

**2021 HOUSE GOVERNMENT AND VETERANS AFFAIRS**

**HB 1489**

# 2021 HOUSE STANDING COMMITTEE MINUTES

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

HB 1489  
2/18/2021

Relating to mandating the attorney general issue opinions requested by individual members of the legislative assembly and enforce state laws

**Chairman Kasper** opened the hearing at 4:45 p.m.

Representatives	Roll Call
Representative Jim Kasper	P
Representative Ben Koppelman	P
Representative Pamela Anderson	P
Representative Jeff A. Hoverson	P
Representative Karen Karls	P
Representative Scott Louser	P
Representative Jeffery J. Magrum	P
Representative Mitch Ostlie	P
Representative Karen M. Rohr	P
Representative Austen Schauer	P
Representative Mary Schneider	P
Representative Vicky Steiner	P
Representative Greg Stemen	P
Representative Steve Vetter	P

### Discussion Topics:

- Attorney general's opinions

**Rep. Magrum** introduced and testified in favor, #6978.

**Senator Heitkamp** testified in favor.

**Troy Seibel, Chief Deputy Attorney General**, testified in opposition.

**Chairman Kasper** closed the hearing at 5:09 p.m.

*Carmen Hart, Committee Clerk*

## CHAPTER 54-12 ATTORNEY GENERAL

### 54-12-01. Attorney general - Duties.

The attorney general shall:

1. Appear for and represent the state before the supreme court in all cases in which the state is interested as a party.
2. Institute and prosecute all actions and proceedings in favor or for the use of the state which may be necessary in the execution of the duties of any state officer.
3. Appear and defend all actions and proceedings against any state officer in the attorney general's official capacity in any of the courts of this state or of the United States. If both parties to an action are state officers, the attorney general may determine which officer the attorney general will represent and the other officer may employ counsel to represent that other officer.
4. Consult with and advise the several state's attorneys in matters relating to the duties of their office.
5. Attend the trial of any party accused of crime and assist in the prosecution when in the attorney general's judgment the interests of the state require it.
6. Consult with and advise the governor and all other state officers and when requested give written opinions on all legal or constitutional questions relating to the duties of such officers respectively.
7. Prepare, when necessary, proper drafts for contracts and other writings relating to subjects in which the state is interested.
8. Give written opinions, when requested by either branch of the legislative assembly, upon legal questions.
9. Enforce the proper application of funds appropriated to the public institutions of the state and prosecute breaches of trust in the administration of such funds.
10. Prosecute corporations and limited liability companies, when necessary, for failure or refusal to make the reports required by law.
11. Keep in proper books a register of all cases prosecuted or defended by the attorney general or the attorney general's assistants, in behalf of this state or its officers, and of all proceedings had in relation thereto, including a record of all actions wherein the state is a party, or is interested, prosecuted by the state's attorneys of the several counties and reported to the attorney general as provided by law, and deliver the same to the attorney general's successor in office.
12. Keep in the attorney general's office a book in which the attorney general shall record all the official opinions given by the attorney general during the attorney general's term of office, such book to be delivered by the attorney general to the attorney general's successor in office.
13. Pay into the state treasury all moneys received by the attorney general for the use of the state.
14. Serve as superintendent of the bureau of criminal investigation and perform all duties incident to the proper and efficient conduct of that office.
15. Attend to and perform any other duties which from time to time may be required by law.
16. Appoint the state fire marshal and supervise the operation of the state fire marshal department.
17. Give written opinions, when requested by the governing body or city attorney of a city in the state of North Dakota.
18. Repealed by S.L. 1991, ch. 637, § 9.
19. Give written opinions to public entities as defined in subdivision a or b of subsection 13 of section 44-04-17.1, when requested by an interested person under section 44-04-21.1.

# 2021 HOUSE STANDING COMMITTEE MINUTES

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

HB 1489  
2/19/2021

Relating to mandating the attorney general issue opinions requested by individual members of the legislative assembly and enforce state laws.

