

1999 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1104

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1104

House Industry, Business and Labor Committee

Conference Committee

Hearing Date January 12, 1999

Tape Number	Side A	Side B	Meter #
1		x	24.2-32.5
1		x	43.2
Committee Clerk Signature <i>Lisa Horner</i>			

Minutes:

CHAIRMAN BERG called the hearing for HB 1104 to order.

1B: 25.0 JOHN HOEVEN, Bank of ND, testified in support of the bill. (See attached testimony.)

1B: 26.6 REP. KOPPANG asked how many loans have been issued through this program. Mr. Hoeven said that none have been issued, as it is still in progress. A number of insurance companies have agreed to get involved, but they want some changes. Rep. Koppang continued by asking how the figure %10 was arrived at. Mr. Hoeven believed that when Rep. Dorso had the bill drafted, he gave Legislative Council a number of figures.

CHAIRMAN BERG adjourned the hearing on HB 1104.

1B: 43.2 ACTION ON BILL Rep. Koppang made a motion for a DO PASS. The motion was seconded by Rep. Johnson. A roll call vote was taken. The bill passed and Rep. Koppang will carry it to the House floor.

Date: 1-12-99
Roll Call Vote #: _____

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1104

House Industry, Business and Labor Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken do pass

Motion Made By Koppang Seconded By Johnson

Representatives	Yes	No	Representatives	Yes	No
Chair - Berg	/		Rep. Thorpe		
Vice Chair - Kempenich	/				
Rep. Brekke	/				
Rep. Eckstrom					
Rep. Froseth	/				
Rep. Glasheim	/				
Rep. Johnson	/				
Rep. Keiser	/				
Rep. Klein	/				
Rep. Koppang	/				
Rep. Lemieux	/				
Rep. Martinson	/				
Rep. Severson	/				
Rep. Stefonowicz	/				

Total (Yes) 13 No 1

Absent 2

Floor Assignment Koppang

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

REPORT OF STANDING COMMITTEE (410)
January 12, 1999 5:02 p.m.

Module No: HR-06-0521
Carrier: Koppang
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1104: Industry, Business and Labor Committee (Rep. Berg, Chairman) recommends **DO PASS** (13 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1104 was placed on the Eleventh order on the calendar.

1999 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1104

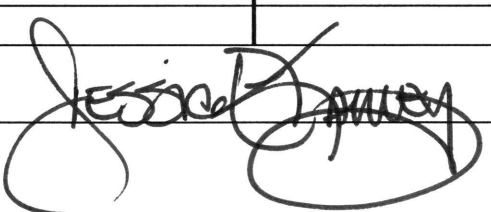
1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1104

Senate Industry, Business and Labor Committee

Conference Committee

Hearing Date February 9, 1999

Tape Number	Side A	Side B	Meter #
1		x	415-2600
Committee Clerk Signature 			

Minutes:

Senator Mutch opened the hearing on HB1104. All senators were present.

Paul Govig testified in support of HB1104. His testimony is included. Senator Krebsbach asked if the fund has been utilized. Mr. Govig told her that it has not been used as of this date. Senator Mutch asked how they define a low-risk loan. Mr. Govig told him that a low risk loan is a loan that is 3% credit (income or corporate), or is ¼ % over the T-bill. Senator Krebsbach asked him if he felt that there should still be a cap left and if this loan be considered a direct loan. Mr. Govig told her that the banks were not opposed to this legislation two years ago. Senator Mutch closed the hearing on HB1104.

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Senate Industry, Business and Labor Committee

Bill/Resolution Number Hb1104

Hearing Date February 9, 1999

Committee discussion took place on March 1, 1999.

Senator Thompson motioned for a do pass recommendation. Senator Heitkamp seconded his motion. The motion carried with a 7-0-0 vote.

Senator Krebsbach will carry the bill.

SR404092

Date: 3/1

Roll Call Vote #: 1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
HOUSE BILL/RESOLUTION NO. 1104

Senate INDUSTRY, BUSINESS AND LABOR COMMITTEE Committee

Subcommittee on _____

or

Conference Committee

Legislative Council Amendment Number _____

Action Taken DO PASS

Motion Made By THOMPSON Seconded By HEITKAMP

Senators	Yes	No	Senators	Yes	No
Senator Mutch	X				
Senator Sand	X				
Senator Krebsbach	X				
Senator Klein	X				
Senator Mathern	X				
Senator Heitkamp	X				
Senator Thompson	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment KREBSBACH

REPORT OF STANDING COMMITTEE (410)
March 5, 1999 9:07 a.m.

