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Yolanda Rickford
Operator's Signature

10/2/03
Date

2003 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1104

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10/2/03
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1104

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 1-13-03

Tape Number	Side A	Side B	Meter #
1		X	2,839-3860
Committee Clerk Signature <i>Beth Keiser / Pam Dever</i>			

Minutes: **CHAIR KEISER**: Opened hearing on HB 1104.

KARLENE FINE (Industrial Commission): (see attached testimony)

CHAIR KEISER: Will the disclosure only occur when the board approves a write-off for a specific transaction?

FINE: Approve a total list of charge-off. If the loan is uncollectible (loan by loan), at that point they would release the name of the borrower

JACK McDONALD (NDNA, NDBA): (See attached testimony)

Can you draft it to be more flexible?

CHAIR KEISER: Closed hearing on HB 1104 (3743)

ACTION:

Representative Froseth moved to adopt the amendment. Seconded by Rep. Severson. No discussion. Amendment is adopted by voice vote. Rep. Klein moved "do pass as amended"

Seconded by Rep. Tieleman. No discussion. Passed Rep. Nottestad will carry the bill.

38195.0101
Title.0200

Adopted by the Industry, Business and Labor
Committee

January 16, 2003

VR
1/16/03

HOUSE AMENDMENTS TO HOUSE BILL NO. 1104 IRL 1-17-03

Page 1, line 10, after "financing" insert "or security, including a loan guarantee or a letter of credit."

Page 1, line 13, after "Dakota" insert "or security"

Page 1, after line 13, insert:

"c. The amount of any net writeoff or loan forgiveness associated with the financing or security referenced in subdivision a which the industrial commission determines is uncollectible."

Renumber accordingly

Page No. 1

38195.0101

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Operator's Signature

Yalosta Rickford

Date

10/2/03

Date: 1/13/03
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1104

House Industry, Business & Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 38125.0101
Title .0200

Action Taken Do Pass With Amendment

Motion Made By Klein Seconded By Tieman

Representatives	Yes	No	Representatives	Yes	No
Chairman Kelser	✓		Rep.Boe	✓	
Rep.Severson, Vice-Chair	✓		Rep.Ekstrom	✓	
Rep.Dosch	✓		Rep.Thorpe	✓	
Rep. Froseth	✓		Rep. Zaiser	✓	
Rep. Johnson	✓				
Rep.Kasper	✓				
Rep. Klein	✓				
Rep. Nottlestad	✓				
Rep. Ruby	✓				
Rep.Tieman	✓				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Nottlestad

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
January 20, 2003 12:22 p.m.

Module No: HR-10-0761
Carrier: Nottestad
Insert LC: 38195.0101 Title: .0200

REPORT OF STANDING COMMITTEE

HB 1104: Industry, Business and Labor Committee (Rep. Kelsor, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1104 was placed on the Sixth order on the calendar.

Page 1, line 10, after "financing" insert "or security, including a loan guarantee or a letter of credit."

Page 1, line 13, after "Dakota" insert "or security"

Page 1, after line 13, insert:

"c. The amount of any net writeoff or loan forgiveness associated with the financing or security referenced in subdivision a which the industrial commission determines is uncollectible."

Renumber accordingly

2003 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1104

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10/2/03

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1104

Senate Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 02-17-03

Tape Number	Side A	Side B	Meter #
1	XXXX		0
Committee Clerk Signature <i>Lisa VanBurken</i>			

Minutes: Chairman Mutch opened the hearing on HB 1104. All Senators were present. HB 1104 relates to confidentiality of information in the Bank of North Dakota's possession.

Testimony in support of HB 1104

Karlene Fine, Executive Director and Secretary for the Industrial Commission of North Dakota.

See attached testimony.

Senator Every: What do you mean by "release to the public"?

Karlene: After a loan is declared uncollectible and charged off, we turn the information in to the press.

Senator Mutch: What was wrong with the law the way it was?

Karlene: We were releasing that information and the Attorney General's office informed us that we couldn't do that.

Senator Heltkamp: How long of a time period do you allow before you give this information to the press?

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10/2/03
Date

Page 2

Senate Industry, Business and Labor Committee

Bill/Resolution Number 1104

Hearing Date 02-17-03

Karlene: There is a committee that views each account case by case.

There was no opposition.

Hearing closed.

Senator Espegard moved a DO PASS. Senator Klein seconded.

