

2025 SENATE STATE AND LOCAL GOVERNMENT

SB 2072

2025 SENATE STANDING COMMITTEE MINUTES

State and Local Government Committee Room JW216, State Capitol

SB 2072
1/9/2025

Relating to contracts limiting liability to the state

10:35 a.m. Chair Roers called the meeting to order.

Members Present: Chair Roers; Vice Chair Castaneda; Senators: Barta, Braunberger, Lee and Walen.

Discussion Topics:

- Framework for process
- Limitation of liability clause
- Increase in contract amount

10:35 a.m. Tag Anderson, Director of Risk Management of the Office of Management and Budget testified with testimony #28118 in favor of SB 2072.

10:40 a.m. Chair Roers closed the hearing.

10:41 a.m. Senator Braunberger moved to Do Pass.

10:41 a.m. Senator Walen seconded the motion.

Senators	Vote
Senator Kristin Roers	Y
Senator Jose L. Castaneda	Y
Senator Jeff Barta	Y
Senator Ryan Braunberger	Y
Senator Judy Lee	Y
Senator Chuck Walen	Y

Motion Passed 6-0-0

Senator Braunberger will carry the bill.

10:40 a.m. Chair Roers closed the meeting.

Susan Helbling, Committee Clerk

REPORT OF STANDING COMMITTEE
SB 2072 ([25.8071.01000](#))

State and Local Government Committee (Sen. Roers, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING), and be placed on the Eleventh order on the calendar. This bill does not affect workforce development.



Management
and Budget

Testimony in Support of
Senate Bill No. 2072
Senate State and Local Government
January 9, 2025

TESTIMONY OF

Tag Anderson, Director Risk Management Division

Chairman Roers and members of the 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 SB 2072.

Large software or other IT contracts are typically negotiated directly with a vendor, and otherwise legally impermissible or unfavorable terms are removed through normal negotiation processes. Similarly, when agencies purchase routine electronic equipment and software that goes on or is used by most state employee computers, it is typically done pursuant to statewide or cooperative contracts that are available to all agencies.

This legislation is not designed to by-pass that process and the need for the State Procurement Office with assistance from NDIT and the Attorney General's Office to have appropriate terms. However, the way electronic services or systems are delivered and made available continues to change, with web-based applications and services becoming common. Many of these applications use third-party software that are included in the click-through agreements or end-user license agreements (EULA). Click-through agreements are defined as a digital contracts that require users to agree to terms and conditions before they can use a website, software, or online service. Users typically agree to the terms by clicking a button or checking a box that says, "I agree." Often there is no meaningful way of reaching out to the third-party vendor and negotiating appropriate terms. Some embedded third-party software or applications are essentially free, whether used in the vendor's application or directly by a state agency.

In prior legislation we addressed the often-contentious limitation of liability provisions that are found in adhesive click through or EULA agreements. This legislation would allow an agency, in consultation with the Attorney General's Office, OMB and NDIT to agree, or ignore, other provisions in third-party click-through agreements and terms that would otherwise be impermissible. This will allow agencies to properly negotiate appropriate terms consistent with state law when necessary or feasible but allow for the purchase or use of the products when there is no real risk of these impermissible terms becoming operable and enforced against the state.

Chairman Roers and committee members, this concludes my testimony. I ask your support for SB 2072. I would be happy to answer any questions.

Thank you.

2025 HOUSE GOVERNMENT AND VETERANS AFFAIRS

SB 2072

2025 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Pioneer Room, State Capitol

SB 2072
3/6/2025

Relating to contracts limiting liability to the state.
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4:01 p.m. Chairman Schauer opened the hearing.

Members present: Chairman Schauer, Vice Chairman Satrom, Representatives Grindberg, Karls, McLeod, Rohr, Schneider, Steiner, VanWinkle, Vetter, Wolff
Members absent: Representatives Bahl, Brown

Discussion Topics:

- Contract disclosure statements and flexibility

4:01 p.m. Tag Anderson, Director of the Risk Management Division, testified in favor and submitted testimony, #38583.

4:10 p.m. Chairman Schauer closed the hearing.

Jackson Toman, Committee Clerk



Management
and Budget

Testimony in Support of
Senate Bill No. 2072

House Government and Veterans Affairs

March 6, 2025

TESTIMONY OF

Tag Anderson, Director Risk Management Division

Chairman Schauer and members of the 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 SB 2072.

Large software or other IT contracts are typically negotiated directly with a vendor, and otherwise legally impermissible or unfavorable terms are removed through normal negotiation processes. Similarly, when agencies purchase routine electronic equipment and software that goes on or is used by most state employee computers, it is typically done pursuant to statewide or cooperative contracts that are available to all agencies.

This legislation is not designed to by-pass that process and the need for the State Procurement Office with assistance from NDIT and the Attorney General's Office to have appropriate terms. However, the way electronic services or systems are delivered and made available continues to change, with web-based applications and services becoming common. Many of these applications use third-party software that are included in the click-through agreements or end-user license agreements (EULA). Click-through agreements are defined as a digital contracts that require users to agree to terms and conditions before they can use a website, software, or online service. Users typically agree to the terms by clicking a button or checking a box that says, "I agree." Often there is no meaningful way of reaching out to the third-party vendor and negotiating appropriate terms. Some embedded third-party software or applications are essentially free, whether used in the vendor's application or directly by a state agency.

In prior legislation we addressed the often-contentious limitation of liability provisions that are found in adhesive click through or EULA agreements. This legislation would allow an agency, in consultation with the Attorney General's Office, OMB and NDIT to agree, or ignore, other provisions in third-party click-through agreements and terms that would otherwise be impermissible. This will allow agencies to properly negotiate appropriate terms consistent with state law when necessary or feasible but allow for the purchase or use of the products when there is no real risk of these impermissible terms becoming operable and enforced against the state.

Chairman Schauer and committee members, this concludes my testimony. I ask your support for SB 2072. I would be happy to answer any questions.

Thank you.

2025 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Pioneer Room, State Capitol

SB 2072
3/7/2025

Relating to contracts limiting liability to the state.
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10:54 a.m. Chairman Schauer opened the meeting.

Members present: Chairman Schauer, Vice Chairman Satrom, Representatives Brown, Grindberg, Karls, McLeod, Rohr, Schneider, Steiner, VanWinkle, Vetter, Wolff
Members absent: Representative Bahl

Discussion Topics:

- Committee action

10:55 a.m. Representative Vetter moved a Do Pass.

10:55 a.m. Representative McLeod seconded the motion.

Representatives	Vote
Representative Austen Schauer	Y
Representative Bernie Satrom	Y
Representative Landon Bahl	AB
Representative Collette Brown	Y
Representative Karen Grindberg	Y
Representative Karen Karls	Y
Representative Carrie McLeod	Y
Representative Karen Rohr	Y
Representative Mary Schneider	Y
Representative Vicky Steiner	Y
Representative Lori VanWinkle	Y
Representative Steve Vetter	Y
Representative Christina Wolff	Y

10:58 a.m. Motion passed 12-0-1.

Representative Vetter will carry the bill.

10:59 a.m. Chairman Schauer closed the meeting.

Jackson Toman, Committee Clerk

REPORT OF STANDING COMMITTEE
SB 2072 ([25.8071.01000](#))

Government and Veterans Affairs Committee (Rep. Schauer, Chairman) recommends **DO PASS** (12 YEAS, 0 NAYS, 1 ABSENT OR EXCUSED AND NOT VOTING). SB 2072 was placed on the Fourteenth order on the calendar.