

Sixty-third
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1069

Introduced by

Judiciary Committee

(At the request of the Office of Management and Budget)

1 A BILL for an Act to amend and reenact sections 32-12.2-15 and 32-12.2-16 of the North
2 Dakota Century Code, relating to authorization of agencies to limit the liability of certain
3 contracting parties to the state.

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

5 **SECTION 1. AMENDMENT.** Section 32-12.2-15 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **32-12.2-15. Contracts limiting liability to the state –~~Assumption of certain excess~~**
8 **~~liability by the risk management fund.~~**

9 Notwithstanding any provision in this chapter to the contrary, ~~if the attorney general and the~~
10 ~~director of the office of management and budget determine it is in the best interest of the state,~~
11 ~~an agency may agree to limit the liability of a contractor to the state. The liability limitation must~~
12 ~~be approved by the attorney general and director of the office of management and budget in~~
13 ~~writing and may only be approved for if the agency determines such services or products~~
14 ~~cannot be effectively obtained without such limitation and the limitation does not pose any~~
15 ~~significant risk of loss to the state and is in the best interests of the state. An agency shall~~
16 ~~consult with the office of management and budget and the attorney general's office prior to~~
17 ~~agreeing to any liability limitation~~ The agency, in consultation with the office of management and
18 budget and the attorney general's office, shall prepare a written documentation before agreeing
19 to any liability limitation. An agency's authority to agree to a limitation of liability is limited to
20 contracts for the purchase or lease of, or services related to, software, communication, or
21 electronic equipment and economic forecasting and may only limit the agency's ability to
22 recover indirect consequential damages. For any uninsured losses, the director of the office of
23 management and budget may approve the risk management fund to assume all or part of the
24 contractor's liability to the state in excess of the limitation. ~~Contracts for economic forecasting~~

1 for the office of management and budget may contain a provision limiting the state's ability to
2 seek and recover indirect consequential damages if the director of the office of management
3 and budget and the attorney general determine that such services cannot be effectively
4 obtained without such limitation and that the limitation does not pose any significant risk of loss
5 to the state and is in the best interests of the state. A contract under this section may not limit
6 any direct loss to the state or loss resulting from property damage or personal injury.

7 **SECTION 2. AMENDMENT.** Section 32-12.2-16 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **32-12.2-16. Ratifying contracts limiting liability to the state.**

10 Any employee or official of an agency who entered into enters a contract prior to March 17,
11 2005, requiring the agency to limit the liability of the contracting party without first consulting
12 with the office of management and budget and the attorney general's office will be deemed to
13 be acting within the scope of the employee's or official's employment provided the contract is
14 approved or ratified by the attorney general and the director of the office of management and
15 budget and otherwise meets the conditions contained in section 32-12.2-15.