

**FISCAL NOTE**  
**Requested by Legislative Council**  
**01/12/2017**

Amendment to: HB 1303

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2015-2017 Biennium		2017-2019 Biennium		2019-2021 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2015-2017 Biennium	2017-2019 Biennium	2019-2021 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

HB 1303 prohibits the filling of any vacant position through April 30, 2017. Because it is unknown how many positions may become vacant in that timeframe and how many positions agencies would have hired during that timeframe, it is impossible to determine the fiscal impact of this bill.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

Fiscal impact cannot be determined.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

**Name:** Pam Sharp

**Agency:** Office of Management and Budget

**Telephone:** 328-4606

**Date Prepared:** 01/13/2017

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Bill/Resolution No.: HB 1303

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**Name:** Pam Sharp

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**Date Prepared:** 01/13/2017



**2017 HOUSE APPROPRIATIONS**


**HB 1303**

# 2017 HOUSE STANDING COMMITTEE MINUTES

## Appropriations Committee Roughrider Room, State Capitol

HB1303  
1/17/2017  
26999

- ☐ Subcommittee  
☐ Conference Committee



### Explanation or reason for introduction of bill/resolution:

To prohibit state agencies from filling vacant employee positions and to declare an emergency

### Minutes:

Attachment 1-5

Chairman **Delzer**: Meeting was calling to order; we have a quorum.

1:00- 14:10 Representative **Carlson**: **If favor of HB 1303** This would stop the hiring of state employees until April 30<sup>th</sup> 2017. We don't want to have a bunch of positions filled and then have to reducing those same positions as we go through our budget. Governor Dalrymple has 552 less FTE positions being funded, yesterday Governor Burgum he added an additional 53 FTEs, bringing the total to 607 FTEs that would not be funded. Majority of our employees are classified, **(see attachment 1)** It's about 84 million dollars by the end of the biennium. Our new governor ran on a platform of reinventing government, look for new efficacies in government and what this does is gives us a first step. Governor Burgum was the one that brought up the idea of 53 more positions, he brought up the idea of employees paying 5% of their health care and he already said that the 1% raise in the second half of the biennium won't be available, just a few highlights. Government is people and programs; I would like to see we change our philosophy and say you can hire a maximum of people and this is the dollar amount you are appropriated this much money to fund those people with salaries and benefits.

Representative **Streyle**: In the executive budget; if you take the 607 and divide that by the total number which is 16,489 FTEs that's a reduction of 3.68% and our budget is down 50%? We need to go significantly deeper. So I think this is the right move and if you look at all these agencies, the benefit cost versus the salary line, if between 45-50%. We we've done and both governors have done isn't enough and we have to cut deeper.

Representative J. **Nelson**: I don't feel that all vacancies are the same, so are newly open and some are more important than others and this would slow that process down for those positions that need to be filled.

Representative **Carlson**: We're just asking for 3 months; we're not looking for the whole biennium and there's no way that we can look at it and say this guy is more important than the other guy.

**14:40 Opposed to HB 1303**

**-21:50 Pam Sharp Office of Management and Budget**

All state agencies have been dealing with this reduction of revenue since the first allotment of 4.05% about a year ago and then again with the second allotment last summer and then again when they had to put together their 10% reduction for the budget request. They know they are losing FTEs and they are not looking to replace them. When you say there's 525 vacant positions a lot of those are vacant because of that allotment, there are only 95 that are posted the rest aren't being perused to be filled. Agencies have a process before they fill those positions, and there's a hiring council for cabinet agencies, they have to have approval before they fill any positions that have been open for 6 months or longer or if they had a reclassification or a reorganization. They are making sure filling these spots is justified.

There are a lot of positions that just can't be left open, some are required by the feds. Direct care for patients, correctional officers, 911 dispatchers as just a few. About half of those 95 positions are from Human Services.

Chairman **Delzer**: We're not even sure where we are going to settle, we're not even sure that we've hit bottom yet. We'd like to have the information that you are talking about as far as what positions are vital to fill and which ones can be left open if you want to get that to us.

Representative **Streyle**: Most agencies are already using vacancies to balance the short falls so I don't see where this is going to be a problem at all

**Ms. Sharp**: They are using vacancies to help with the budget, but that doesn't mean that if something else opens up that can afford to not fill that spot

Representative **Streyle**: How long does it take to hire the average?

**Ms. Sharp**: I suppose it could be 6 weeks, but it could be as short as two weeks.

**22:05-28:25 LeAnn Bertsch Director of the department of Corrections and Rehabilitation (see attachment 2)**

To add a few statistics to my testimony; out of the 29 vacant positions from December 31<sup>st</sup> to January 3<sup>rd</sup> 26 positions were filled 19 where those correctional officers, parole officers and juvenile institutional residential specialist, those are positions that take care of people, 4 where medical, 3 where education 2 where rough rider were not filled due to ongoing reorganization. 77% of all vacant positions fill within 4 weeks. Last year DOCR processed over 1600 applications for nearly 200 jobs. They average 11 applications for each job posting.

27:10 Representative J. **Nelson**: Have you done an analysis on how the new Fair Standard and Labor Act is going to affect your department?

**Travis Engelhardt: Director of Human Resources** at DOCR If you're talking just about the new regulations that are proposed, we would only have two employees that it would affect.



28:35-32:20 **Nick Archuleta: president of ND United** On behalf of our 11,500 members in every district across the state on ND I am opposed to this bill. This bills lays the ground work for diminish of public service jobs and the employees that provide the vital serves that we except. It seems that you think we can deliver the same great service with less people. Even if positions are cut the work still has to be done. Fewer people who already know they won't be getting a raise next year are going to be asked to do more work. Governor Burgum also wants employees to pay 5% of their health insurance, that's \$600/employee on top of not getting a raise. We are going to see a lot of turn over. If anything happens to PERS, the retirement fund, this will even be worse. For decades it was the health coverage and retirement that served as an enticement to get employees.

Chairman **Delzer:** This is not meant derogatory to any of our public employees in anyway. How many of your 11,000 members are state employees?

**Mr. Engelhardt:** 84% come from the education side of the family and the rest is from the public side.

33:15-34:00 **Marcy Witchek Human Resource Director of the Department of Human Services**

This would cause major hardships for us in the form of direct care, we have several 24 hour facilities, 3 of those are accredited and they have certain staffing ratios.

34:00-36:05 **Mike Link: Director of State Radio also here for the Department of Emergency Services**

I am asking for careful consideration especially for dispatch and emergency services, we have 32 dispatchers we dispatch for 25 of the counties besides the state agencies, we do 10s of thousands of calls a year, we are allocated 8 per shift and right now we are down 5 people. It's been a revolving door, 13 left for other opportunities, 5 we had to let go. We are down and if we have to wait until April that will add great strain with the flood season approaching.

