

TESTIMONY OF

Tag Anderson, Director Risk Management Division

Chairman Patten and members of the Senate Energy and Natural Resources 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 opposition of SB 2310.

The Risk Management Division of OMB administers the Risk Management Fund pursuant to N.D.C.C. Chap. 32-12.2. This chapter outlines the state of North Dakota's tort liability for money damages. The Risk Management Fund is not insurance, it is a self-retention fund that is funded through agency contributions that are actuarially determined every two years, before the budgeting process for the next Legislative Session.

The Risk Management Division does not address claims against the state the way in which a "for profit" insurance company would. We have a statutory obligation to provide compensation to injured parties who are harmed through state activities as the facts and applicable law dictate. We take that responsibility very seriously and do not engage in any tactics which are designed to force citizens to accept less than they are entitled. In addition, there simply are no incentives to engage in such practices. We compensate parties as the facts and law requires and where there is uncertainty, we work in good faith to reach a mutually beneficial compromise. In fact, in the last approximate fifteen years, there does not appear to have been a single meritorious claim against the state that was not resolved through prompt payment or settlement. Simply put, the ability to collect fees and costs as outlined in SB 2310 would not have occurred at any point during at least the last approximate fifteen years as there have been no adverse judgments.

However, there are still significant issues with this bill. The fee shifting is mandatory and creates a disincentive for a claimant to act in good faith to resolve a claim. Under this legislation, the claimant will receive fees and costs regardless, even in cases where the claimant was offered more money than he received in the lawsuit and resulting judgment. In fact, this legislation may well raise constitutional separation of powers issues to the extent it would interfere with Rule 68 of the North Dakota Rules of Civil Procedure and the "cut off" of recoverable costs where the resulting judgment is less than a formal settlement offer made through a Rule 68 offer of judgment.

In addition, this bill will impact the actuarial assumptions that go into funding recommendations and required agency contributions to the Risk Management Fund. The statutory caps on liability contained in N.D.C.C. chap. 32-12.2 are actuarially assumed per person and per occurrence limits. We reinsure through the purchase of an excess insurance

product above the statutory caps to address those exposures. However, these assumptions are undercut where costs and fees are required to be included and there are no limits on the amounts of costs and fees that are recoverable. Our ability to insure above statutorily provided limits is also impacted, resulting in greater uncertainties in required biennial funding and agency contributions.

Chairman Patten and committee members, this concludes my testimony. I ask for a do not pass recommendation. I would be happy to answer any questions.

Thank you.