Module No: SR-40-4092
Carrier: Krebsbach
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

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

1999 TESTIMONY

HB 1104

**TESTIMONY TO THE
HOUSE INDUSTRY BUSINESS AND LABOR COMMITTEE
HOUSE BILL 1104
JOHN HOEVEN-BANK OF NORTH DAKOTA**

The Bank of North Dakota supports House Bill 1104 which enables the Bank of North Dakota to increase the amount of its participation in loans originated by the North Dakota Low Risk Incentive Fund. Currently, the Bank of North Dakota is limited to participation of 10% or less in the loans. Passage of the bill should improve the acceptance of the fund with the insurance companies which will provide funding for the program and in addition, should improve the overall effectiveness of the fund.

The 1997 North Dakota Legislature authorized the establishment of the North Dakota Low Risk Incentive Fund. The law provides a tax credit against premium taxes paid by insurance companies which participate in the fund. The purpose of the fund is to provide a low cost source of financing for companies which will either locate or expand in North Dakota and increase employment in the state. The fund will be managed by the Bank of North Dakota. To be eligible, an applicant for financing must be in excellent financial condition.

Insurance companies investing in the fund will receive a tax credit of up to 3% of the amount invested in the fund. The actual tax credit is determined by calculating the difference between the loan interest paid by the borrower and the amount of interest that would have been paid during the same period by applying an interest rate that is calculated by adding 3% to a comparable Treasury rate. The objective is to provide financing to desirable companies at treasury rates, while providing the insurance companies which invest in the fund, rates of return in the range of the Treasury rates + 3%. For the insurance companies willing to invest, the fund provides an attractive return relative to the risk involved.

The maximum annual fiscal impact to the state of North Dakota is \$750,000.

NORTH DAKOTA

LOW RISK INCENTIVE FUND

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Executive Summary

During the 1997 Legislative session, the Legislature authorized the establishment of the Low Risk Incentive Fund (N.D.C.C. 26.1-50). The law provides a tax credit against premium taxes paid by insurance companies which participate in the fund. The purpose of the fund is to provide a low cost source of financing for companies which will either locate or expand in North Dakota and increase employment in the state. The fund is to be managed by the Bank of North Dakota (BND). To be eligible, an applicant for financing must be in excellent financial condition. BND is required to co-invest in applicant companies along with the fund.

Insurance companies investing in the fund will receive a tax credit of up to 3% of the amount invested in the fund. The actual tax credit is determined by calculating the difference between the loan interest paid by the borrower and the amount of interest that would have been paid during the same period by applying an interest rate that is calculated by adding 3% to a comparable Treasury rate. The objective is to provide financing to desirable companies at Treasury rates, while providing the insurance companies which invest in the fund, rates of return in the range of the Treasury rates + 3%. For the insurance companies willing to invest, the fund provides an attractive return relative to the risk involved.

For additional information, please contact Paul Govig at the Bank of North Dakota at 1-800-472-2166 Ext. 5687.

Fund Development and Operation

- 1) 1997 North Dakota Legislature authorized the establishment of the Low Risk Incentive Fund (N.D.C.C. 26.1-50). Tax credits under this section for all insurance companies may not exceed \$750,000 in a calendar year. If the full 3% differential permitted under the statute for calculating the tax credit is utilized on all loans, the credit would cover \$25,000,000 in outstanding loan volume per year.
- 2) February 10, 1998. Development meeting with insurance companies to determine the overall level of interest in the fund at the Ramada Plaza Suites in Fargo.
- 3) Interested participants elect a governing board. The governing board must include a representative of the Bank of North Dakota and the Department of Economic Development and Finance. The governing board shall be responsible for adopting all fund policy and procedures but the Bank of North Dakota shall administer the fund.
- 4) Fund applications are received. The Bank of North Dakota shall review each loan application, report to the governing board whether the applicant qualifies for the fund and make a recommendation to the governing board to either approve or disapprove the loan application. BND will carry 10% of the loan itself. The borrowers may be, but more likely will not be, rated by an investment service such as Moody's or Standard and Poor's. Actual investments in the fund will not be made until a project is ready to be financed.
- 5) Projects are funded. The Bank of North Dakota shall administer all loans issued by the fund and shall receive from the fund a service fee of twenty-five basis points on all loans in place.
- 6) The governing board shall contract annually with a certified public accountant for the performance of an audit and preparation of audited financial statements of the fund prepared in accordance with generally accepted accounting principles and a report containing an analysis of the impact of the fund on the state's economy, business and employment activity generated by loans from the fund, and the effects of that activity on state and local tax revenues.

Eligible Insurance Company Investments

Investments by insurance companies are regulated by the respective state agencies in which the insurance companies are chartered. North Dakota insurance companies and holding companies are governed by N.D.C.C. 26.1-05-19 and N.D.C.C. 26.1-10-02 respectively.