Carrier: Senator Espegard

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Date: 2/17/03
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1104

Senate _____ Committee _____

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DO Pass

Motion Made By Espegard Seconded By Klein

Senators	Yes	No	Senators	Yes	No
Sen. Jerry Klein, Vice Chairman	X				
Sen. Karen Krebsbach	X				
Sen. Dave Nething	X				
Sen. Joel Heitkamp	X				
Sen. Mike Every	X				
Sen. Duane Espegard	X				
Sen. Duane Mutch, Chairman	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Espegard

If the vote is on an amendment, briefly indicate intent:

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10/2/03
Date

REPORT OF STANDING COMMITTEE (410)
February 26, 2003 1:50 p.m.

Module No: SR-34-3526
Carrier: Espagard
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
HB 1104, as engrossed: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1104 was placed on the Fourteenth order on the calendar.

(2) DESK, (3) COMM

Page No. 1

SR-34-3526

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Yolanda Rickford
Operator's Signature

10/2/03
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2003 TESTIMONY

HB 1104

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Valista Rickford
Operator's Signature

10/2/03
Date

JANUARY 13, 2003

HOUSE INDUSTRY, BUSINESS & LABOR COMMITTEE
HB 1104

REPRESENTATIVE KEISER AND COMMITTEE MEMBERS:

My name is Jack McDonald. I am appearing today on behalf of the North Dakota Newspaper Association and the North Dakota Broadcasters Association. We strongly support HB 1104 and the proposed amendments.

This bill will provide the public with necessary information about the loans of the Bank of North Dakota without violating any confidential information provided by the Bank's customers. We think it is important from a public policy standpoint that the public have some information about the outcome of loan policies and decisions made by the Bank of North Dakota.

If the Industrial Commission makes a policy decision, for example, to support a certain type of economic development activity, then there should be some accountability as to the result of that decision. The money shouldn't just go into some type of black hole, never to be heard from again.

The proposed amendments strengthen the bill and we support those as well.

If you have any questions, I'd be glad to try and answer them. Thank you for your time and consideration.

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Yalosta Rickford

10/2/03

Date



INDUSTRIAL COMMISSION OF NORTH DAKOTA

John Hoeven
Governor

Wayne Stenehjem
Attorney General

Roger Johnson
Commissioner of Agriculture

Testimony on House Bill 1104
Industry, Business and Labor Committee
Monday, January 13, 2003

Mr. Chairman and members of the Industry, Business and Labor Committee my name is Karlene Fine, Executive Director and Secretary for the Industrial Commission of North Dakota. I am appearing today on behalf of the Commission to support House Bill 1104 and to offer additional amendments to the bill. With me today is Scott Miller, an Assistant Attorney General who has done extensive work on the confidentiality issue as it relates to the Bank of North Dakota.

House Bill 1104 deals with the confidentiality of Bank of North Dakota customer information. As you are all aware, the Bank of North Dakota (Bank) is the only state-owned bank in the United States. This is a unique institution—operating as a bank that is owned by the citizens of North Dakota. Representing those citizens is the Industrial Commission, which consists of three elected officials—the Governor, Attorney General and Agriculture Commissioner. The Commission oversees the operations of the Bank of North Dakota. The Legislature—elected by the citizens—has passed laws that relate specifically to the Bank in the area of confidentiality. Two of those provisions in law are found in 6-08.1-02 (7) and in 6-09-35. In addition to state statutes the Bank must also operate under the federal laws which relate to financial institutions.

Background. Since the mid-80's the Industrial Commission had operated under the policy of releasing the name of a borrower and the amount of the financing (including letters of credit and guarantees) at the time a financing was approved. In addition the Commission released the name of a borrower and the amount of charge-offs and recoveries on charged-off loans on an annual basis.

In 2001 the Bank of North Dakota requested an Attorney General's Opinion regarding confidentiality to clarify the various confidentiality state laws and Attorney General opinions and the Gramm-Leach-Bliley Financial Modernization Act of 1999 (GLB Act). On December 11, 2001 the Attorney General released an opinion which stated in part:

Karlene K. Fine, Executive Director and Secretary
State Capitol, 14th Floor - 600 E Boulevard Ave Dept 405 - Bismarck, ND 58505-0840
E-Mail: kfine@state.nd.us
Phone: (701) 328-3722 FAX: (701) 328-2820
"Your Gateway to North Dakota": discovernd.com

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Operator's Signature

Karlene K. Fine

Date

10/2/03

In conclusion, the confidentiality requirements of the Industrial Commission and BND regarding bank customer information are as follows:

- The name of an agricultural or commercial borrower and the amount of financing provided to the borrower is open upon request to the Industrial Commission under N.D.C.C. §§ 6-08.1-02(7) and 44-04-18, but only after the loan is closed.
- The name of a consumer borrower as defined in the GLB Act and the amount of financing provided to the borrower is confidential pursuant to N.D.C.C. § 6-09-35.
- All other bank customer information is confidential and may only be released as allowed or required by law or in the narrow circumstances described in this opinion, including the following:
 - The confidentiality exemptions and exceptions provided in N.D.C.C. § 6-09-35 and N.D.C.C. ch. 6-08.1, except for N.D.C.C. § 6-08.1-02.
 - The inherent exceptions to bank confidentiality represented in subsections 1, 2, 3, 4, 5, 6, 8, 9 and 11 of N.D.C.C. § 6-08.1-02.

