GREATER NORTH DAKOTA CHAMBER
SB 2406
Special Ad Hoc Policy Committee
Chairman Klein and Chairman Ruby
Sept. 1, 2026

Mr. Chairmen and members of the Committee, my name is Andrea Pfennig, and I am the Vice President of Government Affairs for the Greater North Dakota Chamber. GNDC is North Dakota's largest statewide business advocacy organization, with membership represented by small and large businesses, local chambers, and trade and industry associations across the state. We stand in **opposition** of Senate Bill 2406.

Nondisclosure agreements (NDAs) have a specific purpose. They allow businesses to protect sensitive information as they develop projects, evaluate feasibility, and work with public entities. That can include proprietary, trade secret, commercial, financial, and security-related information. But an NDA cannot override North Dakota's existing open records and open meetings laws.

GNDC has several concerns with Senate Bill 2406, beginning with its broad scope.

While the impetus for this bill initiated with concern regarding NDAs at the local level, the definition of "agency" in this bill goes much further. It includes the state, its employees, elected and appointed officials, as well as a person or contractor acting on behalf of the state or a political subdivision. We are concerned about how this could affect consultants, engineering firms, economic development organizations, and others working with public entities.

The definition of "industrial project" is just as broad. By encompassing business, industry, utilities, and infrastructure this could affect virtually every sector of our economy, including manufacturing, agricultural processing, energy, and many others.

Finally, the definition of "nondisclosure agreement" extends beyond a stand-alone contract to include provisions or clauses contained within other documents. For example, this could include grant agreements, research contracts, licensing agreements, or development contracts.

Together, these definitions give this legislation a reach that extends well beyond a narrow set of projects or circumstances.

Lines 28 and 29 of page 2 indicate that 44-04-18.4 is not modified. We appreciate that this important protection remains, but the bill raises structural questions about how the information will be protected. Under the existing law information may qualify as confidential, but agencies are not allowed to enter into an agreement to keep it confidential.

That concern is compounded by lines 13 and 14 on page 2, which prohibit requiring an agency to obtain advance approval from a developer before disclosing information. If information is determined not to qualify as confidential, the private entity may have no opportunity to respond before that information is disclosed. That uncertainty could make businesses more reluctant to share information with public entities in the first place, thus reducing the transparency this bill seeks.

Lines 5 and 6 on page 3 also provide that a violation constitutes grounds for suspension or revocation of permits and approvals. It is unclear how broadly that provision could be applied, including whether existing permits or approvals could be affected.

These are only some of the concerns we have heard from our members. Just as importantly, many have told us they are concerned but are still working to understand the full implications of the bill.

Given the broad scope of businesses and industries impacted by the bill, the unanswered questions surrounding its application, and the limited opportunity to fully evaluate those impacts during a special session, at a minimum we would request that this issue be considered during the regular legislative session beginning in January.

GNDC understands that communities have questions about the potential impacts of projects. Businesses are a vital part of the communities in which they operate. Our members are not opposed to sharing information and addressing legitimate concerns. But achieving transparency does not require a blanket, one-size-fits-all approach that broadly restricts the use of NDAs.

NDAs can be an important tool that allows businesses to share information and work collaboratively with state and local governments while appropriately protecting confidential information. Restricting that protection may ultimately result in businesses sharing less information, not more.

It is possible to answer questions, engage communities, and have productive conversations while also recognizing that private entities investing significant amounts of private capital have information that must remain confidential.

North Dakota's longstanding open records framework has served the state well, providing businesses with predictability and certainty while helping foster a strong business climate, attract private investment, create jobs, and support economic growth. Given that track record, we do not believe the case has been made for broad changes to the existing framework.

GNDC stands ready to continue the conversation and work with legislators and stakeholders to explore targeted approaches that preserve what has worked well for North Dakota while providing communities with the clarity they are seeking.