36:30-37:45 **Lori Leingang: Chief Administrative Officer at Bank of ND**  
(see attachment 3)

38:15-40:55 **Becky Sicble: Interim Director HR management Services** To add one thing, about two years ago was the first allotment, that was the first time agencies had to change their mind set then there was a second allotment. I can tell you agencies are critically looking at ever vacancies to determine or not if they need to fill that position. There are 95 openings on our website, that's from 22 different agencies.

Representative **Brabandt:** How many human resource departments are there?

**Ms. Sicble:** Throughout the number of agencies within the state there are 36 positions that have human resources as part of their title, I would say there's about 7-9 true human resource departments

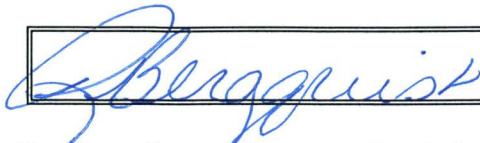
**Attachments 4 and 5 where sent after testimony was over**

# 2017 HOUSE STANDING COMMITTEE MINUTES

## Appropriations Committee Roughrider Room, State Capitol

HB 1303  
1/26/2017  
27510

- ☐ Subcommittee  
☐ Conference Committee



### Explanation or reason for introduction of bill/resolution:

A Bill for an Act to prohibit state agencies s from filling vacant employee's positions;  
and to declare an emergency

### Minutes:

**Chairman Delzer:** Called the committee back to order; Were going to look at HB 1303, It'll put a freeze on hiring. I do have a set of amendments, should we freeze all or make some exceptions? Has an emergency clause, it would go into effect as soon as it is signed. With the amendment there is language

*"the governor may, as an exception to this prohibition authorize an executive branch state agency or institution to fill vacant position that is essential to protecting the life and safety of the citizens of this state. The chief justice of the supreme court may, as an exception to this prohibition, authorize the filling of a vacant position in the judicial branch that is essential to protecting the life and safety of the citizen of this state. Any state agency or institution that receives an exception under this section shall provide a report to the legislative council within five days of receiving the exception identifying the position, the position's anticipated monthly salary and benefits costs by funding source, and the justification of the need to fill the position."*

**4:00 Representative Monson:** We'll have a vacancy with one of the three Public Service Commissioners, does that fall into this hiring.

**Chairman Delzer:** I don't know when his last day is, like January 31<sup>st</sup>? I don't know how soon this will be in place, it'll have to go through the senate yet to. I would think this could go under life and safety.

**Representative Brandenburg:** We might as well do this right away before these positions get filled, I'll make a motion with the adoption of the amendment

**Seconded by Representative Schatz**

**Chairman Delzer:** That's a motion to ament HB 1303 with amendment 17.0789.01001



Discussion?

**Representative Kreidt:** Critical positions, one can be a nurse position, I've heard from the veteran's hospital and they are expecting some retirements in the near future.

**Chairman Delzer:** Isn't there time to get people in there? They wouldn't be filling these spots in one day.

**Representative Kreidt:** They would have to work doubles until they are able to fill those spots.

**Representative Holman:** If they are actively look, interviewing how does this affect that?

**Chairman Delzer:** Unless it would fall under one of the exceptions they'd have to wait.

**Representative Boe:** What about research areas? They have to hire staff for the summer's research staff, are we leaving them enough time to do that?

**Chairman Delzer** It's not stopping anyone from looking into the people they want to hire, just keeping time form filling those spots until we are done with the budgeting process.

**Representative Holman:** Higher Ed, are worried about the timing for hiring for the fallowing fall.

**Chairman Delzer** We would lift this as soon as the budget is good

**Voice vote; All in Favor; Motion Carries with the amended bill;**

**Representative Streyle: I make a motion for a DO Pass as Amended**

**Representative Schmidt: I'll second that motion**

A Roll Call vote was taken. Yea: 19 Nay: 0 Absent: 2

**Representative Brandenburg will carry this to the floor**

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1303

Page 1, line 1, after "positions" insert "; to provide for a report"

Page 1, line 4, after "**PROHIBITED**" insert "**- EXCEPTIONS - REPORT**"

Page 1, line 5, replace "During" with "Except as provided in this section, during"

Page 1, line 7, after the period insert "The governor may, as an exception to this prohibition, authorize an executive branch state agency or institution to fill a vacant position that is essential to protecting the life and safety of the citizens of this state. The chief justice of the supreme court may, as an exception to this prohibition, authorize the filling of a vacant position in the judicial branch which is essential to protecting the life and safety of the citizens of this state. Any state agency or institution that receives an exception under this section shall provide a report to the legislative council within five days of receiving the exception identifying the position, the position's anticipated monthly salary and benefits costs by funding source, and the justification of the need to fill the position."

Renumber accordingly

Date: 1/26/2017  
Roll Call Vote #: 1

**2017 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1303**

House Appropriations Committee

☐ Subcommittee

Amendment LC# or Description: 17.0789.01001

Recommendation: ☒ Adopt Amendment  
☐ Do Pass    ☐ Do Not Pass    ☐ Without Committee Recommendation  
☐ As Amended    ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar  
Other Actions: ☐ Reconsider    ☐ \_\_\_\_\_

Motion Made By Representative Brandenburg Seconded By Representative Schatz

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer					
Representative Kempenich			Representative Streyle		
Representative: Boehning			Representative Vigesaa		
Representative: Brabandt					
Representative Brandenburg					
Representative Kading			Representative Boe		
Representative Kreidt			Representative Delmore		
Representative Martinson			Representative Holman		
Representative Meier					
Representative Monson					
Representative Nathe					
Representative J. Nelson					
Representative Pollert					
Representative Sanford					
Representative Schatz					
Representative Schmidt					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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



Date: 1/26/2017  
Roll Call Vote #: 2

**2017 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1303**

House Appropriations Committee

☐ Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation: ☐ Adopt Amendment  
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation  
☒ As Amended ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar  
Other Actions: ☐ Reconsider ☐ \_\_\_\_\_

Motion Made By Representative Streyle Seconded By Representative Schmidt

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer	X				
Representative Kempenich	X		Representative Streyle	X	
Representative: Boehning	X		Representative Vigesaa	X	
Representative: Brabandt	X				
Representative Brandenburg	X				
Representative Kading	X		Representative Boe	X	
Representative Kreidt	X		Representative Delmore	A	
Representative Martinson	X		Representative Holman	X	
Representative Meier	X				
Representative Monson	X				
Representative Nathe	X				
Representative J. Nelson	A				
Representative Pollert	X				
Representative Sanford	X				
Representative Schatz	X				
Representative Schmidt	X				

Total (Yes) 19 No 0

Absent 2

Floor Assignment Representative Brandenburg

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

**REPORT OF STANDING COMMITTEE**

**HB 1303: Appropriations Committee (Rep. Delzer, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (19 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1303 was placed on the Sixth order on the calendar.