**Chairman Kasper** opened the committee work meeting at 10:19 a.m.

Representatives	Roll Call
Representative Jim Kasper	P
Representative Ben Koppelman	P
Representative Pamela Anderson	P
Representative Jeff A. Hoverson	P
Representative Karen Karls	P
Representative Scott Louser	P
Representative Jeffery J. Magrum	P
Representative Mitch Ostlie	P
Representative Karen M. Rohr	P
Representative Austen Schauer	P
Representative Mary Schneider	P
Representative Vicky Steiner	P
Representative Greg Stemen	P
Representative Steve Vetter	P

### Discussion Topics:

- Attorney General's opinions
- Amendment

**Rep. B. Koppelman** presented a list and amendment, #7047, #7048. (10:41)

**Rep. B. Koppelman** moved to adopt the amendment presented numbered on when Attorney General shall give an opinion to a legislator upon legal questions list a. thru d. **Rep. Magrum** seconded. (10:43) **Rep. B. Koppelman and Rep. Magrum withdrew their motions.**

(10:46) Consensus on final amendment. **Rep. Karls** moved to adopt list a. thru d. and add e. "amounts to private legal advice" **Rep. Vetter** seconded. **Voice vote:** Carried

(10:48) **Rep. Vetter** moved to further amend with f. "involves matters whether a criminal offense has occurred" **Rep. Schneider** seconded.

Representatives	Vote
Representative Jim Kasper	Y
Representative Ben Koppelman	Y
Representative Pamela Anderson	Y
Representative Jeff A. Hoverson	N
Representative Karen Karls	Y
Representative Scott Louser	Y
Representative Jeffery J. Magrum	N
Representative Mitch Ostlie	Y

Representative Karen M. Rohr	Y
Representative Austen Schauer	Y
Representative Mary Schneider	Y
Representative Vicky Steiner	N
Representative Greg Stemen	Y
Representative Steve Vetter	Y

**Motion carries.** 11-3-0.

**(10:49) Rep. B. Koppelman** moved to adopt amendment lines e. and f to 54-12-01.8 list. **Rep. Magrum** seconded. **Voice vote. Motion carries.**

**(10:54) Rep. B. Koppelman** moved to adopt amendment 54-12-01.8 list a. thru d. plus lines e. "amounts to private legal advice" and f. "involves matters whether a criminal offense has occurred". **Rep. Magrum** seconded. **Voice vote. Motion carries.**

**(10:55) Rep. B. Koppelman** moved **Do Pass as amended.** **Rep. Magrum** seconded.

<b>Representatives</b>	<b>Vote</b>
Representative Jim Kasper	Y
Representative Ben Koppelman	Y
Representative Pamela Anderson	N
Representative Jeff A. Hoverson	Y
Representative Karen Karls	N
Representative Scott Louser	N
Representative Jeffery J. Magrum	Y
Representative Mitch Ostlie	Y
Representative Karen M. Rohr	Y
Representative Austen Schauer	N
Representative Mary Schneider	N
Representative Vicky Steiner	N
Representative Greg Stemen	N
Representative Steve Vetter	Y

**Motion fails.** 7-7-0.

**(11:00) Rep. Magrum** moved go to floor **without committee recommendation.** **Rep. Vetter** seconded.

<b>Representatives</b>	<b>Vote</b>
Representative Jim Kasper	N
Representative Ben Koppelman	N
Representative Pamela Anderson	Y
Representative Jeff A. Hoverson	N
Representative Karen Karls	Y
Representative Scott Louser	Y
Representative Jeffery J. Magrum	N
Representative Mitch Ostlie	Y
Representative Karen M. Rohr	N
Representative Austen Schauer	Y
Representative Mary Schneider	N

Representative Vicky Steiner	N
Representative Greg Stemen	Y
Representative Steve Vetter	Y

**Motion fails. 7-7-0.**

**(11:03) Rep. Vetter** moved to adopt further amendment “If the attorney general declines to issue an opinion for a reason in subdivision a, the attorney general shall inform the individual who requested the opinion in a written response.

**Rep. Magrum** seconded. **Voice vote. Motion carries.**

**(11:08) Rep. Vetter** moved **Do Pass as amended with LC 21.0983.02001. Rep. B. Koppelman** seconded.

<b>Representatives</b>	<b>Vote</b>
Representative Jim Kasper	Y
Representative Ben Koppelman	Y
Representative Pamela Anderson	N
Representative Jeff A. Hoverson	Y
Representative Karen Karls	N
Representative Scott Louser	N
Representative Jeffery J. Magrum	Y
Representative Mitch Ostlie	Y
Representative Karen M. Rohr	Y
Representative Austen Schauer	N
Representative Mary Schneider	N
Representative Vicky Steiner	N
Representative Greg Stemen	N
Representative Steve Vetter	Y

