

Introduced by

1 A BILL for an Act to amend and reenact sections 26.1-21-01, 26.1-21-02, 26.1-21-03,
2 26.1-21-04, 26.1-21-06, 26.1-21-07, 26.1-21-08, 26.1-21-09, 26.1-21-10, 26.1-21-11,
3 26.1-21-12, 26.1-21-14, 26.1-21-15, 26.1-21-16, 26.1-21-17, 26.1-21-18, 26.1-21-19,
4 26.1-21-23, and 54-09-02 of the North Dakota Century Code, relating to the state bonding fund.

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

6 **SECTION 1. AMENDMENT.** Section 26.1-21-01 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **26.1-21-01. Definitions.** In this chapter, unless the context otherwise requires:

- 9 1. "Blanket bond" means a bond that covers collectively all public employees and
10 public officials without the necessity of scheduling names or positions as a part of
11 the bond, and a bond whereby new public employees and new public officials
12 entering employment or office during the period of the bond are automatically
13 included without notice to the fund.
- 14 2. "Fund" means the state bonding fund.
- 15 3. "International peace garden" means an entity located upon the international
16 boundary line between the United States of America and Canada used and
17 maintained as a memorial to commemorate the long-existing relationship of peace
18 and good will between the people and the governments of the United States of
19 America and Canada and to further international peace among the nations of the
20 world.
- 21 4. "Political subdivision" means ~~all counties a county, townships township, park~~
22 ~~districts park district, school-districts school district, cities city,~~ and any other ~~units~~
23 unit of local government which are created either by statute or by the Constitution
24 of North Dakota for local government or other public purposes.

5. "Public employee" means ~~any person~~ an individual employed by the state or any of its political subdivisions, an officer or employee eligible under section 57-15-56, an employee under section 61-16.1-05, and an officer or employee of an international peace garden. "Public employee" does not include a person employed by an occupational and professional board or commission under title 43 or by the state bar association.

6. "Public official" means ~~any~~ an elected or appointed officer or deputy, ~~either elected or appointed~~, of the state or ~~any of its~~ a political subdivisions ~~who is required to be bonded by any law of this state~~ subdivision, except for an officer of an occupational and professional board or commission under title 43 or of the state bar association.

7. "State agency" means ~~a state departments~~ department, ~~agencies~~ agency, ~~industries~~ industry, and ~~institutions~~ institution and ~~an~~ the international peace garden.

SECTION 2. AMENDMENT. Section 26.1-21-02 of the North Dakota Century Code is amended and reenacted as follows:

26.1-21-02. State Creation of state bonding fund under management of -
Management by commissioner. ~~The commissioner shall manage the fund. The A~~ fund must be maintained as a fund for the bonding of public employees and public officials. ~~All moneys~~
Money collected under this chapter must be paid into ~~such~~ the fund. The commissioner shall manage the fund.

SECTION 3. AMENDMENT. Section 26.1-21-03 of the North Dakota Century Code is amended and reenacted as follows:

26.1-21-03. Commissioner may employ assistants. The commissioner may employ ~~such~~ clerical and other assistants as may be necessary to operate the fund. The salaries of all employees together with all other expenditures for the operation of the fund must remain within the appropriations made ~~from time to time~~ by the legislative assembly for ~~such~~ these purposes and must be paid by warrant-check drawn on the state treasury prepared by the office of management and budget after the approval of expense vouchers by the office of the budget.

SECTION 4. AMENDMENT. Section 26.1-21-04 of the North Dakota Century Code is amended and reenacted as follows:

1 **26.1-21-04. Attorney general is attorney for fund.** The attorney general shall act as
2 attorney for the commissioner in any ~~and all actions and proceedings~~ proceeding to which the
3 commissioner is a party on behalf of the fund.