Eligible Fund Projects

The fund may be used only for making loans to low-risk businesses for primary sector business projects in North Dakota and no loan may be approved or made by the fund without a ten percent participation in the aggregate amount of the loan by the Bank of North Dakota. "Primary sector business" means an individual, corporation, limited liability company, partnership, or association that through the employment of knowledge or labor adds value to a product, process, or service which results in the creation of new wealth. Qualification as a primary sector business must be determined by the Department of Economic Development and Finance. 50% of the amount loaned from the fund during the first year of a biennium must be served solely for business in rural areas. "Rural areas" means the area of the state not including territory within the corporate limits of a city with a population of twenty thousand or more.

Example

Assumptions

- 1) 5 year treasury rate: 5.50%
- 2) Loan term: 5 years
- 3) Insurance company premium tax: \$100,000
- 4) Investment return based on the loan amortization

Insurance Company (Investor)

Fund/Project Investment: \$500,000
Interest Rate Received: (5.5%) 5 Year Treasury rate
First Year Interest Earned: \$26,026.61
Yearly interest earned at the Treasury rate + 3% (8.5%): \$39,243.35

Tax Savings

	\$39,243.35
	(<u>\$26,026.61</u>)
Tax Credit	\$13,216.74
	\$100,000.00
	(<u>\$ 13,216.74</u>)
Revised Premium Tax	\$86,783.26

Primary Sector Business (Borrower)

Interest Rate Charged: (5.75%) 5 year Treasury rate +25 basis points
.25% interest rate service fee provided to BND
Amount Borrowed: \$500,000
First Year Interest Paid: \$26,406.42
Use of Proceeds: Building and equipment

26.1-03-17. Commissioner to collect premium tax - Insurance companies generally - Computation - Credits - Penalty - Estimated tax.

1. Before issuing the annual certificate required by law, the commissioner shall collect from every stock and mutual insurance company, nonprofit health service corporation, health maintenance organization, and prepaid legal service organization, except a fraternal benefit society, doing business in this state, a tax on the gross amount of premiums, assessments, membership fees, subscriber fees, policy fees, service fees collected by any third-party administrator providing administrative services to a group that is self-insured for health care benefits, and finance and service charges received in this state during the preceding calendar year, at the rate of two percent with respect to life insurance, one and three-fourths percent with respect to accident and health insurance, and one and three-fourths percent with respect to all other lines of insurance. This tax does not apply to considerations for annuities. The total tax is payable on or before March first following the year for which the tax is assessable. Collections from this tax must be deposited in the insurance tax distribution fund under section 18-04-04.1 but not in an amount exceeding one-half of the biennial amount appropriated for distribution under section 18-04-05 in any fiscal year. Collections from this tax exceeding the amount deposited in the insurance tax distribution fund each fiscal year must be deposited in the general fund in the state treasury. If the due date falls on a Saturday or legal holiday, the tax is payable on the next succeeding business day.
2. An insurance company, nonprofit health service corporation, health maintenance organization, or prepaid legal service organization subject to the tax imposed by subsection 1 is entitled to a credit against the tax due for the amount of any assessment paid as a member of a comprehensive health association under subsection 4 of section 26.1-08-09 for which the member may be liable for the year in which the assessment was paid, a credit as provided under section 26.1-38.1-10, a credit against the tax due for an amount equal to the examination fees paid to the commissioner under sections 26.1-01-07, 26.1-02-02, 26.1-03-19.6, 26.1-03-22, 26.1-17-32, and 26.1-18-27, and a credit against the tax due for an amount equal to the ad valorem taxes, whether direct or in the form of rent, on that proportion of premises occupied as the principal office in this state for over one-half of the year for which the tax is paid. The credits under this subsection must be prorated on a quarterly basis and may not exceed the total tax liability under subsection 1.
3. Any person failing to pay the tax imposed by subsection 1, within the time required, is subject to a penalty of five percent of the amount of tax due or one hundred dollars, whichever is greater, plus interest of one percent per month on the unpaid tax for each month or fraction of a month of delay, excepting the first day after the tax became due, or twenty-five dollars per day, whichever is greater. Any person failing to file the appropriate tax statement required by rule if the tax is zero is subject to a penalty of twenty-five dollars per day for each day's neglect not to exceed five hundred dollars. The commissioner, if satisfied that the delay was excusable, may waive, and if paid, issue a premium tax credit for all or any part of the penalty and interest.
4. Every stock and mutual insurance company, nonprofit health service corporation, health maintenance organization, and prepaid legal service organization, except a fraternal benefit society, doing business in this state required to pay premium taxes in this state shall make and file a statement of estimated premium taxes. The statement and payment must be made on a quarterly basis as prescribed by the commissioner. Failure of a company to make payments of at least one-fourth of either the total tax paid during the previous calendar year, or eighty percent of the actual tax for the current calendar year, shall subject the company to the penalty and interest provided in subsection 3.
5. If an amount of tax, penalty, or interest has been paid which was not due under the provisions of this section, a refund may be issued to the taxpayer who made the erroneous payment. The refund is allowed as a credit against any tax due or to become due under this section or as a cash refund, at the discretion of the commissioner. The taxpayer who made the erroneous payment shall present a claim for refund to the commissioner not later than two years after the due date of the return for the period for which the erroneous payment was made.