**Motion fails. 7-7-0.**

**(11:10) Rep. Magrum** moved to go to the floor **without committee recommendation as amended. Rep. Stemen** seconded.

<b>Representatives</b>	<b>Vote</b>
Representative Jim Kasper	Y
Representative Ben Koppelman	Y
Representative Pamela Anderson	Y
Representative Jeff A. Hoverson	Y
Representative Karen Karls	Y
Representative Scott Louser	Y
Representative Jeffery J. Magrum	Y
Representative Mitch Ostlie	Y
Representative Karen M. Rohr	Y
Representative Austen Schauer	Y
Representative Mary Schneider	Y
Representative Vicky Steiner	N
Representative Greg Stemen	Y
Representative Steve Vetter	N

**Motion passes. 12-2-0. Rep. B. Koppelman** is the carrier.

**Chairman Kasper** adjourned at 11:10 a.m.

Note: The bill was reconsidered on 2/23/2021.

*Carmen Hart, Committee Clerk*

54-12-01.8

- Give written opinions, when requested by ~~either branch~~ a member of the legislative assembly, upon legal questions unless:
  - a. Is one of only fact, rather than of fact and law or of law;
  - b. Involves the constitutionality of a statute;
  - c. Concerns the internal operation or management of the judicial branch of government;
  - d. Is likely to be or presently is pending before a court or a court already has ruled on the issue.



PROPOSED AMENDMENTS TO HOUSE BILL NO. 1489

Page 1, line 1, replace "create and enact a new section to chapter 54-12 and subsection 20 to" with "amend and reenact"

Page 1, line 3, remove "and enforce state"

Page 1, line 4, remove "laws"

Page 1, replace lines 6 through 15 with:

**"SECTION 1. AMENDMENT.** Section 54-12-01 of the North Dakota Century Code is amended and reenacted as follows:

**54-12-01. Attorney general - Duties.**

The attorney general shall:

1. Appear for and represent the state before the supreme court in all cases in which the state is interested as a party.
2. Institute and prosecute all actions and proceedings in favor or for the use of the state which may be necessary in the execution of the duties of any state officer.
3. Appear and defend all actions and proceedings against any state officer in the attorney general's official capacity in any of the courts of this state or of the United States. If both parties to an action are state officers, the attorney general may determine which officer the attorney general will represent and the other officer may employ counsel to represent that other officer.
4. Consult with and advise the several state's attorneys in matters relating to the duties of their office.
5. Attend the trial of any party accused of crime and assist in the prosecution when in the attorney general's judgment the interests of the state require it.
6. Consult with and advise the governor and all other state officers and when requested give written opinions on all legal or constitutional questions relating to the duties of such officers respectively.
7. Prepare, when necessary, proper drafts for contracts and other writings relating to subjects in which the state is interested.
8. a. Give written opinions, within a reasonable time, when requested by ~~either branch~~ a member of the legislative assembly, in writing, upon legal questions unless the request:
  - (1) Is one of only fact, rather than of fact and law, or of law;
  - (2) Involves the constitutionality of a statute;

(3) Concerns the internal operation or management of the judicial branch of government; or

(4) Is likely to be or presently is pending before a court or a court already has ruled on the issue.

07  
2/19/21

b. If the attorney general declines to issue an opinion for a reason in subdivision a, the attorney general shall inform the individual who requested the opinion in a written response.

9. Enforce the proper application of funds appropriated to the public institutions of the state and prosecute breaches of trust in the administration of such funds.
10. Prosecute corporations and limited liability companies, when necessary, for failure or refusal to make the reports required by law.
11. Keep in proper books a register of all cases prosecuted or defended by the attorney general or the attorney general's assistants, in behalf of this state or its officers, and of all proceedings had in relation thereto, including a record of all actions wherein the state is a party, or is interested, prosecuted by the state's attorneys of the several counties and reported to the attorney general as provided by law, and deliver the same to the attorney general's successor in office.
12. Keep in the attorney general's office a book in which the attorney general shall record all the official opinions given by the attorney general during the attorney general's term of office, such book to be delivered by the attorney general to the attorney general's successor in office.
13. Pay into the state treasury all moneys received by the attorney general for the use of the state.
14. Serve as superintendent of the bureau of criminal investigation and perform all duties incident to the proper and efficient conduct of that office.
15. Attend to and perform any other duties which from time to time may be required by law.
16. Appoint the state fire marshal and supervise the operation of the state fire marshal department.
17. Give written opinions, when requested by the governing body or city attorney of a city in the state of North Dakota.
18. Repealed by S.L. 1991, ch. 637, § 9.
19. Give written opinions to public entities as defined in subdivision a or b of subsection 13 of section 44-04-17.1, when requested by an interested person under section 44-04-21.1."

