

Fifty-fifth  
Legislative Assembly  
of North Dakota

## HOUSE BILL NO. 1229

Introduced by

Representative Kretschmar

1 A BILL for an Act to amend and reenact subsection 3 of section 32-12.1-03 of the North Dakota  
2 Century Code, relating to the discretionary functions or duties of a political subdivision.

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

4 **SECTION 1. AMENDMENT.** Subsection 3 of section 32-12.1-03 of the North Dakota  
5 Century Code is amended and reenacted as follows:

- 6 3. A political subdivision is not liable for any claim based upon an act or omission of  
7 an employee of a political subdivision, exercising due care, in the execution of a  
8 statute or regulation, whether or not ~~such~~ that statute or regulation ~~be~~ is valid, or  
9 based upon the exercise or performance, exercising due care, of or the failure to  
10 exercise or perform a discretionary function or duty on the part of a political  
11 subdivision or its employees, whether or not the discretion involved ~~be~~ is abused.  
12 Specifically, a political subdivision or an employee ~~thereof~~ of a political subdivision  
13 is not liable for any claim that results from:
- 14 a. The decision to undertake or the refusal to undertake any legislative or  
15 quasi-legislative act, including the decision to adopt or the refusal to adopt  
16 any statute, charter, ordinance, order, regulation, resolution, or resolve.
- 17 b. The decision to undertake or the refusal to undertake any judicial or  
18 quasi-judicial act, including the decision to grant, to grant with conditions, to  
19 refuse to grant, or to revoke any license, permit, order, or other administrative  
20 approval or denial.
- 21 c. The decision to perform or the refusal to exercise or perform a discretionary  
22 function or duty, whether or not such discretion ~~be~~ is abused and whether or  
23 not the statute, charter, ordinance, order, resolution, regulation, or resolve  
24 under which the discretionary function or duty is performed is valid or invalid.

1           d.    The failure to provide or maintain sufficient personnel, equipment, or other fire  
2                protection facilities; or doing any fire extinguishment or fire prevention work,  
3                rescue, resuscitation, or first aid; or any other official acts within the scope of  
4                official duties; provided, however, this subsection does not provide immunity  
5                for damages resulting from acts of gross negligence.

6           The operation and maintenance by a political subdivision or an employee of a  
7           political subdivision of a water main system may not be considered a discretionary  
8           function or duty. This subsection does not limit the liability of a political subdivision  
9           or an employee ~~thereof~~ of a political subdivision for a personal injury arising out of  
10          the execution of any legislative or quasi-legislative act, judicial or quasi-judicial act,  
11          or discretionary function.