4 **SECTION 5. AMENDMENT.** Section 26.1-21-06 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **26.1-21-06. Condition of bond created by chapter - Limitation.** ~~The condition of~~
7 Unless otherwise provided, the bond provided under this chapter is a blanket bond arising
8 under the provisions of this chapter shall be limited to that of. The blanket bond is a fidelity
9 bond and must provide that. The blanket bond is conditioned on the public employee or public
10 official, as principal, shall render rendering a true account of all moneys and property of every
11 kind that come into the person's hands as such possessed as a public employee or public
12 official, and shall pay over and deliver the same according to delivering the money or the
13 property as required by law. The provisions of this chapter and of any statute requiring a bond
14 constitute the bond of each public official and public employee for the purposes of any law of
15 this state requiring the bond and constitute the entire contract between the fund and a state
16 agency or a political subdivision as the obligee for the bond.

17 **SECTION 6. AMENDMENT.** Section 26.1-21-07 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **26.1-21-07. Coverage.** The amount of coverage afforded to each state agency;
20 ~~department, industry, and institution~~ or political subdivision must be determined by the
21 commissioner based upon the amount of money or property handled and the opportunity for
22 defalcation. The coverage may be greater than but not less than the amount required by law or
23 determined under law for such positions a position

24 **SECTION 7. AMENDMENT.** Section 26.1-21-08 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **26.1-21-08. Review of ~~public official and employee bond coverage by state~~**
27 **auditor.** ~~Each state agency, department, industry, and institution shall annually review the~~
28 ~~amount of blanket bond coverage of its officers and employees. When conducting an audit~~
29 ~~examination of such a state agencies, departments, industries, and institutions~~ agency or
30 political subdivision, the state auditor or private auditor shall evaluate the blanket bond

coverage and, if ~~deemed~~ necessary, the state auditor shall include recommendations for changes in the amount of that coverage in the auditor's report.

SECTION 8. AMENDMENT. Section 26.1-21-09 of the North Dakota Century Code is amended and reenacted as follows:

26.1-21-09. Premiums - Amount to whom paid - Minimum. The premium for a blanket bond must be determined by the commissioner. ~~Premiums must be paid~~ Each state agency and political subdivision shall pay the premium in advance by the proper authority of the state, or of the political subdivision of the state, from its treasury, to the state treasurer who shall keep the ~~same~~ premiums collected in the fund. The state treasurer shall issue receipts in triplicate. The treasurer shall file one of ~~such~~ these receipts in the treasurer's office, and shall mail one to the official making ~~such~~ the payment and one to the commissioner. The minimum premium for each bond must be two dollars and fifty cents per year. Payments must be made for one year or for ~~such a longer terms term~~ as prescribed by the commissioner may prescribe. ~~From and after July 1, 1953, the~~ The premiums referred to in this section must be waived until the reserve fund of the state bonding fund has been depleted below the sum of two million dollars. The collection of premiums must be resumed on the bonds, at the rates provided under this section, whenever the reserve fund is depleted below the sum of two million dollars. The premiums must continue to be collected until the reserve fund reaches a total of three million dollars, at which time all premiums must again be waived until the reserve fund has been depleted below the sum of two million dollars.

SECTION 9. AMENDMENT. Section 26.1-21-10 of the North Dakota Century Code is amended and reenacted as follows:

26.1-21-10. Automatic insurance of state and political subdivisions.

1. The public employees and public officials of the ~~Each state agency and each political subdivision thereof, as the case may be, must~~ shall apply to be insured bonded in the fund according to the provisions of this chapter upon application to the state bonding fund and upon approval by the commissioner on a biennial basis or if a change in coverage is requested. Unless an application is denied within sixty days from the date it is received by the ~~state bonding fund~~ commissioner, the application will be deemed approved and bond coverage in force. ~~The provisions of this chapter and of any statute requiring a bond constitute the bond of each and~~

every public official for the purpose of any law of this state requiring such bond and constitute the entire contract between the fund. The application must include a list of conditions covered under the bond by section and type as a result of a section of law not in this chapter. If a bond is in the discretion of the state agency or political subdivision and no bond is requested, the state agency or political subdivision is exempt from this section and the state or its political subdivisions, respectively, as the obligee in any such bond.