Renumber accordingly

**REPORT OF STANDING COMMITTEE**

**HB 1489: Government and Veterans Affairs Committee (Rep. Kasper, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **BE PLACED ON THE CALENDAR WITHOUT RECOMMENDATION** (12 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). HB 1489 was placed on the Sixth order on the calendar.

Page 1, line 1, replace "create and enact a new section to chapter 54-12 and subsection 20 to" with "amend and reenact"

Page 1, line 3, remove "and enforce state"

Page 1, line 4, remove "laws"

Page 1, replace lines 6 through 15 with:

**"SECTION 1. AMENDMENT.** Section 54-12-01 of the North Dakota Century Code is amended and reenacted as follows:

**54-12-01. Attorney general - Duties.**

The attorney general shall:

1. Appear for and represent the state before the supreme court in all cases in which the state is interested as a party.
2. Institute and prosecute all actions and proceedings in favor or for the use of the state which may be necessary in the execution of the duties of any state officer.
3. Appear and defend all actions and proceedings against any state officer in the attorney general's official capacity in any of the courts of this state or of the United States. If both parties to an action are state officers, the attorney general may determine which officer the attorney general will represent and the other officer may employ counsel to represent that other officer.
4. Consult with and advise the several state's attorneys in matters relating to the duties of their office.
5. Attend the trial of any party accused of crime and assist in the prosecution when in the attorney general's judgment the interests of the state require it.
6. Consult with and advise the governor and all other state officers and when requested give written opinions on all legal or constitutional questions relating to the duties of such officers respectively.
7. Prepare, when necessary, proper drafts for contracts and other writings relating to subjects in which the state is interested.
8. a. Give written opinions, ~~within a reasonable time~~, when requested by either branch a member of the legislative assembly, in writing, upon legal questions unless the request:
  - (1) Is one of only fact, rather than of fact and law, or of law;
  - (2) Involves the constitutionality of a statute;
  - (3) Concerns the internal operation or management of the judicial branch of government; or

- (4) Is likely to be or presently is pending before a court or a court already has ruled on the issue.
- b. If the attorney general declines to issue an opinion for a reason in subdivision a, the attorney general shall inform the individual who requested the opinion in a written response.
9. Enforce the proper application of funds appropriated to the public institutions of the state and prosecute breaches of trust in the administration of such funds.
  10. Prosecute corporations and limited liability companies, when necessary, for failure or refusal to make the reports required by law.
  11. Keep in proper books a register of all cases prosecuted or defended by the attorney general or the attorney general's assistants, in behalf of this state or its officers, and of all proceedings had in relation thereto, including a record of all actions wherein the state is a party, or is interested, prosecuted by the state's attorneys of the several counties and reported to the attorney general as provided by law, and deliver the same to the attorney general's successor in office.
  12. Keep in the attorney general's office a book in which the attorney general shall record all the official opinions given by the attorney general during the attorney general's term of office, such book to be delivered by the attorney general to the attorney general's successor in office.
  13. Pay into the state treasury all moneys received by the attorney general for the use of the state.
  14. Serve as superintendent of the bureau of criminal investigation and perform all duties incident to the proper and efficient conduct of that office.
  15. Attend to and perform any other duties which from time to time may be required by law.
  16. Appoint the state fire marshal and supervise the operation of the state fire marshal department.
  17. Give written opinions, when requested by the governing body or city attorney of a city in the state of North Dakota.
  18. Repealed by S.L. 1991, ch. 637, § 9.
  19. Give written opinions to public entities as defined in subdivision a or b of subsection 13 of section 44-04-17.1, when requested by an interested person under section 44-04-21.1."

Renumber accordingly

54-12-01.8

- Give written opinions, when requested by ~~either branch~~ a member of the legislative assembly, upon legal questions unless:
  - a. Is one of only fact, rather than of fact and law or of law;
  - b. Involves the constitutionality of a statute;
  - c. Concerns the internal operation or management of the judicial branch of government;
  - d. Is likely to be or presently is pending before a court or a court already has ruled on the issue.