Based on that opinion the Industrial Commission changed its practices and released the name of the borrower and the amount of the financing at the time the loan was closed (funded) rather than when the loan was approved. Further the Commission released the total dollar amount of charge-offs and recoveries on an annual basis but no longer released the name of the borrower or the amount of the charged-off financing.

House Bill 1104 amends 6-08.1-02 (7) to allow for the release of the name of the borrower and the amount of financing when the financing has been approved. Since the Commission submitted this proposed legislation the Commission further discussed two aspects of this confidentiality question:

1. Should letters of credit and guarantees also be items that could be released to the public; and
2. How to deal with charge-offs or loans that are uncollectable.

The Commission concluded that letters of credit and guarantees as it relates to the confidentiality question should be treated in the same manner as loans and be released at the time of approval.

The second item regarding charge-offs requires further discussion. The language that is being proposed indicates that the name of the borrower and the amount of the net charge-off or loan forgiveness will be at the point in time that the Commission determines it is uncollectable.

As I mentioned earlier the prior practice had been to release the name of the borrower and the amount of the charged-off loan on an annual basis when the loan was charged-off. This did not mean that the loan was uncollectable. The charging-off of a loan is an accounting entry that

January 13, 2003

recognizes the Bank's potential inability to collect the loan. It is an adjustment to the Bank's overall financial statement and not a forgiveness of the debt. Collection efforts may continue for a period of time while all avenues of seeking repayment are pursued. In fact, even after the Bank has made an accounting charge-off, the borrower is often still in business and the borrower may be in the process of reorganizing its business or selling the business to another party. Releasing the charge-off information before all of that has taken place could be the death knell of that business by terminating customer confidence in that business or scaring off potential buyers.

The Commission, in reviewing this question, determined that the release of the name of the borrower and the amount of the loan when the loan is charged-off may hinder the Bank's ability to obtain full repayment. However, the Commission believes at the time a loan is determined to be uncollectable the name of the borrower and the net amount of the uncollectable debt should no longer be confidential.

How would this work? Each year the Commission would release the total dollar amount of charged off loans that is reflected in the Bank's audited financial statement. At the same time the Commission would receive from Bank management a listing of those loans that management has determined to be uncollectable. The Commission would then discuss those loans on that list with Bank management and then act on the list. The names of the borrowers and the net amount of the loans that are uncollectable would then be released to the public. I would point out that the dollar amount of the chargeoffs reflected in the Bank's audited financial statements could be higher than the total amount of the uncollectable loans.

After the discussion of these two other issues, the Commission directed that the attached amendments be proposed to House Bill 1104.

The Industrial Commission introduced this legislation to seek the Legislature's input on the policy question of what is the proper balance as it relates to operating the Bank of North Dakota with the public's right to know. The Commission believes that what has been presented in this bill and the suggested amendments is the appropriate balance—the Bank of North Dakota will be able to continue to function as this unique financial institution that has a mission of encouraging agriculture, commerce and industry and also meet the public's right to know what their state government is doing.

Thank you for your consideration of House Bill 1104 and the proposed amendments. Scott and I are available to respond to your questions.

Attachment 1

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1104

Page 1, line 10, after "financing" insert "or security, including a loan guarantee or a letter of credit."

Page 1, line 12, after "financing" insert "or security"

Page 1, after line 13 insert the following:

"c. The amount of any net charge-off or loan forgiveness associated with the financing or security referenced in subdivision a that the Industrial Commission determines is uncollectable."

(Adopted)

Fifty-eighth
Legislative Assembly
of North Dakota

Introduced by

1 A BILL for an Act to amend and reenact subsection 7 of section 6-08.1-02 of the North
2 Dakota Century Code, relating to confidentiality of information in the Bank of North
3 Dakota's possession.

4

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

6

7 **SECTION 1. AMENDMENT.** Subsection 7 of section 6-08.1-02 of the North
8 Dakota Century Code is amended and reenacted as follows:

9

10 7. The release by the industrial commission, in its capacity as the managing
body of the Bank of North Dakota, ~~of either of the following:~~

12 a. The name of any person who, ~~either directly or indirectly,~~ has
13 obtained approval for direct or indirect financing or security,
14 including a loan guarantee or a letter of credit, through the Bank of
15 North Dakota primarily for purposes other than personal, family or
16 household purposes.