6. In lieu of the tax required by subsection 1, the commissioner shall collect from each entity subject to this section an annual filing fee in the amount of two hundred dollars, provided the total tax liability of the entity pursuant to subsection 1 is less than two hundred dollars. No annual filing fee is due or may be collected from an entity if its total tax liability pursuant to subsection 1 is in excess of two hundred dollars. The annual filing fee may be reduced by any credits available pursuant to subsections 2 and 5.

CHAPTER 26.1-50

NORTH DAKOTA LOW-RISK INCENTIVE FUND

26.1-50-01. Definitions. As used in this chapter:

1. "Fund" means the North Dakota low-risk incentive fund.
2. "Governing board" means the board of directors of the corporation or board of governors of the limited liability company established under section 26.1-50-02.
3. "Insurer" means any foreign or domestic corporation, association, benefit society, exchange, partnership, limited liability company, or individual engaged as principal in the business of insurance in this state.
4. "Primary sector business" means an individual, corporation, limited liability company, partnership, or association that through the employment of knowledge or labor adds value to a product, process, or service which results in the creation of new wealth. Qualification as a primary sector business under this subsection must be determined by the department of economic development and finance.

26.1-50-02. Establishment - Organization. Any insurer or group of insurers may establish a corporation or limited liability company to own and operate the North Dakota low-risk incentive fund. Except as provided in this chapter, all authority regarding the articles of incorporation or articles of organization is the province of the governing board, which must include a representative of the Bank of North Dakota and the director of the department of economic development and finance. The Bank of North Dakota shall administer the fund; however, the governing board is responsible for adopting fund policies and procedures. The governing board may not distribute more than seventy-five percent of the net profit of the fund in any of the first five years of operation.

26.1-50-03. North Dakota low-risk incentive fund use. The fund may be used only for making loans to low-risk businesses for primary sector business projects in this state and no loan may be approved or made by the fund without a ten percent participation in the aggregate amount of the loan by the Bank of North Dakota. The participation of the Bank of North Dakota in a loan may not exceed ten percent of the aggregate amount of the loan. A loan from the fund may not be made to an insurer. The governing board shall establish the rate of interest and terms of repayment for a loan from the fund. Fifty percent of the amount loaned from the fund during the first year of a biennium must be reserved solely for businesses in rural areas. The remainder loaned from the fund may be used in urban or rural areas. For purposes of this section, "rural areas" means the area of the state not including territory within the corporate limits of a city with a population of twenty thousand or more.

26.1-50-04. Loan administration. An application for a loan from the fund must contain the information prescribed by the governing board. Except as provided in this section, information contained in applications for loans from the fund is confidential. The Bank of North Dakota shall review each loan application, report to the governing board whether the applicant represents a primary sector business project, and make a recommendation to the governing board to either approve or disapprove the loan application. The Bank of North Dakota shall administer all loans issued by the fund and shall receive from the fund a service fee of twenty-five basis points on all loans in place. The commissioner of insurance may examine the fund and activities of insurers in connection with the fund to assure compliance with title 26.1. The fund shall pay for the costs of an examination and no credit may be allowed any insurer for payment of examination costs as otherwise provided under section 26.1-03-17.

26.1-50-05. Audited financial statement - Report of fund operations. The governing board shall contract annually with a certified public accountant for performance of an audit and preparation of audited financial statements of the fund prepared in accordance with generally accepted accounting principles and a report containing an analysis of the impact of the fund on the state's economy, business and employment activity generated by loans from the fund, and the effects of that activity on state and local tax revenues. The governing board shall provide the financial statements and report to the governor, the commissioner of insurance, and the legislative council and make copies available to

the public. The cost of the audit and preparation of financial statements and report must be paid from the fund.

26.1-50-06. Tax credit - Penalty. If the requirements of this chapter are met, an insurer is entitled to a credit against taxes due under section 26.1-03-17 as determined under this section.

1. An insurer making or participating in a loan under this chapter is entitled to a premium tax credit calculated for each calendar year the loan is in place. The amount of the credit is the difference between:
 - a. The participating insurer's share of the interest earned on the loan during the calendar year; and
 - b. The participating insurer's share of an amount of interest that would have been earned during the same period by applying an interest rate, calculated by adding three hundred basis points to a comparable treasury security rate at the date of the issuance of the loan.
2. The maximum credit allowed an insurer for any calendar year is the amount of interest that would have been earned during the period by applying an interest rate of three hundred basis points. A credit may not be allowed if the interest earned exceeds the interest that would have been earned by applying the calculation in subdivision b of subsection 1.
3. The credit may not exceed the total amount of the insurer's tax liability under subsection 1 of section 26.1-03-17 and no unused credit may be carried forward.
4. Credits under this section for all insurers may not exceed seven hundred fifty thousand dollars in a calendar year.