# Legal Opinions

One of the duties of the Attorney General is to give written opinions on legal questions. State law restricts who may request an Attorney General's Opinion.

The Attorney General is authorized to issue opinions only to state agencies and officials, the state legislature, county state's attorneys, certain city officials, water resource districts, soil conservation districts, health district boards, the Judicial Conduct Commission, and the Garrison Diversion Conservancy District.

Some situations are unsuited for an Opinion. These include when the question presented:

- is one of fact, rather than law;
- involves the constitutionality of a statute;
- is moot or hypothetical;
- concerns the internal operation or management of the judicial branch of government;
- calls for interpreting a local ordinance or charter;
- should be, or already has been, addressed by the political subdivision's legal advisor;
- involves matters regarding whether a criminal offense has occurred;
- is likely to be or presently is pending before a court or a court already has ruled on the issue; or
- amounts to private legal advice.

An Attorney General's Opinion governs the actions of public officials until such time as the question presented is decided by the Courts.



# 2021 HOUSE STANDING COMMITTEE MINUTES

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

HB 1489  
2/23/2021

Relating to mandating the attorney general issue opinions requested by individual members of the legislative assembly and enforce state laws

**Chairman Kasper** opened the committee work meeting at 3:10 p.m.

Representatives	Roll Call
Representative Jim Kasper	P
Representative Ben Koppelman	P
Representative Pamela Anderson	P
Representative Jeff A. Hoverson	P
Representative Karen Karls	P
Representative Scott Louser	A
Representative Jeffery J. Magrum	P
Representative Mitch Ostlie	P
Representative Karen M. Rohr	P
Representative Austen Schauer	P
Representative Mary Schneider	P
Representative Vicky Steiner	P
Representative Greg Stemen	P
Representative Steve Vetter	A

### Discussion Topics:

- Amendment correction

**Rep. B. Koppelman** moved to **reconsider**. **Rep. Magrum** seconded the motion. **Voice vote. Motion carries.**

**Rep. B. Koppelman** explained amendment, #7038, and moved to **adopt #21.0938.04001**. **Rep. Rohr** seconded the motion. **Voice vote. Motion carries.**

**Rep. B. Koppelman** moved **As amended without committee recommendation**. **Rep. Magrum** seconded the motion.

<b>Representatives</b>	<b>Vote</b>
Representative Jim Kasper	Y
Representative Ben Koppelman	Y
Representative Pamela Anderson	Y
Representative Jeff A. Hoverson	Y
Representative Karen Karls	N
Representative Scott Louser	A
Representative Jeffery J. Magrum	Y
Representative Mitch Ostlie	Y
Representative Karen M. Rohr	Y
Representative Austen Schauer	Y
Representative Mary Schneider	Y
Representative Vicky Steiner	Y
Representative Greg Stemen	Y
Representative Steve Vetter	A

**Motion passes.** 11-1-2. **Rep. B. Koppelman** is the carrier.

**Chairman Kasper** ended 3:16 p.m.

*Carmen Hart, Committee Clerk*



PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1489

Page 2, line 9, remove "or"

Page 2, line 11, after "issue" insert ":

- (5) Amounts to private legal advice; or
- (6) Involves matters regarding whether a criminal offense has occurred"

Renumber accordingly

**REPORT OF STANDING COMMITTEE**

**HB 1489, as engrossed: Government and Veterans Affairs Committee (Rep. Kasper, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends BE PLACED ON THE CALENDAR WITHOUT RECOMMENDATION (11 YEAS, 1 NAY, 2 ABSENT AND NOT VOTING). Engrossed HB 1489 was placed on the Sixth order on the calendar.**

Page 2, line 9, remove "or"

Page 2, line 11, after "issue" insert ":

(5) Amounts to private legal advice; or

(6) Involves matters regarding whether a criminal offense has occurred"

Renumber accordingly

21.0938.04001  
Title.

Prepared by the Legislative Council staff for  
Representative B. Koppelman  
February 23, 2021

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1489

Page 2, line 9, remove "or"

Page 2, line 11, after "issue" insert ":

- (5) Amounts to private legal advice; or
- (6) Involves matters regarding whether a criminal offense has occurred"

Renumber accordingly