Page 1, line 1, after "positions" insert "; to provide for a report"

Page 1, line 4, after "**PROHIBITED**" insert "- **EXCEPTIONS - REPORT**"

Page 1, line 5, replace "During" with "Except as provided in this section, during"

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Renumber accordingly

**2017 SENATE GOVERNMENT AND VETERANS AFFAIRS**

**HB 1303**

# 2017 SENATE STANDING COMMITTEE MINUTES

## Government and Veterans Affairs Committee

Sheyenne River Room, State Capitol

HB 1303

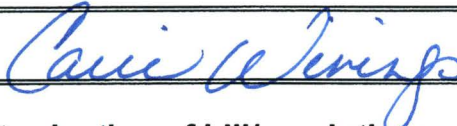
3/17/2017

Job Number 29399

☐ Subcommittee

☐ Conference Committee

Committee Clerk Signature



### Explanation or reason for introduction of bill/resolution:

A BILL for an Act to prohibit state agencies from filling vacant employee positions; to provide for a report; and to declare an emergency.

### Minutes:

Attachments: 1-5

**Chairman Poolman:** Opened the hearing on HB 1303.

**Representative Carlson, District 41:** Testified as sponsor and in support of the bill. I believe there is not a point of this bill anymore. The original intent to this bill was, as we started this process, to make sure that agencies were not filling positions when we were trying to decide how many we were going to have to remove from this biennium as we looked at the budget. Our intention was to pass it right away and that you would pass it right away, and it only goes till April 30<sup>th</sup>. A lot of these agencies will come in and tell you not to tie their hands on hard to fill positions. We did modify it in the House to give the Governor some latitude on the hard to fill and necessary positions where he could have a waiver to do that. It is too late at this point. April 30<sup>th</sup> is a month and a couple of weeks away. I think that our message got out. There are 630 positions that we have not funded and a lot of them are not pink slips. They are empty positions and retirements coming. Higher Ed is at almost 800 positions that will not be filled. I think the bill worked and it serves no purpose that this point in time. I think the message was worthwhile. We had to make some difficult decisions. We are averaging between 15 and 20% in budget reductions.

**(3:40) Pam Sharp, OMB:** See Attachment #1 for testimony in opposition to the bill.

**(5:10) Travis Engelhardt, Director of Human Resources, North Dakota Department of Corrections and Rehabilitations:** See Attachment #2 for testimony in opposition to the bill.

**(6:15) Nick Archuleta, President, North Dakota United:** See Attachment #3 for testimony in opposition to the bill.

**(6:42) Marcie Wuitschick, Director of Human Resources, Department of Human Services:** See Attachment #4 for testimony in opposition to the bill.



**(7:03) Sally Holewa, North Dakota State Court Administrator:** Testified in opposition to the bill. From the supreme court level, we are very responsible. We are not an agency and we are a separate branch of government and we take that responsibility seriously. Long before the legislature came to town, we put into place a reduction plan. Not because we had vacant positions to fill. We have a comprehensive plan for layoffs that a lot of thought and effort went into and we would like to be exempted from this bill.

**(8:09) Lori Leingang, Chief Administrative Officer, Bank of North Dakota:** See Attachment #5 for testimony in opposition to the bill.

**(8:30) Jean Delaney, Executive Director, Commission on Legal Counsel for Indigents:** Testified in opposition to the bill. We adopt the testimony of Pam Sharp.

**(8:45) Chairman Poolman:** No further testimony was present. Closed the hearing on HB 1303.

**Senator Bekkedahl:** Moved a Do Not Pass.

**Senator Meyer:** Seconded.

**A Roll Call Vote Was Taken: 6 yeas, 0 nays, 0 absent.**

**Vice Chairman Davison will carry the bill.**

Date: 3/17  
Roll Call Vote #: 1

2017 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1303

Senate Government and Veterans Affairs Committee

☐ Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation: ☐ Adopt Amendment  
☐ Do Pass ☒ Do Not Pass ☐ Without Committee Recommendation  
☐ As Amended ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar  
Other Actions: ☐ Reconsider ☐ \_\_\_\_\_

Motion Made By Bekkedahl Seconded By Meyer

Senators	Yes	No	Senators	Yes	No
Chairman Poolman	✓		Senator Marcellais	✓	
Vice Chairman Davison	✓				
Senator Bekkedahl	✓				
Senator Meyer	✓				
Senator Vedaa	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Davison

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

**REPORT OF STANDING COMMITTEE**

**HB 1303, as engrossed: Government and Veterans Affairs Committee (Sen. Poolman, Chairman)** recommends **DO NOT PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1303 was placed on the Fourteenth order on the calendar.

**2017 TESTIMONY**

**HB 1303**



1/17/17 HB 1303  
Att 1

**ESTIMATED MONTHLY SAVINGS FROM VACANT POSITIONS**

Vacant FTE positions in state agencies as of January 17, 2017, as reported in PeopleSoft, excluding higher education	525
Average monthly state employee salary and fringe benefits (Average annual salary of a classified state employee in December 2016 was \$56,614)	\$6,800
Estimated monthly salary and fringe benefit savings from vacant positions	\$3,570,000

**HOUSE BILL 1303  
HOUSE APPROPRIATIONS COMMITTEE  
JANUARY 17, 2017**

TO: Jeff Delzer, Chairman, House Appropriations Committee, and Members of the House Appropriations Committee.

Travis Engelhardt, Director of Human Resources, submits this written testimony in opposition of House Bill 1303 on behalf of the North Dakota Department of Corrections and Rehabilitation ("ND DOCR").

House Bill 1303 affects a hiring freeze for any position vacancy beginning with the effective date of the Act, and ending April 30, 2017. It appears the hiring freeze time frame could be up to three calendar months. Due to the length of the hiring freeze the ND DOCR believes agency operations will be impacted negatively and result in higher overtime costs, higher contract services costs, and possible increase to worker's compensation claims, due to employee burnout and fatigue from mandatory overtime and cancellation of paid leave.

Everything the ND DOCR does is about public safety. Correctional Officers, Parole and Probation Officers, Juvenile Institutional Residence Specialists and Juvenile Corrections Specialists make up over 60% (not including leadership) of the ND DOCR workforce. These essential safety and security positions are the front lines that ensure public safety, every minute of every day. However, without properly staffed and effective administrative services, medical care, food services, plant services, and education, the ND DOCR cannot effectively accomplish its public safety mission. Adult and youth offenders are considered vulnerable wards in the eyes of the law. That requires the ND DOCR to meet various state and federal guidelines in protocol and practice, which starts and ends with all ND DOCR employees within all facilities, and all services required.

The ND DOCR is a vital part of the North Dakota criminal justice system. Here are some examples of negative impact expected from the passage of House Bill 1303.

