never heard that in four decades. You don't need a lawyer just to read a statute. Sometimes you need interpretation.

Sen. Kristin Roers: Do you think outside this bill, that there may be a conflict of interest between in certain situations it may be necessary for them to have their own?

Wayne: Absolutely, and you have thought about that in Code already. We do that all the time. If an issue came up.

Sen. Kristin Roers: The board of land trusts. Could there be a conflict there with contracts stuff?

Wayne: If disputes come up in any agency and another agency. We appoint a special assistant attorney general to come. I can't represent both sides.

Sen. Erin Oban: Have there been any efforts in 20 plus years to bring some of the other agencies that still have their own attorneys.

Wayne: The board of education seven lawyers were brought in. There has been talk but no efforts have been made. (10.25)

Sen. Richard Marcellais: If an auditor goes in the field to do an audit., and he wants legal assistance. Does he come to you to get someone to go with you?

Wayne: I don't think they would go with. They could come in and ask. You would not go help do the audit. No. (11.10)

Chairman Davison: The conversation was if they had this attorney, he could be out in the field. It would be a dual purpose. Would you get the final say, anyway?

Wayne: It may not come to my attention. We have hundreds of clients and may not come to my attention. (12.18)

Levi Bachmeier, Governor's Office: It would be hypercritical at some length for the governor's office to be advocating for IT unification and not support the unification of lawyer in AG office. There needs to be more shared services across state government not fewer. This is not just about any specific office or agency. There was a request that came to our office during the process of building the governors executive budget recommendations as it related to the commission of department of trust lands. That was rejected. We want to be consistent.

Sen. Erin Oban: The governor's office is not one of the agencies able to have a legal counsel. I know you have a legal counsel. How is that possible? (15.20)

Levi: I don't know.

Chairman Davison: We will vote in the morning. (15.48)

2019 SENATE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee
Sheyenne River Room, State Capitol

HB1079
3/15/2019
33780

- Subcommittee
 Conference Committee

Committee Clerk: Pam Dever

Explanation or reason for introduction of bill/resolution:

Relating to special assistant attorney general.

Minutes:

Chairman Davison: Let's do committee work. Look at HB1079. We have talked this one to death already. What are the committee wishes?

Vice Chair Meyer: I move a DO NOT PASS.

Sen. Kristin Roers: I second.

Chairman Davison: Discussion? Take the roll: **YES -- 7 NO -- 0 -0-absent**
The **DO NOT PASS – passed.** **Chairman Davison will carry the bill.**

(Sen. Marcellais entered just as recording was turned off and voted a 'yes')

Done (1.07)

3-15-19

Date:
Roll Call Vote #:

2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES HB1079
BILL/RESOLUTION NO.

Senate Government and Veterans Affairs Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Sen. Meyer Seconded By Sen. Roers

Senators	Yes	No	Senators	Yes	No
Chair Davison	/		Sen. Oban	/	
Vice Chair Meyer	/		Sen. Marcellais	/	
Sen. Elkin	/				
Sen. K. Roers	/				
Sen. Vedaa	/				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Chair Davison

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1079, as engrossed: Government and Veterans Affairs Committee (Sen. Davison, Chairman) recommends **DO NOT PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1079 was placed on the Fourteenth order on the calendar.

2019 TESTIMONY

HB 1079



#1
HB 1079
1/10/19

TESTIMONY TO HOUSE GOVERNMENT AND VETERANS AFFAIRS
HB 1079 – STATE AUDITOR’S OFFICE - SPECIAL ASSISTANT ATTORNEY GENERAL
1/10/2019

Good morning, Chairman Kasper, members of the committee, my name is Joshua Gallion and I serve as the State Auditor. I’m here today to discuss the resource needs of the State Auditor’s Office, providing information regarding our efforts to fulfill our statutory obligations while improving accountability and promoting transparency of our state’s government.

As you are aware, the State Auditor is a constitutional state official elected by the citizens of North Dakota. My job is to lead the way in providing truthful, objective and independent information to you and the citizens of North Dakota. Our mission is to produce informative audits to improve government through our vision of a diverse team committed to generating greater value for our taxpayers.

What is the need?

Currently, the Office of the State Auditor is prohibited from employing legal counsel and no person may act as legal counsel except on written permission of the attorney general.

Audits routinely and frequently involve North Dakota Century Code and the auditor’s office looks for agency compliance with the Century Code. Presently the auditor’s office must contact the attorney general’s office to obtain an opinion or interpretation of N.D.C.C., or to find or interpret legislative intent. The current arrangement can be time-consuming.

In house counsel addresses legal needs and reinforces the independence of the State Auditor’s Office and creates a source of legal guidance.

Why are we asking for this?

This need can be addressed by general counsel in the auditor’s office, but without the ability to classify them as special assistant attorneys general recruitment of attorneys is hindered by the fact that any attorney hired cannot act as an attorney.

This amendment adds the office of the State Auditor to the list of state agencies that can employ a special assistant attorney general. Enhancing the ability of the State Auditor’s office to provide effective and independent audits.

What does this ultimately accomplish?

Article V section 2 of the North Dakota Constitution states which state officials are to be chosen by the qualified electors of the state. These positions are all independent of each other and for good reason. This was not an overlooked aspect when our state was formed. Independent state agencies with elected officials creates transparency. While these agencies need to work together for the good of the state, they must remain independent.