17 b. The amount of any financing or security ~~obtained either directly or~~
18 ~~indirectly through the Bank of North Dakota~~ referenced in
19 subdivision a.

20 c. The amount of any net charge-off or loan forgiveness associated
21 with the financing or security referenced in subdivision a that the
22 Industrial Commission determines is uncollectable.

Page No. 1

Yalosta Rickford
Operator's Signature

10/2/03
Date

BND

BANK OF NORTH DAKOTA

Attachment 3

MEMORANDUM

TO: Industrial Commission members
FROM: Eric Hardmeyer, President
DATE: January 10, 2003
RE: House Bill 1104

As we discussed at the last Industrial Commission meeting, I do not plan to testify on House Bill 1104 and its proposed amendment. However, it is important to me to identify three areas for the Legislature's consideration.

1. Disclosure of Customer Information - As mentioned in Karlene Fine's testimony, the Gramm-Leach-Bliley (GLB) Act now restricts the release of consumer orientated segments (student loans and residential real estate loans) of our loan portfolio from disclosure as it relates to 6-08.1-02. However, other segments of our loan portfolio including agricultural and commercial borrowers are not subject to the GLB Act and their information allowed under 6-08.1-02 can be disclosed. The inconsistent method of treatment of customer information between these borrowing groups has the potential to be confusing and difficult to explain to our customers.

2. Business Effect - The effect of disclosure as it exists today and what is proposed has and will continue to stymy some of the interest in using BND and its programs. How much is difficult to quantify, but there is no question the Bank loses some loan volume because of this disclosure.

3. Public Relations - Our mission at BND is to promote agriculture, commerce and industry in North Dakota. We do that by being the development bank; by lending money to farmers, entrepreneurs, and businesses and we hope that they create new wealth and job opportunities. However, if they fail and BND loses money the Industrial Commission will disclose that to the public. For some borrowers that creates a significant disincentive to use BND programs.

I understand the difference between being a private sector financial institution and being the only state-owned bank in the country. There is a greater desire and perhaps need for public scrutiny when using taxpayer funds that are deposited at the Bank and used for its operations. Thank you for the opportunity to present these points as this legislation is debated by the Legislature.

700 EAST MAIN AVENUE, P.O. BOX 5509

BISMARCK, NORTH DAKOTA 58506-5509

1-800-472-2166

1-701-328-5600

TDD: 1-800-643-3916

www.banknd.com

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Introduction

INDUSTRIAL COMMISSION OF NORTH DAKOTA

John Hoeven
Governor

Wayne Stenehjem
Attorney General

Roger Johnson
Commissioner of Agriculture

Testimony on Engrossed House Bill 1104
Senate Industry, Business and Labor Committee
Monday, February 17, 2003

Mr. Chairman and members of the Senate Industry, Business and Labor Committee my name is Karlene Fine, Executive Director and Secretary for the Industrial Commission of North Dakota. I am appearing today on behalf of the Commission to support Engrossed House Bill 1104. With me today is Scott Miller, an Assistant Attorney General who has done extensive work on the confidentiality issue as it relates to the Bank of North Dakota.

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Background. Since the mid-80's the Industrial Commission had operated under the policy of releasing the name of a borrower and the amount of the financing (including letters of credit and guarantees) at the time a financing was approved. In addition the Commission released the name of a borrower and the amount of charge-offs and recoveries on charged-off loans on an annual basis.

In 2001 the Bank of North Dakota requested an Attorney General's Opinion regarding confidentiality to clarify the various confidentiality state laws and Attorney General opinions and the Gramm-Leach-Bliley Financial Modernization Act of 1999 (GLB Act). On December 11, 2001 the Attorney General released an opinion which stated in part:

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Operator's Signature

Karlene Fine

10/2/03
Date

Testimony on Engrossed House Bill 1104
Page 2
February 17, 2003

In conclusion, the confidentiality requirements of the Industrial Commission and BND regarding bank customer information are as follows:

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 - The confidentiality exemptions and exceptions provided in N.D.C.C. § 6-09-35 and N.D.C.C. ch. 6-08.1, except for N.D.C.C. § 6-08.1-02.
 - The inherent exceptions to bank confidentiality represented in subsections 1, 2, 3, 4, 5, 6, 8, 9 and 11 of N.D.C.C. § 6-08.1-02.