- North Dakota State Penitentiary (NDSP), James River Correctional Center (JRCC), and the Missouri River Correctional Center (MRCC) and other Transitional Facilities are tasked with ensuring public safety and reducing the risk of future criminal behavior of male adult offenders in its care.
  - Each facility already operates with the least number of staff necessary, which leaves a very limited relief factor when positions are vacant.
  - Correctional Officers, Case Managers, Unit Managers, Sergeants, Lieutenants, Captains, Chiefs of Security, Deputies and Wardens are critical to each of our facilities and rarely vacant for more than 30 days.
  - When security positions are vacant for even 30 days, it forces the ND DOCR to implement forced overtime and denial of leave on our already taxed staff.
  - When case management staff positions are vacant for even 30 days caseloads can greatly increase and could negatively impact release planning and parole release dates. Case managers are critical to ensure inmates receive their treatment and that other programs are completed to become eligible for parole consideration.



- ND DOCR inmate numbers continue to climb.
  - 12/31/2012 – 1,536 adult offenders
  - 12/31/2016 – 1,791 adult offenders
- The ND DOCR has no way to close a housing unit to save costs or require less staff, as each facility is already at or near capacity. Each facility must have adequate staff for each shift, 24/7, for the safety of ND DOCR staff, the public, and the inmates.
  - NDSP 2016 average inmate population – 759; budgeted capacity – 796; 208.95 FTE
  - JRCC 2016 average inmate population = 437; budgeted capacity = 437; 151 FTE
  - MRCC 2016 average inmate population = 165; budgeted capacity = 187; 39.05 FTE
- Failure to properly supervise offenders could expose the state to increased liability or reduce effectiveness in reaching our mission of reducing the risk of future criminal behavior of inmates.
- The ND DOCR works hard to review applications, complete interviews, and prepare hiring decisions on many of these positions, prior to a vacancy. For example, Correctional Officers may be hired from waiting lists that have been established days to weeks before a position is vacant. Often, this allows the ND DOCR to fill these critical positions within 30 days of a vacancy.
- Education Services – The ND DOCR operates a fully accredited junior and senior high school (Marmot Schools) and adult education programs. Teachers at YCC are hired on a contract school year, which is generally signed during the first part of March. If the ND DOCR cannot fill these critical positions until after April 30, 2017, the candidate pool for qualified Teachers is depleted and may result in a lower quality of Teacher candidates. In addition, if the ND DOCR cannot fill these Teacher positions due to HB 1303, accreditation with the ND Department of Public Instruction may be impacted.
- Treatment Services
  - Psychologist and Counselor positions vacant for extended periods of time may require the cancellation of scheduled court ordered treatment that would extend the length of stay for many inmates. Inmates are rarely considered for parole if they have not completed their required treatment. Treatment services include substance abuse treatment, sex offender treatment, managing offender assessments, conflict resolution and anger management, and mental health and crisis intervention programs.
  - Youth Correctional Center Social Workers - The primary purpose is to provide treatment and rehabilitation; through a full range of treatment services and programming designed and implemented for adjudicated juvenile offenders in a juvenile correctional facility. Services and programming are offered in the areas of Therapeutic and Clinical services in the Assessment and Management of Trauma, Suicide and/or Self Injury, Mental Health, Addiction, Case Management and Spiritual growth and development. In addition, training programs such as Suicide Detection and Prevention in Juvenile Detention and Correctional Facilities and Mental Health and Juvenile Justice are provided by clinicians within this work unit. The combination of speciality services and complimentary training programs are purposed towards rehabilitation of and reducing recidivism for youth incarcerated at the North Dakota Youth Correctional Center (NDYCC).



- Community Corrections - The Division of Juvenile Services (DJS) manages costs to the state by insuring that as many youth as possible are not served in the secure facility.
  - 40% of the youth committed to the custody of the Division of Juvenile Services are placed in someone's home in the community; either the home of their parents, a relative, or a foster parent. These youth require close supervision and monitoring in order to preserve public safety, including safe behavior in our schools.
  - Approximately 25 % of the caseload are placed in residential facilities and group homes.
  - Community case managers are responsible for insuring that all court orders for every youth meet all requirements presented in State and Federal law. Federal funding, on which the child welfare system in North Dakota depends for offsetting the cost of care, requires court orders to be compliant with very specific language, and timelines. Leaving these positions vacant for even 30 days can lead to paperwork failures that result in costs of care that are not reimbursable; this means 10's of thousands of dollars per case, and literally millions of dollars in un- reimbursable expenses over the course of a year.
  - Case managers, together with the regional administrative assistants, do more than keep the funding for treatment flowing. They are responsible for paperwork compliance with state and federal law related to release of confidential records, federally protected health information, Medicaid and foster care eligibility, case planning deadlines, court appearance deadlines, victim notification requirements and restitution payments, and numerous other regulations and requirements.
  - Case load size in community corrections is mission critical. If positions could not be filled for up to 90 days, other workers simply cannot pick up enough of the slack on a long-term basis. Without the regional case management support, DJS would be forced to rely only on placement in the secure youth correctional center, which places even more strain on YCC resources and staff.
- Medical Services - Primary care provider positions, such as Physician, Dentist, and nursing professionals are critical to meeting offender medical needs who are in ND DOCR custody. If the ND DOCR could not provide these essential services on a 24/7 basis the ND DOCR would be forced to send offenders to local area medical facilities for a range of medical issues. This will result in increased cost for services and overtime for Correctional Officer staff that must accompany offenders outside of ND DOCR facilities. In addition, increased overtime costs for nursing and other direct care provider positions may increase, as shifts staffed by vacant position(s) need to be covered.
- Youth Correctional Center – Juvenile Institutional Residence Specialists and Security Officers provide therapeutic service to delinquent and disturbed adolescents within the most restricted environment on a continuum of services available to adjudicated juveniles, and to protect society from delinquent and disturbed juveniles acting out their negative behaviors in the community. This unit also provides direct supervision and security to NDYCC juveniles, teaches proper living skills, and assists juveniles in the attainment of treatment goals.
  - The ND DOCR has requested an additional 10.0 FTE for 2017-2019 to ensure compliance with Prison Rape Elimination Act (PREA) staffing

requirements. Being forced to leave vacant positions open for even 30 days may cause noncompliance with national PREA standards.

