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From: **Charles Hoefler**

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SUBJECT: Testimony in Favor of SB 2396

Madam Chair Roers and Members of the State and Local Government Senate Committee:

For the record, I am Charles Hoefler. I am in favor of this bill, and I am providing first-hand testimony and other public information, which is crucial to motivating the passage of SB 2396 to allow for a performance audit of Commerce and the North Dakota Development Fund.

1. Introduction:

North Dakota Commerce functions under the Governor's executive authority, while mandates, appropriations, and numerous State and federal laws set the guard rails. Powers given to Commerce officials are unlike any other commerce department in the nation. There are more local banks per capita in North Dakota than any other state. Those banks exist because of the State Bank of North Dakota's support system deploying assets, infrastructure, and competitive financial products cost-effectively to enable those private banks. North Dakota's business financing landscape is shaped by the interplay of Commerce and the State Bank interfacing by mandates with a cottage industry of small banks, private lenders, communities, public lenders, and nonprofits for the benefit of all North Dakotans.

North Dakota's business funding, and especially its startup finance eco-system, promises great benefits. Business owners in or being recruited to the State are promised low-interest, public-private financing opportunities, even with lighter collateral. State-influenced incentives are attractive and there remains little incentive for out-of-state private equity or banks to compete. As a result, and due to small population, most of North Dakota's business and startup finance is connected to an interplay of power between Commerce, the State Bank, and the cottage industry they support or influence. Billions of dollars in funding stacks are controlled or influenced by Commerce officials. Great State powers hold great fiduciary responsibilities, and, without accountability, risk foul play.

2. An Alarming Review of Public Information:

\$1.6 billion has been appropriated in the Regular Session to Budget No. 601, Commerce, from 2001-2025, with 32% of that (\$515 million) in the last two sessions, and Governor Armstrong seeks another \$249 million in this session. The bulk of those public funds are intended to provide loans and grants to support North Dakota businesses, and hundreds of millions of dollars have been basketed to Commerce's North Dakota Development Fund, a statewide nonprofit development corporation. With such staggering appropriations for a small population, how on earth does the Development Fund justify reporting a total asset position under \$37 million in 2023? *Where did all the taxpayer money go?*

There are more than a few hints in Governor Armstrong's Commerce budget that something is amiss. For starters, despite very limited powers afforded to the State Auditor, the Governor's current budget request discloses that the State Auditor made significant audit findings of Commerce and the Development Fund, identifying:

- a) *Misuse* by Commerce and Development Fund officials of State purchase cards,
- b) *Deficient and improper accounting* at the Development Fund,
- c) *Improperly written-off loans* at the Development Fund, and
- d) *A non-competitive grant process* that prevented representation of best candidates.

The 2023 Development Fund Annual Report adds to concerns. For example, the Development Fund Board approved loans companies in which board members have ownership. Those loans were listed as non-reducing, with identical balances of \$4.66 million in 2022 and 2023. Worse, \$3.16 million was already reserved for loss (See Note 7 in the Annual Report). One or more Board members are, according to audited financial notes, self-dealing in free taxpayer dollars under the guise of loans.

Additionally, the Development Fund reported \$30.2 million loans receivable in 2023. However, \$14.5 million was already *impaired*, meaning set for write-off (see Note 4 of the Annual Report). A series of accounting maneuvers charged off millions more in bad loans. One creative way charge-offs were accomplished was to swap bad loans into bad equity and then charge the equity as an impairment, meaning a revaluation to \$0.00, or a charge-off (see Note 3 and the Statement of Cash Flows).

3. A Need for Accountability in the Actions of Commerce Officials:

As shown above, self-dealing is evidence within Commerce using taxpayer dollars, and audit reports show that such dealings may include preferential treatment for write-offs.

On April 24, 2024 *InForum* writer Rob Port claimed that former Commerce Commissioner Josh Teigen or his family benefited directly or indirectly from \$2.5 million in Commerce loans when he was a Commerce director. One business connected to funding reportedly closed North Dakota operations, and the other was not found with any staff in its offices when *InForum* investigated. All of the loans were reported to *InForum* as active and in good standing by Commerce, however. Port quoted Teigen as having evidenced that he disclosed his conflicts.

Even if Commerce board members and officials are disclosing their conflicts of interest, there is really minimal reason to expect that an organization whose lending boards are appointed or directed by the Governor would routinely oppose their own colleagues' requests.

Self-dealing is only one of many concerns. Commerce officials have the capacity to abuse their State powers and oppose their mandates, even to turn project winners into losers through retaliation. A single message by a senior Commerce official can deprive a private citizen access to the publicly-influenced North Dakota private and third party business financing system. A performance review will help identify where the Commerce and Development Fund capital is being deployed, and into what projects stacks and partnerships, and with what rate of success, to ensure the system is operating fairly and according to applicable laws.

4. My Personal Testimony with Commerce Officials:

I was recruited to North Dakota by Commerce manager Dave Lehman to build the highest job-creating manufacturer in the State. I have a family history in such endeavors, and I am a global leader in RV design. Lehman connected me to public and private finance partners and the State Bank. I was interviewed carefully by Commerce and the Development Fund, and I was impressed with their process and diligence. Lehman introduced me to a 100,000 square foot factory he knew personally, located in the poorest region of the State, and in a community decimated by the 2015 exit of a manufacturer.

Our Dunseith factory had been embroiled in federal crimes, which created serious property encumbrances. Lehman concealed disclosure of critical facts about our Dunseith factory, even making false statements, when inducing me to buy the site and personally guarantee multiple loans connected to it. Lehman and other Commerce and State officials had funded and facilitated aerospace and defense work at the site almost until I bought it, which the work was illegal, but Lehman said that all such work had stopped in 2015. There are public records we have independently obtained to support that State officials were warned not to pursue such work, but did so anyway for years.

There was a bloody room shockingly discovered at the site that appeared to be connected to the tenant before me, who also worked with officials. There were guided missile parts concealed at the site, and other federal evidence which reflected both past and ongoing serious federal crimes connected to the property. The site's crimes and misconduct were dumped on us. I was forced upon discovery to report and resolve the crimes and encumbrances with authorities, or risk potential serious liabilities. Eventually, our factory was declared a federal crime scene in June 2023, more than a year after we bought the property, and following many threats we faced.

Commerce officials, seeking to conceal their past misconduct, retaliated against me in ways that are now becoming well-documented publicly through *The Dakotan* (www.mydakotan.com). I faced fear and terror in North Dakota, including stalking and electronics interference, and a physical threat. I was also repeatedly extorted by Commerce officials as to my loan with them, and they were concealing the evidence of past Commerce officials' misconduct connected to my reporting and relief. Commerce officials still conceal hundreds of public records that relate to me, despite requests from media to have those records since 2023. I have begun to release shared records to prove my situation.

Communities and State legislators have raised alarm about my situation with Commerce.

I request the passage of this bill.

Charles Hoefler