26.1-50-07. Assets of insurers. The amount of a loan made by an insurer or the amount of an insurer's participation in a loan made under this chapter may not be considered or reported on the insurer's annual statement as an admitted asset except to the extent provided under subsection 33 of section 26.1-05-19.

26.1-05-19. Authorized investment of funds of insurance companies. A domestic insurance company may invest any of its funds and accumulations in:

1. Securities or obligations made specifically eligible for such investment by law.
2. Bonds or other evidences of indebtedness issued, assumed, or guaranteed by the United States of America, the District of Columbia, or by any state, territory, or insular possession of the United States or by any county, city, township, school district, or other civil division of a state, including those payable from special revenues or earnings specifically pledged for the payment thereof, and those payable from special assessments, including rights to purchase or sell these securities or obligations if these rights are traded upon a contract market designated and regulated by a federal agency and purchased for legitimate hedging, nonspeculative purposes.
3. Bonds or other evidences of indebtedness issued, assumed, or guaranteed by any instrumentality or agency of the United States of America, including rights to purchase or sell these securities or obligations if these rights are traded upon a contract market designated and regulated by a federal agency and purchased for legitimate hedging, nonspeculative purposes.
4. Notes or bonds secured by mortgage or deed of trust insured by the federal housing administrator, debentures issued by the federal housing administrator, and securities issued by national mortgage associations.
5. Bonds issued by the industrial commission under chapter 4-36.
6. Bonds guaranteed under chapter 6-09.2.
7. Bonds issued by the North Dakota municipal bond bank pursuant to chapter 6-09.4.
8. Bonds issued by the state board of higher education under chapter 15-55.
9. Revenue bonds issued by the state water commission.
10. Interim financing notes issued by the state water commission pursuant to chapter 61-02.
11. Warrants issued by a city under chapter 40-24.
12. Bonds or notes issued pursuant to chapter 40-33.2.
13. Bonds or other obligations issued pursuant to chapter 40-58.
14. Bonds issued under chapter 40-61.
15. Bonds issued under chapter 54-30.
16. Notes or other evidences of indebtedness of the North Dakota life and health insurance guaranty association not in default.
17. Notes or other interest-bearing obligations of any state development corporation of which the company is a member, issued in accordance with chapter 10-30.
18. Bonds or other evidences of indebtedness issued, assumed, or guaranteed by the Dominion of Canada, or any province thereof, or by any municipality or district therein, provided that the obligations are valid and legally authorized and issued.
19. Mortgage bonds and debentures of any solvent railway company duly incorporated and authorized under the laws of this state or of any other state or insular possession of the United States, or of the Dominion of Canada or of any province thereof.
20. Mortgage bonds and debentures of any solvent industrial public utility or financial corporation duly incorporated and authorized under the laws of the United States of

America or of any state or insular possession thereof, or of the Dominion of Canada or of any province thereof, including rights to purchase or sell these securities or obligations if these rights are traded upon a contract market designated and regulated by a federal agency and purchased for legitimate hedging, nonspeculative purposes.