- Food Service, Facility Management and Plant Operations – The ND DOCR's secure 24/7 facilities require constant attention to ensure safe operations. With 1,791 adult offenders and 51 juvenile offenders living within the ND DOCR's secure facilities, meal planning and preparation, custodial services, electrical and plumbing needs, HVAC and plant services, and grounds maintenance and snow removal are critical. If any of these essential positions is required to remain vacant for an extended period of time, the ND DOCR will likely incur additional overtime costs, and additional costs related to contracting of certain services where specialized experience may be needed.
- Parole and Probation – The Division works to provide services to people sentenced to supervision on either probation or parole. Allowing people the opportunity to change while keeping the community safe is the top goal of the division.
  - The ND DOCR operates 16 regional offices, some which are very small with one or two Officers. If any of these critical small regional offices experiences unexpected turnover, and the ND DOCR is unable to fill the positions during HB 1303's mandated hiring freeze, this would result in large mostly rural areas that would have no coverage with an assigned officer. Staffs will be forced to come from other areas resulting in a slow response time should emergencies arise.
  - Numbers of people under supervision has continued to increase across the state, and caseloads already exceed levels that officers can work with effectively. If vacancies that arise are not filled, those cases would have to be picked up by other officers creating an even higher and less manageable caseload. Public safety would be compromised if those workloads be allowed to increase.
  - 12/31/2016 adult offenders on community supervision – 7,334

The ND DOCR will continue to ensure public safety whether or not HB 1303 is enacted. Turnover rates for the ND DOCR have historically hovered around 20%, with 2016 a little higher at 23%. However, as the ND DOCR deals with relatively high turnover for several critical classes of positions (Correctional Officer is around 30%, on average) the concern is that these critical high turnover positions that cannot be filled as fast as possible, due to HB 1303, will lead to higher costs related to turnover and put strains on already lean position counts and staff resources. All DOCR position needs are analyzed and staffing plans are created at least every biennium, per the ND DOCR Staffing Requirements policy, in order to ensure the best utilization of staff resources

Mandatory overtime for positions such as Correctional Officers and Parole and Probation Officers that are already severely fatigued due to recent long-term assistance with DAPL protest activities runs the risk of workplace injuries and increased worker's compensation claims, and more unexpected turnover.

Therefore, the ND DOCR respectfully requests unfavorable consideration and do not pass for House Bill 1303.

OR



Therefore, the ND DOCR respectfully requests favorable consideration and passage of House Bill 1303, as amended.

**PROPOSED AMENDMENT TO HOUSE BILL NO. 1303**

Page 1, line 7, insert, "with the exception of the Department of Corrections and Rehabilitation full time equivalent employee positions deemed critical to agency operations" immediately after, "...not be filled".

A#3 1/17/17  
HB 1303

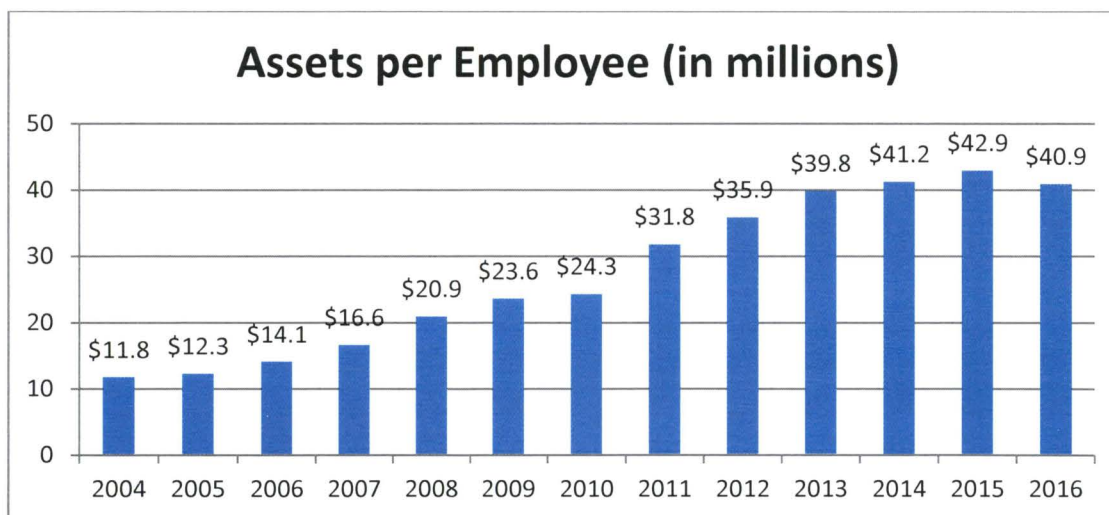
## House Bill 1303 Testimony

Good afternoon Mr. Chairman and members of the Committee. For the record, my name is Lori Leingang and I am the Chief Administrative Officer at Bank of North Dakota. My role at the Bank involves the oversight of human resources, communications and marketing, financial literacy, and the strategic planning process. I am here to testify in opposition of House Bill 1303.

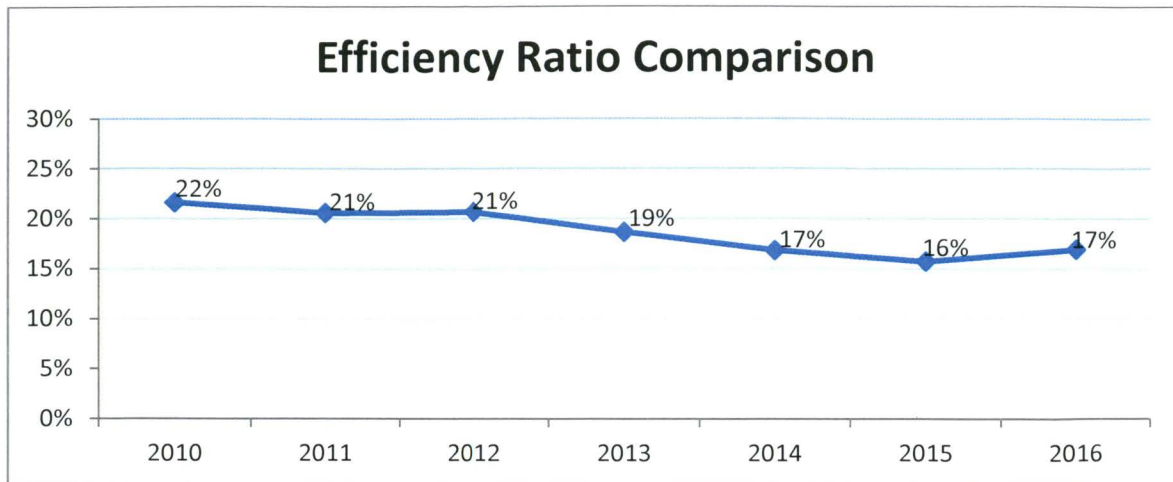
This bill prohibits an agency from filling vacancies that occur until April 30, 2017 which could be detrimental to the Bank and our ability to provide value to the state of North Dakota.

As an example of how we closely manage the use of our human resources, Bank of North Dakota monitors various metrics including the following:

- **Assets per employee** – this is a measure of the bank's effective use of human resources. A comparison to this metric was shared at a recent peer group meeting where the average amount of assets per FTE for the 17 banks represented was \$5,000,000 compared to our \$40,900,000.