Based on that opinion the Industrial Commission changed its practices and released the name of the borrower and the amount of the financing at the time the loan was closed (funded) rather than when the loan was approved. Further the Commission released the total dollar amount of charge-offs and recoveries on an annual basis but no longer released the name of the borrower or the amount of the charged-off financing.

House Bill 1104 amends 6-08.1-02 (7) and makes three specific changes to the law:

1. Allows the release of the name of the borrower and the amount of the financing when the financing has been approved.
2. Allows letters of credit and guarantees as it relates to the confidentiality question to be treated in the same manner as loans and be released at the time of approval.
3. Allows the release of the name of the borrower and the amount of the net charge-off or loan forgiveness at the point in time the Commission determines it is uncollectible.

This third change requires further discussion. As I mentioned earlier the prior practice had been to release the name of the borrower and the amount of the charged-off loan on an annual basis when the loan was charged-off. This did not mean that the loan was uncollectible. The charging-off of a loan is an accounting entry that recognizes the Bank's potential inability to collect the loan. It is an adjustment to the Bank's overall financial statement and not a forgiveness of the debt. Collection efforts may continue for a period of time while all avenues of seeking repayment are pursued. In fact, even after the Bank has made an accounting charge-off, the borrower is often still in business and the borrower may be in the process of reorganizing its business or selling the business to another party. Releasing

Testimony on Engrossed House Bill 1104
Page 3
February 17, 2003

the charge-off information before all of that has taken place could be the death knell of that business by terminating customer confidence in that business or scaring off potential buyers.

The Commission, in reviewing this issue, determined that the release of the name of the borrower and the amount of the loan when the loan is charged-off may hinder the Bank's ability to obtain full repayment. However, the Commission believes at the time a loan is determined to be uncollectible the name of the borrower and the net amount of the uncollectible debt should no longer be confidential.

How would this work? Each year the Commission would release the total dollar amount of charged off loans reflected in the Bank's audited financial statement. At the same time the Commission would receive from Bank management a listing of those loans that management has determined to be uncollectible. The Commission would then discuss those loans on that list with Bank management and then act on the list. The names of the borrowers and the net amount of the loans that are uncollectible would then be released to the public. I would point out that the dollar amount of the chargeoffs reflected in the Bank's audited financial statements could be higher than the total amount of the uncollectible loans.

The Industrial Commission introduced this legislation to seek the Legislature's input on the policy question of what is the proper balance as it relates to operating the Bank of North Dakota with the public's right to know. The Commission believes that what has been presented in this engrossed bill is the appropriate balance—the Bank of North Dakota will be able to continue to function as this unique financial institution that has a mission of encouraging agriculture, commerce and industry and also meet the public's right to know what their state government is doing.

Thank you for your consideration of Engrossed House Bill 1104. Scott and I are available to respond to your questions.

Yolanda Rickford
Operator's Signature

10/2/03
Date

BND

Attachment 1

BANK OF NORTH DAKOTA

MEMORANDUM

TO: Industrial Commission members
FROM: Eric Hardmeyer, President
DATE: January 10, 2003
RE: House Bill 1104

As we discussed at the last Industrial Commission meeting, I do not plan to testify on House Bill 1104 and its proposed amendment. However, it is important to me to identify three areas for the Legislature's consideration.

1. Disclosure of Customer Information - As mentioned in Karlene Fine's testimony, the Gramm-Leach-Bliley (GLB) Act now restricts the release of consumer oriented segments (student loans and residential real estate loans) of our loan portfolio from disclosure as it relates to 6-08.1-02. However, other segments of our loan portfolio including agricultural and commercial borrowers are not subject to the GLB Act and their information allowed under 6-08.1-02 can be disclosed. The inconsistent method of treatment of customer information between these borrowing groups has the potential to be confusing and difficult to explain to our customers.

2. Business Effect - The effect of disclosure as it exists today and what is proposed has and will continue to stymie some of the interest in using BND and its programs. How much is difficult to quantify, but there is no question the Bank loses some loan volume because of this disclosure.

3. Public Relations - Our mission at BND is to promote agriculture, commerce and industry in North Dakota. We do that by being the development bank; by lending money to farmers, entrepreneurs, and businesses and we hope that they create new wealth and job opportunities. However, if they fail and BND loses money the Industrial Commission will disclose that to the public. For some borrowers that creates a significant disincentive to use BND programs.

I understand the difference between being a private sector financial institution and being the only state-owned bank in the country. There is a greater desire and perhaps need for public scrutiny when using taxpayer funds that are deposited at the Bank and used for its operations. Thank you for the opportunity to present these points as this legislation is debated by the Legislature.

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Yalosta Rickford
Operator's Signature

10/2/03
Date