21. Preferred stock, of, or common or preferred stock guaranteed as to dividends by, and common stock of, any corporation organized under the laws of the United States, any state or possession of the United States, the Dominion of Canada, or any province of the Dominion of Canada, including rights to purchase or sell these securities or obligations if these rights are traded upon a contract market designated and regulated by a federal agency and purchased for legitimate hedging, nonspeculative purposes, subject to the following restrictions and limitations:
 - a. The company issuing the preferred stock or guaranteeing the dividends on the common stock must have earned an average amount per annum at least equal to five percent of the par value of its common and preferred stocks or in the case of stocks having no par value, of its issued or stated value outstanding at the date of purchase, over the period of seven fiscal years immediately preceding the date of purchase or which over such period earned an average annual amount at least equal to two times the total of its annual interest charges, preferred dividends, and dividends guaranteed by it, determined with reference to the date of purchase.
 - b. The company issuing any common stock must have earned an average amount per annum at least equal to six percent of the par value of its capital stock, or in the case of stock having no par value of the issued or stated value of such stock, outstanding at the date of purchase over the period of seven fiscal years immediately preceding the date of purchase.
 - c. The company issuing or guaranteeing the stock has not been in arrears in the payment of dividends thereunder for a period of ninety days within the five-year period immediately preceding purchase of the stock.
 - d. Investments in preferred, guaranteed, and common stocks may not exceed in the aggregate twenty percent of the life insurance company's admitted assets.
22. Savings accounts, under certificates of deposit or in any other form, in solvent banks and trust companies which have qualified for federal deposit insurance corporation protection, shares and savings accounts, under certificates of deposit, investment certificates, or in any other form, in solvent savings and loan associations organized under federal law or state law of any state which have qualified for federal savings and loan insurance corporation protection, and shares and deposit accounts, under certificates of deposit or in any other form, in solvent state or federally chartered credit unions which are insured by the national credit union administration. Investments in the shares and accounts are not limited to, or by, the amount of any such insurance protection. Short-term or liquidity investments such as certificates of deposit, repurchase agreements, bankers' acceptances, commercial paper, money market mutual funds, or current interest accounts in solvent banks and trust companies, savings and loan associations, state or federally chartered credit unions, investment brokerage houses which are regulated by a federal agency, and such other types of investments as may be deemed appropriate and authorized by rule by the commissioner.
23. Loans made upon the security of its own policies, if a life insurance company, but no loan on any policy may exceed the reserve value thereof.
24. Notes secured by mortgages on improved unencumbered real estate, including leaseholds substantially having and furnishing the rights and protection of a first real estate mortgage, within the United States of America or any province of the Dominion of Canada. No loan may be made under this subsection unless at the date of acquisition the total indebtedness secured by such lien does not exceed seventy-five percent of the value of the property upon which it is a lien. The loan may be made in an amount exceeding seventy-five percent so long as any amount over seventy-five percent of the value of the property mortgaged is guaranteed or insured by the federal housing administration or guaranteed

by the administrator of veterans' affairs or is insured by private mortgage insurance through an insurance company authorized to do business in this state. Loans may be amortized on the basis of a final maturity not exceeding thirty years from the date of the loan with an actual maturity date of the loan at any time less than thirty years. A loan on a single-family dwelling where the loan is amortized on the basis of a final maturity twenty-five years or less from the date of the loan may be made in an amount not exceeding eighty percent of the value of the property mortgaged. The loan on a single-family dwelling may be made in an amount exceeding eighty percent so long as any amount over eighty percent of the value of the property mortgaged is insured by private mortgage insurance through an insurance company authorized to do business in this state. Buildings may not be included in the valuation of such property unless they are insured and the policies are made payable to the company as its interest may appear. A loan may not be made in excess of the amount of insurance carried on the buildings plus the value of the land. No insurance company may hold less than the entire loan represented by the bonds or notes described in this subsection except that a company may own part of an aggregate obligation if all other participants in the investment are insurance companies authorized to do business in North Dakota or banks whose depositors are insured by the federal deposit insurance corporation or savings and loan associations whose members are insured by the federal savings and loan insurance corporation or unless the security of the bonds or notes, as well as all collateral papers, including insurance policies, executed in connection therewith, are made to and held by a trustee which is a solvent bank or trust company having a paid-in capital of not less than two hundred fifty thousand dollars, except in case of banks or trust companies incorporated under the laws of the state of North Dakota, wherein a paid-in capital of not less than one hundred thousand dollars is required. In case of proper notification of default, the trustee, upon request of at least twenty-five percent of the holders of the bonds outstanding, and proper indemnification, shall proceed to protect the rights of the bondholders under the provisions of the trust indentures. An insurance company may acquire such an interest in real estate directly or as a joint venture or through a limited or general partnership in which the insurance company is a partner. An insurance company acquiring such an interest in real estate on the basis of a joint venture or through a limited or general partnership may acquire such an interest so long as the company's interest does not exceed seventy-five percent of the value of the property.

25. First mortgage bonds on improved city real estate in any state, issued by a corporation duly incorporated under the laws of any state of the United States of America, if the loans on the real estate are made in accordance with the requirements as to first mortgage loans in subsection 24.
26. Real estate for the production of income or for improvement or development for the production of income subject to the following provisions and limitations:
 - a. Real estate used primarily for farming or agriculture may not be acquired under this subsection.
 - b. Investments made by any company under this subsection may not at any time exceed ten percent of the admitted assets of the company.
 - c. An investment in any single parcel of real estate acquired under this subsection may not exceed two percent of the admitted assets of the company.
 - d. The real estate, including the cost of improvements, must be valued at cost and the improvements may be depreciated annually at an average rate of not less than two percent of the original cost.
 - e. An insurance company may acquire such real estate or an interest in such real estate directly or as a joint venture or through a limited or general partnership in which the insurance company is a partner.
27. Land and buildings used as home or regional offices, subject to the following provisions and limitations:

- a. Land and buildings thereon in which it has its principal office and any other real estate including regional offices requisite for its convenient accommodation in the transaction of its business.
 - b. Investments or total commitment in the land and buildings may not aggregate more than ten percent of the company's admitted assets without the consent of the commissioner.
 - c. The real estate, including the cost of improvements, must be valued at cost and the improvements must be depreciated annually at an average rate of not less than two percent of the original cost.
28. Investments by loans or otherwise, in the purchase of electric or mechanical machines, including software, constituting a data processing system. The company may hold the system as an admitted asset for use in connection with the business of the company if its aggregate cost does not exceed five percent of the admitted assets of the company and the cost of the components constituting the system is fully amortized over a period of not to exceed seven years. If a data processing system consists of separate components acquired at different times, then the cost of each component must be amortized over a period not to exceed seven years commencing with the date of acquisition of each component.
29. Promissory notes amply secured by the pledge of bonds or other evidences of indebtedness in which the company is authorized to invest its funds by the provisions of this section.
30. Ownership of, or loans secured by first liens upon:
- a. Production payments or interests therein payable from oil, gas, other hydrocarbons, or other minerals in producing properties located in areas of established and continuing production within the United States or the adjacent continental shelf areas, which production payments are dischargeable from property interests appraised by independent petroleum engineers at the time of the acquisition or loan, based on current market prices, to have a current market value of at least one hundred fifty percent of the purchase price of, or the amount loaned upon the security of, such production payments. The term "production payments" means rights to oil, gas, other hydrocarbons, or other minerals in place or as produced which entitle the owner thereof to a specified fraction or percentage of production or the proceeds thereof, until a specified or determinable sum of money has been received, and which have investment qualities and characteristics in which the speculative elements are not predominant.
 - b. Royalty interests, overriding royalty interests, net profit interests, leasehold interests, working interests, or other interests or rights in oil, gas, other hydrocarbons, or other minerals in place or as produced, which interests or rights may be subject to production payments of the nature described in subdivision a.

No domestic insurance company may invest more than five percent of its admitted assets in the ownership of such interests or rights. In determining the amount invested in such interests or rights at any given time, each insurance company may evaluate such interests or rights in such manner as will permit it to amortize the interests or rights over a period of time during which not more than seventy-five percent of the dollar value of the recoverable production accruing to such interests or rights will be produced, as determined by independent petroleum engineers at the time of investment.

31. Obligations secured by a pledge of personal property, as follows:
- a. Tangible personal property, or equipment trust certificates or other instruments evidencing an interest in or debt secured by tangible personal property, if there is a right to receive determined portions of rental, purchase, or other fixed obligatory payments for the use or purchase of such tangible personal property.

- b. Bonds, notes, or other evidences of indebtedness secured wholly or partially by tangible personal property, provided that at the date of acquisition the amount of such indebtedness does not exceed sixty-six and two-thirds percent of the value of such tangible personal property.

The aggregate outstanding investment made under subdivisions a and b may not exceed five percent of the admitted assets of the life insurance company.

32. Loans, securities, or investments issued by a small business investment company created by the Myron G. Nelson Fund, Incorporated, and licensed by the small business administration under the Small Business Investment Company Act of 1958 [Pub. L. 85-699; 72 Stat. 689; 15 U.S.C. 661 et seq.] or the Small Business Equity Enhancement Act of 1992 [Pub. L. 102-366; 106 Stat. 1007-1020; 15 U.S.C. 661 et seq.].
33. Loans, securities, or investments in addition to those permitted in this section, whether or not the loans, securities, or investments qualify or are permitted as legal investments under its charter, or under other provisions of this section or under other provisions of the laws of this state. The aggregate admitted value of the company's investments under this section may not at any one time exceed either seven percent of the company's admitted assets, or the amount equal to the company's capital and surplus in excess of the minimum capital and surplus required by law, whichever is less.

The commissioner may adopt rules as to investments which are permissible for any domestic insurance company which may waive or increase any limitation on investments or authorize companies to invest their funds in investments which are not specifically mentioned in statutes relating to investments if the commissioner finds, after notice and hearing, that such funds would be well invested and available for the payment of losses. The commissioner, in adopting such rules, may not be any more restrictive, or place any greater limitations on, any type of investment in which companies are authorized by statute to invest their funds.

This section does not prohibit a company from taking any action deemed necessary or expedient for the protection of investments made by it or from accepting in good faith, to protect its interests, securities, or property not mentioned in this section in payment or to secure debts due to it.

26.1-10-02. Subsidiaries - Additional investment authority - Exception from investment restrictions.