- **Efficiency Ratio** – this is a measure of a bank's ability to turn resources into revenue. A lower percentage reflects better utilization of resources and 50% is generally regarded as the maximum optimal ratio. Bank of North Dakota's current efficiency ratio of 16% is an indicator of the effective use of resources as our assets continue to grow. A comparison to this metric was shared at a recent peer group meeting where the average efficiency ratio for the 17 banks represented was 64% compared to our 17%.



Bank of North Dakota is unique as the only state-owned Bank in the country, as well as a bottom-line driven organization with significant demands for profitability. We continually monitor, question and ensure that our human resources are being utilized as effectively and efficiently as possible, and we do not fill positions that are vacated without a diligent review of current and future needs. The profitability of Bank of North Dakota is absolutely reliant on our ability to recruit and retain highly talented employees. Limiting our ability to fill vacancies would put our organization at risk not only from a revenue generation standpoint, but also in the areas of regulatory adherence and the safety and soundness of the Bank.

If this bill were to pass, it would greatly diminish our ability to serve the needs of our customers, those being financial institutions, state agencies, students, economic development entities and residents of North Dakota.

I would be glad to answer any questions.

Thank you.



Att 4 1/17/17 HB 1303



**NDCLCI**

***North Dakota Commission on Legal Counsel for Indigents***

*2517 West Main*

*P.O. Box 149*

*Valley City, ND 58072*

*701-845-8632*

*www.nd.gov/indigents*

H. Jean Delaney, Executive Director

Travis Finck, Deputy Director

January 18, 2017

Re: HB1303

Dear Chairman Delzer and Members of the House Appropriations Committee:

The Commission is the agency that provides attorneys for indigent persons when there is a constitutional, statutory, or rule-based right to counsel, mostly in criminal and juvenile matters. We provide services through our public defender offices, and through approximately 70 attorneys with monthly contracts, and more than 90 attorneys with conflict/hourly contracts.

The agency has 40 FTEs. All of these positions are vital for providing constitutionally mandated services. Twenty of the positions are attorney positions. The attorney positions are in eight different offices across the state with most offices having three attorneys, two FTE staff and one temp secretary. If the agency is not permitted to fill a vacant attorney position, we would still need to provide services in all cases in which a person is found eligible. An attorney can competently handle only so many assignment per month. Other attorneys in an office would not be able to absorb the case load that would normally be assigned to an attorney in the vacant position. Other non-attorney staff in the office provide attorney support, but are not able to provide representation to clients.

If the case load would not be handled through an employee, it would need to be done through additional conflict contract attorneys. Conflict contract counsel is paid at the rate of \$75/hour. Any savings in employee costs would be spent on contractors.

If the vacant position was one of non-attorney staff positions, the work load would need to be absorbed by the other non-attorney staff in the office. This would require each doing approximately one-third additional work, and putting in significant overtime, which must be paid at time and one-half. Thus, not filling the position would likely cost more than filling it.

The agency currently has one attorney position vacant. The attorney who was previously in the position has retired, and his last day was January 6. We are in the process of interviewing applicants, and an offer of employment is expected to be made in the very near future. I've attached a letter from Monty Mertz, the Supervising Attorney in that office, in which he explains the critical need to fill the position.

Sincerely,

A handwritten signature in dark ink, appearing to be 'H. Jean Delaney', written in a cursive style.

H. Jean Delaney

att 5  
1/17/17 HB  
1303



January 18, 2017

## FARGO PUBLIC DEFENDER OFFICE

H. Jean Delaney  
Executive Director  
North Dakota Commission on Legal  
Counsel for Indigents  
2517 West Main  
Valley City, ND 58072

Monty G. Mertz, *Supervising Attorney*  
Laura Reynolds, *Attorney*  
Christine LaCoursiere, *Administrative Assistant*  
Amy Mihulka, *Legal Assistant*

**RE: Critical necessity to immediately fill vacate staff attorney position in the  
Fargo Public Defender Office**

Dear Ms. Delaney:

One of the full-time staff attorneys in my office recently resigned (retired), having provided the minimum two-week notice. His last work day was January 6, 2017.

It would be a disaster for this office and the criminal justice system in Cass County if this vacancy is not filled without any delay. This attorney left seventy (70) unresolved files. Prior to his departure, we were just keeping up with our caseloads. Trying to absorb his open files and the on-going caseload he left uncovered is not feasible. We are dealing with this situation on a triage basis, and several cases set for trial have been continued already. We knew this person planned to retire, but we did not expect him to give only the minimum notice.

This office serves the East Central Judicial District. The primary case load comes from Cass County. There are nine (9) District Judges and fourteen (14) prosecutors in the Cass County Courthouse. The population of Fargo and greater Cass County continues to grow steadily. We have seen our caseloads increase steadily. Cases assigned in the East Central Judicial District to Public Defenders for FY 2015 were 2,738. For the period including the month of November 2015 to through October, 2016 that number was 3,342. That is an increase of 604 additional cases. The goal to keep individual case assignments for each attorney to no more than 300 cases has been exceeded for the first time in the eight years I have been the Supervising Attorney.



We have seen the average seriousness of the cases we are assigned to increase over time. Our caseloads are heavily weighted toward felony cases. Statistically, Public Defenders handle about 95% of all felony cases state-wide. The private criminal defense lawyers handle many of the city court cases, which are many of the traffic cases such as DUIs, and other misdemeanors. It seems that persons who commit felony offenses rarely can afford to hire a private attorney.

We actually need additional attorneys to handle the case load in Cass County, so we certainly cannot function long without filling this full-caseload position in my office.

We need to hire a replacement as soon as possible. Even the process to fill the position as is has been and will be a substantial challenge.

### **Fargo Public Defender Office**

Respectfully,



Monty G. Mertz; ND Bar ID#03778  
Supervising Attorney

Engrossed HB 1303  
Senate Government and Veterans' Affairs  
Pam Sharp, OMB

3-17-17 #1

Good morning Madam Chair and members of the Senate GVA Committee. For the record, I am Pam Sharp with the Office of Management and Budget.

I am here today in opposition of Engrossed House Bill 1303. This bill is completely unnecessary and creates a level of bureaucracy that provides no value.

State agencies are well aware of the financial situation in state government and fully aware that FTE positions are being eliminated. The last thing an agency head wants to do is to fill a position only to have to RIF that individual in a couple months.

Since the early 2000's, the State Hiring Council has been in place as a result of an executive order. The Hiring Council is chaired by the Lt. Governor and consists of Jodi Uecker, as the Chief Operating Officer, myself as the OMB Director, Becky Sible, as the HRMS Director and an agency HR officer appointed by the Governor, who is Marcie Wuitchuk from the Department of Human Services. The Hiring Council reviews vacant positions in the cabinet level agencies.