This change allows for greater independence of the auditor’s office and ensures the auditor’s office can continue to provide transparent, objective, and truthful audits.

STATE AUDITOR
Joshua C. Gallion



#2
HB 1079
7/10/19
Phone
(701)328-2241

STATE OF NORTH DAKOTA
OFFICE OF THE STATE AUDITOR
STATE CAPITOL
600 E. BOULEVARD AVENUE – DEPT 117
BISMARCK, NORTH DAKOTA 58505

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

I would like to add to the testimony given to your committee January 10, 2019, regarding HB 1079. Any attorneys hired by the Office of the State Auditor will use existing resources and FTE as indicated in the Fiscal Note prepared by my office.

Thanks,

A handwritten signature in green ink, appearing to read "Joshua Gallion", written over a large, light green scribble.

Joshua Gallion
North Dakota State Auditor

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1079

Page 2, after line 24, insert:

- "5. Except as otherwise provided in this section, the state auditor may seek the assistance of the attorney general for legal issues affecting the state auditor, however, the state auditor shall seek the assistance of the attorney general for issues of the state auditor involving litigation. The state auditor may request an opinion from the attorney general as provided in section 54-12-01."

Page 4, after line 7, insert:

- "5. Except as otherwise provided in this section, the state auditor may seek the assistance of the attorney general for legal issues affecting the state auditor, however, the state auditor shall seek the assistance of the attorney general for issues of the state auditor involving litigation. The state auditor may request an opinion from the attorney general as provided in section 54-12-01."

Renumber accordingly



Office of the
State Auditor

SENATE GOVERNMENT AND VETERANS AFFAIRS COMMITTEE
HB 1079 – STATE AUDITOR’S OFFICE - SPECIAL ASSISTANT ATTORNEY GENERAL
2/28/2019

HB 1079
2-28-19
QH #1
PS1

Good morning, Chairman Davison and members of the committee, my name is Joshua Gallion and I serve as the State Auditor. I’m here today to discuss the resource needs of the State Auditor’s Office, providing information regarding our efforts to fulfill our statutory obligations while improving accountability and promoting transparency of our state’s government.

As you are aware, the State Auditor is a constitutional state official elected by the citizens of North Dakota. My job is to lead the way in providing truthful, objective and independent audits to you and the citizens of North Dakota. Our mission is to produce informative audits to improve government through our vision of a diverse team committed to generating greater value for our taxpayers.

The law is not always black and white and not to mention complex.

If the law were strictly black and white, we wouldn’t need lawyers. Some would say we should have fewer anyway and everyone has their favorite lawyer joke. What isn’t a joke is the need to interpret law and advise if it is being followed properly. The State Auditor’s Office does not enforce the law, we look to see if it is being followed as the legislature intended it to be, and report what we observe. We cannot charge people for violating it, only pass the information on to those who can.

The Auditor’s Office has a different need for legal advice that doesn’t focus on if an action or lack of action is legal or illegal. Many times, auditors must determine whether something is ethical, and does it follow the intent and spirit of the law based on industry standards and best practices. In-house counsel is needed to assist in bringing forth recommendations that benefit the agency and the legislature in making sure policy is functioning as it should be and is meeting the needs of North Dakota taxpayers.

Why this is important and beneficial.

Recently, our office received a petition to audit. N.D.C.C. 54-10-15 allows an audit to be requested by the governor or LAFRC, or by citizen-initiated petition. What is not clear is what is required within the petition itself. The Century Code and Constitution are clear about petitions relating to the recall of elected officials, initiated measures, and referendum matters. But there is nothing other than the word petition and how to determine the required number of signatures. This leaves a lot of room to speculate.

Deputy State Auditor Brian Johnson is an attorney. However, he cannot function as one without the designation of Special Assistant Attorney General. The only way for me to hire an attorney in the State Auditor’s Office is in the appointed deputy role. Hiring a classified employee as an attorney in the state’s classified system would be against the law according to the Attorney General’s Office. Operating within these constraints, Brian was able to research N.D.C.C. the North Dakota Constitution and case law and present his research to our point of contact in the Attorney General’s office. We finally had

HB 1079
2-28-19
att #1
pg 2

someone in our office that could understand legalese and communicate it to our team. Having this skill in-house that worked with and assisted the Assistant Attorney General in determining the best course of action minimized liability to the State of North Dakota and greatly improved the outcome. In the end, the best course of action came from the sharing of different ideas and perspectives with everyone ending up understanding each other's viewpoints.

Is there any other benefit?

The Auditor's Office is not looking to replace the expertise and legal support of the Attorney General's office, but to work with them, using an attorney we employ, who can communicate our position and work with the Attorney General's counsel when needed. There are daily questions in-house counsel can answer and other ways to utilize a legal mindset when planning an audit. Questions and seeking guidance from a legal viewpoint occur daily and cannot be answered in a timely fashion in the current arrangement. An attorney in another agency who has multiple other clients does not always provide the attention to small questions and daily needs auditors would appreciate to better shape and direct audit objectives. There are times when legal questions go unasked because of time constraints.

I am asking for this change in law to allow the Auditor's Office to hire attorneys within existing FTE and appropriations. This ability will create greater cooperation and enhance our relationship with our assigned attorney in the Attorney General's Office.