1. Any domestic insurance company, either by itself or in cooperation with one or more persons, may organize or acquire one or more subsidiaries engaged in the following kinds of business:
 - a. Any kind of insurance business authorized by the jurisdiction in which it is incorporated.
 - b. Acting as an insurance broker or as insurance agent for its parent or for any of its parent's insurance company subsidiaries.
 - c. Investing, reinvesting, or trading in securities for its own account, that of its parent, any subsidiary of its parent, or any affiliate or subsidiary.
 - d. Management of any investment company subject to or registered pursuant to the Investment Company Act of 1940, as amended, including related sales and services.
 - e. Acting as a broker-dealer subject to or registered pursuant to the Securities Exchange Act of 1934, as amended.
 - f. Rendering investment advice to governments, government agencies, corporations, or other organizations or groups.
 - g. Rendering other services related to the operations of an insurance business including, but not limited to, actuarial, loss prevention, safety engineering, data processing, accounting, claims, appraisal, and collection services.
 - h. Ownership and management of assets which the parent corporation could itself own or manage.
 - i. Acting as administrative agent for a governmental instrumentality performing an insurance function.
 - j. Financing of insurance premiums, agents, and other forms of consumer financing.
 - k. Any other business activity determined by the commissioner to be reasonably ancillary to an insurance business.
 - l. Owning a corporation or corporations engaged or organized to engage exclusively in one or more of the businesses specified in this section.
2. In addition to investments in common stock, preferred stock, debt obligations, and other securities permitted under all other sections, a domestic insurance company may also:
 - a. Invest, in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries, amounts which do not exceed the lesser of five percent of the insurance company's admitted assets or fifty percent of the company's surplus as regards policyholders; provided, that after the investments the company's surplus as regards policyholders will be reasonable in relation to the company's outstanding liabilities and adequate to its financial needs. In calculating the amount of the investments, there must be included:
 - (1) Total net moneys or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of such subsidiary whether or not represented by the purchase of capital stock or issuance of other securities.
 - (2) All amounts expended in acquiring additional common stock, preferred stock, debt obligations, and other securities, and all contributions to the capital or surplus, of a subsidiary subsequent to its acquisition or formation.

- b. Invest any amount in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries; provided, that each subsidiary agrees to limit its investments in any asset so that the investments will not cause the amount of the total investment of the insurance company to exceed any of the investment limitations specified in subdivision a of subsection 2. "The total investment of the insurance company" includes:
 - (1) Any direct investment by the company in an asset.
 - (2) The company's proportionate share of any investment in an asset by any subsidiary of the company, which must be calculated by multiplying the amount of the subsidiary's investment by the percentage of the company's ownership of such subsidiary.
 - c. With the approval of the commissioner, invest any amount in common stock, preferred stock, debt obligations, or other securities of one or more subsidiaries; provided, that after such investment the insurance company's surplus as regards policyholders will be reasonable in relation to the company's outstanding liabilities and adequate to its financial needs.
3. Investments in common stock, preferred stock, debt obligations, or other securities of subsidiaries made pursuant to subsection 2 are not subject to any of the otherwise applicable restrictions or prohibitions applicable to such investments of insurance companies.
4. Whether any investment pursuant to subsection 2 meets the applicable requirements thereof is to be determined immediately after such investment is made, taking into account the then outstanding principal balance on all previous investments in debt obligations, and the value of all previous investments in equity securities as of the date they were made net of any return of capital invested, not including dividends.
5. If an insurance company ceases to control a subsidiary, it shall dispose of any investment therein made pursuant to this section within three years from the time of the cessation of control or within such further time as the commissioner prescribes, unless at any time after the investment has been made, the investment has met the requirements for investment under any other section, and the company has so notified the commissioner.

**TESTIMONY TO THE
SENATE INDUSTRY BUSINESS AND LABOR COMMITTEE
HOUSE BILL 1104
PAUL GOVIG-BANK OF NORTH DAKOTA**

The Bank of North Dakota supports House Bill 1104 which enables the Bank of North Dakota to increase the amount of its participation in loans originated by the North Dakota Low Risk Incentive Fund. Currently, the Bank of North Dakota is limited to participation of 10% or less in the loans. Passage of the bill should improve the acceptance of the fund with the insurance companies which will provide funding for the program and in addition, should improve the overall effectiveness of the fund.

The 1997 North Dakota Legislature authorized the establishment of the North Dakota Low Risk Incentive Fund. The law provides a tax credit against premium taxes paid by insurance companies which participate in the fund. The purpose of the fund is to provide a low cost source of financing for companies which will either locate or expand in North Dakota and increase employment in the state. The fund will be managed by the Bank of North Dakota. To be eligible, an applicant for financing must be in excellent financial condition.

Insurance companies investing in the fund will receive a tax credit of up to 3% of the amount invested in the fund. The actual tax credit is determined by calculating the difference between the loan interest paid by the borrower and the amount of interest that would have been paid during the same period by applying an interest rate that is calculated by adding 3% to a comparable Treasury rate. The objective is to provide financing to desirable companies at treasury rates, while providing the insurance companies which invest in the fund, rates of return in the range of the Treasury rates + 3%. For the insurance companies willing to invest, the fund provides an attractive return relative to the risk involved.

The maximum annual fiscal impact to the state of North Dakota is \$750,000.