

SENATE STATE AND LOCAL GOVERNMENT  
JANUARY 20, 2023

TESTIMONY OF MARY KAE KELSCH  
OFFICE OF ATTORNEY GENERAL  
SENATE BILL NO. 2208

Madam Chair, members of the Committee.

I am Mary Kae Kelsch, Division Director of the Division of General Counsel in the Attorney General's office and I appear on behalf of the Attorney General.

The Division of General Counsel provides general counsel legal services to approximately 100 state agencies, commissions, regulatory boards, and the higher education institutions. The Division has 14 attorneys, 8 of whom work here in Bismarck. It is also the division that holds the open record and meetings portfolio. Pertinent to SB 2208, my division writes a majority of the legal opinions.

There are two types of opinions: 1) open records and meetings; and 2) legal opinions. By statute, any person may ask for an open records and meeting opinion. However, legal opinions may only be issued to those set forth in the statute at issue in this bill.

The language on page 2, line 3 of SB 2208 adds a three month deadline for issuing an opinion. This will be impossible to do in most instances. There are times when we will get an opinion researched, written, and issued in three months. Most of the time, however, it will take much longer to research, write, and issue an opinion.

In fact, a lot of time may be needed just to get the relevant context and background information from a requester. That time period is not within our control. I do not have an attorney whose only job is to write opinions. Attorneys work on opinions in addition to their normal workloads, which are very heavy already. Most Attorney General's offices have a division dedicated to writing opinions. Many times, a lot of research has to take place before an opinion can even be written. The office takes opinions very seriously because "an attorney general's opinion guides officials until superseded by judicial opinion" *Saefke v. Stenehjem*, 673 N.W.2d 41 (2003). We put the same level of care into an opinion as the Supreme Court puts into their decisions.

After a question is researched, it is written and then another attorney reviews it. It then goes to the Chief Deputy for review and then, finally, the Attorney General. This process is in place to safeguard the quality of the opinion. I understand the frustration that opinions take time. However, I do not have nearly enough staff to issue opinions under a three month deadline. In our budget I requested two FTE's with the purpose of having more attorneys available to write opinions. That is not taking into consideration a three month deadline. With the deadline I would need at least two people to work on opinions.

My only other comment is that the statement on Page 2, line 6 is confusing. I'm happy to answer any questions.