Generally, the Hiring Council reviews positions that have been vacant for six months, or have been reclassified or if a major change has taken place. We have adjusted the rules, at least temporarily, and have been reviewing all vacant positions for approval prior to being posted and filled. That means we meet every week to review the vacancy requests submitted to us.

The agency heads themselves have been extremely selective in the positions they bring before the Hiring Council, given the current budget situation.

Some positions absolutely have to be filled such as employees who provide direct care services, correctional officers, and snowplowers, just to name a few. There are also situations where there are federally required staffing ratios that must be met. The agency heads are the ones who know how to make those decisions, and we need to let them do their jobs. The Hiring Council is the second line of review.

I don't believe there is any amendment that would make this bill workable, and given that the bill's hiring prohibition ends April 30, 2017, it is not worth spending time on when there are already good processes in place and trustworthy agency heads.

Please give this bill a DO NOT PASS recommendation.



#2

**HOUSE BILL 1303**  
**SENATE GOVERNMENT AND VETERANS AFFAIRS COMMITTEE**  
**March 17, 2017**

TO: Nicole Poolman, Chair, Senate Government and Veterans Affairs Committee, and Members of the Senate Government and Veterans Affairs Committee.

Travis Engelhardt, Director of Human Resources, submits this written testimony in opposition of House Bill 1303 on behalf of the North Dakota Department of Corrections and Rehabilitation ("ND DOCR").

House Bill 1303 is simply not needed. The DOCR already has internal checks and approval processes in place to ensure only critical and business-essential positions are filled. In addition, Governor Burgum currently requires all regular FTE positions reviewed and approved by Hiring Council, prior to filling those positions. With the multiple reviews already in place, the DOCR feels HB 1303 adds another layer of bureaucracy and will simply take more valuable and limited resources.

The ND DOCR is a vital part of the North Dakota criminal justice system. Everything the ND DOCR does is about public safety. Correctional Officers, Parole and Probation Officers, and Juvenile Institutional Residence Specialists and Juvenile Corrections Specialists make up over 63% (not including leadership) of the ND DOCR workforce. These essential safety and security positions are the front lines that ensure public safety, every minute of every day. However, without properly staffed and effective administrative services, medical care, treatment and education services, food and plant services, the ND DOCR cannot accomplish its mission of effective and efficient public safety. Adult and youth offenders are considered vulnerable wards in the eyes of the law. That requires the ND DOCR to meet various state and federal guidelines in protocol and practice, which starts and ends with all ND DOCR employees within all facilities, and all services required.

Therefore, the ND DOCR respectfully requests a do not pass vote for House Bill 1303.



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*Great Public Schools**Great Public Service*

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***Testimony before the Senate GVA Committee  
HB 1303  
March 17, 2017***

Good morning Chairwoman Poolman and members of the Committee. For the record, my name is Nick Archuleta and I am the president of North Dakota United. On behalf of our 11,500 members in every district across the state of North Dakota, I rise today in opposition to HB 1303.

Though this bill has been made better with the adoption of thoughtful amendments, I believe that HB 1303 is unnecessary, particularly in light of the most recent budget forecast. North Dakota's general funded agencies and institutions are led by professionals who fully understand the difficult budgetary climate in which they operate. Just as I trust professional educators to make the decisions that best serve their students, I trust these professional agency heads to make the best decisions on behalf of the people they lead and the public they serve. Their budgets are already constrained and it is unlikely that any one of them is looking to pad their roles with more personnel. In addition, after today there will be only 32 days until the end of April. By the time this bill is voted upon and signed by the Governor, this bill will be even less impactful.

Senator Poolman, the March 9 budget forecast, I'm afraid, has erased the urgent need for and relevance of this legislation. I urge you and this Committee to give HB 1303 a DO NOT PASS recommendation.

#4  
pg 1

**Testimony  
House Bill 1303  
Senate Government & Veterans Affairs Committee  
Senator Poolman, Chairman  
March 17, 2017**

Chairman Poolman and members of the Senate Government and Veterans Affairs Committee, I am Marcie Wuitschick, Director of Human Resources for the Department of Human Services (Department), and I am here today in opposition to House Bill 1303.

The Department understands the intent of HB 1303, and my purpose for testifying today is to share with you the impact that passage of HB 1303 would have on the operations of the Department of Human Services.

The vast majority of positions in the Department are related to direct care for clients. This includes addiction counselors, nurses, direct care associates, case managers, clinicians, and psychiatrists. To discontinue filling vacancies in these areas would have a negative impact on clients across North Dakota. The Department has three facilities that are accredited. The accreditation of those facilities would be in jeopardy due to the requirement of minimum staffing ratios, such as nurses and direct care staff. Without sufficient staff, we could be forced to shut down specific areas of the State Hospital or Life Skills & Transition Center. The eight regional human service centers are essentially behavioral health clinics, and not filling vacancies in those locations could result in clients who need services being placed on a waiting list, clients not receiving necessary medications, and increased violence towards staff and/or other clients. With many clients, lack of services provided will result in an



additional burden placed on other community resources such as law enforcement, emergency rooms and first responders.

The Department utilizes a formal approval process to fill any vacancy, in addition to seeking approval from the Governor's Hiring Council to fill critical vacant FTEs. This process has been in place for several years and we intend to continue to use it going forward.

This concludes my testimony and I would be happy to answer any questions you may have.

Thank you.

