

TESTIMONY OF

Tag Anderson, Director of Risk Management Division

Chairman Lefor, and members of the House Industry, Business and Labor Committee, my name is Tag Anderson. I am the Director of the Risk Management Division of the Office of Management and Budget (OMB). I appear today in support of HB 1316.

N.D.C.C. § 32-12.2-15 authorizes state agencies to contractually limit the liability of a vendor for indirect consequential loss resulting from the purchase or lease of certain products and services. Before agreeing to such contractual provisions, agencies must consult with legal counsel from the Attorney General's Office and OMB to assess the contractual language and the risk of loss to the State.

During the 2019 Legislative Session, OMB was contacted by and had discussions with a large IT vendor that asked OMB to pursue legislation to allow agencies greater authority to agree to limit the liability of a vendor. OMB recognized that some additional flexibility may be beneficial to agencies in negotiating these, sometimes contentious, contractual clauses. OMB and representatives from the Attorney General's Office drafted proposed amendments to N.D.C.C. § 32-12.2-15, but unfortunately it was too late to be considered during the 2019 Legislative Session. However, that effort, and the work of the Legislative Interim Technology Committee, has resulted in the current bill before you.

In an effort to simplify and streamline contract negotiations, and encourage all vendors to work with North Dakota agencies, OMB supports amendments to N.D.C.C. § 32-12.2-15. This would allow agencies to agree to limit the liability of a vendor to a maximum amount where that amount is not less than the reasonably foreseeable loss to the State, with exceptions for breach of data confidentiality obligations and personal injury or property damage. It is believed that these changes will address concerns raised by some vendors and assist agencies in contract negotiation without creating any significant risk of loss to the State.

This concludes my prepared remarks. I would be happy to answer any questions you may have.

Thank you.