**Engrossed House Bill 1303**  
**Testimony for Senate Government and Veterans Affairs Committee**

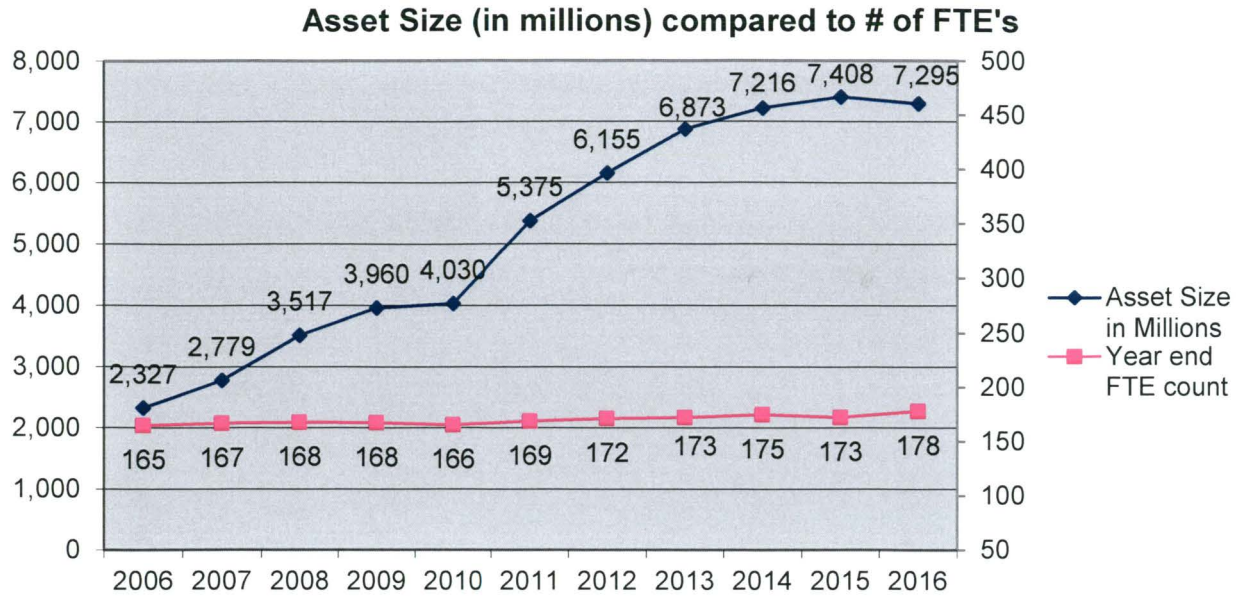
Madam Chairman Poolman and members of the Senate Government and Veterans Affairs Committee, my name is Lori Leingang and I am the Chief Administrative Officer at the Bank of North Dakota. My role at the Bank involves the oversight of Human Resources, Communications and Marketing, financial literacy, and the strategic planning process. I am here to testify in opposition of Engrossed HB1303.

This bill prohibits a State agency from filling employee vacancies that occur through April 30, 2017 which could be detrimental to the Bank and our ability to provide value to the state of North Dakota. Here are a few examples that explain our concerns:

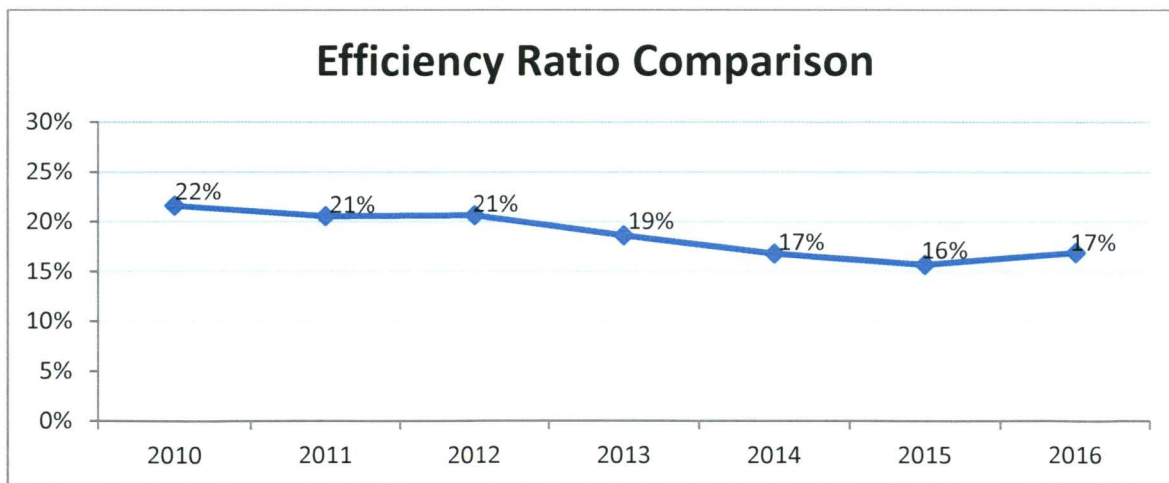
- Financial institutions market: Our business development team consists of business bankers and loan administration employees who interact daily with and provide services to essentially every financial institution and local subdivision in the state. The ability of BND to serve the state-wide needs would be greatly inhibited if we are unable to fill positions that may be vacated.
- Regulatory/Risk Management: The regulatory and compliance landscape for financial institutions related to risk management changes on a daily basis. Over the past few years, this business unit has transitioned from what was viewed as primarily an audit function to one that is regularly consulting with service areas on how to efficiently conduct work while maintaining appropriate levels of segregation of duties. If we are unable to fill positions that are vacated, our ability to mitigate risk while maintaining the highest level of efficiency would be negatively affected.
- State of ND: As you know, the Bank of North Dakota was called upon in the August 2016 Legislative Special Session with SB2379 for up to an additional \$100,000,000 transfer of Bank earnings to the state general fund by June 30, 2017 if OMB determines the fund will not have a projected positive balance. Engrossed SB 2014 in the 2017 Session includes a \$140,000,000 transfer from Bank earnings to the state general fund during the 2017-19 biennium. Our success is dependent on the daily efforts of our dedicated employees and if we are unable to refill positions that become vacant, our ability to provide value back to the state will be lessened.

As an example of how we closely manage the use of our human resources, Bank of North Dakota monitors various metrics including the following:

- **Assets per employee** – The graph below represents the change in assets and employees between 2006 and 2016. Over this 10-year period, assets per employee has nearly tripled from \$14 million to \$41 million. This graph clearly indicates the Bank's effective use of human resources over time and our move to a more streamlined and efficient workforce through gains such as the use of technology.



- Efficiency Ratio** – A key industry benchmark for gauging the efficiency of a financial institution is the efficiency ratio. This is a measure of a bank's ability to turn resources into revenue. A lower percentage reflects better utilization of resources and anything below 50% is considered to be excellent. Bank of North Dakota is operating with a 16.9% efficiency ratio, which is over three times better than the industry average of 60.6% and an excellent indicator of the effective use of resources as our assets continue to grow.





The Bank of North Dakota is unique as the only state-owned Bank in the country, as well as a bottom-line driven organization with significant demands for profitability. We continually monitor, question and ensure that our human resources are being utilized as effectively and efficiently as possible, and we do not fill positions that are vacated without a diligent review of current and future needs. The profitability of the Bank is absolutely reliant on our ability to recruit and retain highly talented employees. Limiting our ability to fill employee vacancies would put our organization at risk not only from a revenue generation standpoint, but also jeopardizes regulatory adherence and the safety and soundness of the Bank.

What graphs aren't able to show are the individual and direct ways in which BND serves the residents of ND. Whether this is through the Farm Financial Stability Loan Program that provided financial relief to farmers who were impacted by low commodity prices or below average crop production, to students who are able to attend college through the use of our DEAL student loan program, BND has a direct benefit to North Dakotans one person at a time. Our ability to produce consistent profits, address state needs, and serve these needs is directly tied to the talent level at the Bank. If Engrossed HB1303 were to pass, it could affect the Bank's ability to serve those needs.

I strongly encourage the committee to issue a "Do Not Pass" recommendation on Engrossed HB1303. We appreciate your consideration and I would be glad to answer any questions.

Thank you.