2. The application must include a requested amount of bond coverage. In addition, the application must include any information requested by the commissioner to determine the amount of money and property handled and the opportunity for defalcation including the procedure used to determine the amount of bond requested, twenty-five percent of the money in control of the public officials or employees for which the bond is requested for the preceding year based the total monthly balances, revenues for the last budget period by type including fees collected, expenditures for the last budget period by type including annual operating cost excluding salaries and wages, the number of people that handle money, any portion of last audit, and any financial proceedings.

SECTION 10. AMENDMENT. Section 26.1-21-11 of the North Dakota Century Code is amended and reenacted as follows:

26.1-21-11. Default of public employees or public officials - ~~Duty of public officer~~
- Limitation on filing of claims against fund. ~~Immediately upon, and in no event later than~~
Within sixty days after, the discovery of any default or wrongful act on the part of any public employee or public official, for which the fund is or may become liable, the state auditor, county auditor, city auditor, township clerk, or business manager of the school district, ~~or~~ the treasurer of the state or state agency or political subdivision thereof, if the defaulting officer is the auditor or clerk of the state or state agency or political subdivision; and any other officer having supervision of a defaulting public employee or public official, shall file a claim with the commissioner against the fund. Any person injured by ~~such a~~ default or wrongful act, ~~if that person intends to hold the fund liable therefor, shall~~ may present the claim to the commissioner within sixty days after the discovery of such default or wrongful act. If a claim is not filed within the time limited by this section, ~~such~~ the claim is waived. A claim filed under the provisions of

1 this section must contain an abstract of the facts upon which ~~it~~ the claim is based and must be
2 verified by the claimant or by someone in the claimant's behalf, ~~and, together with, the claim~~
3 and all papers relating thereto, to the claim must remain on file with the commissioner.

4 **SECTION 11. AMENDMENT.** Section 26.1-21-12 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **26.1-21-12. Commissioner to notify state auditor of default of public employee or**
7 **public official - Duty of state auditor.** If any public employee or public official defaults or
8 creates a liability against the fund, the commissioner shall notify the state auditor, ~~who~~
9 immediately. The state auditor shall immediately check the accounts of ~~such~~ the public
10 employee or public official and file a report with the commissioner stating ~~the any~~ amount, ~~if~~
11 ~~any,~~ due from the fund because of ~~such~~ the default or wrongful act. For ~~such service these~~
12 services, the auditor must be paid out of the fund the same fees as the auditor is paid for
13 auditing the accounts of county officers.

14 **SECTION 12. AMENDMENT.** Section 26.1-21-14 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **26.1-21-14. Filing claim is condition precedent to bringing action - Failure to act**
17 **is refusal disallowance.** ~~No~~ An action may not be maintained against the fund upon ~~any a~~
18 claim ~~whatsoever~~ until the claim ~~first~~ has been presented for allowance as provided in this
19 chapter and the ~~allowance of such~~ commissioner has refused to allow the claim has been
20 refused. ~~Any~~ A claim which has not been ~~acted upon and~~ allowed or ~~disallowed~~ within sixty
21 days after ~~its~~ presentation for allowance ~~must be deemed to be refused~~ is disallowed. The
22 filing and disallowance of the claim must be alleged in the complaint in any action brought
23 ~~thereon~~ against the fund.

24 **SECTION 13. AMENDMENT.** Section 26.1-21-15 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **26.1-21-15. Limitation of time for bringing action against the fund -**
27 **Interest-limitation on time for fund liability.** ~~No~~ An action may not be maintained against the
28 fund upon any claim ~~whatsoever~~ unless ~~such~~ the action is commenced within one year after
29 filing of the claim with the commissioner. Interest on the claim runs from the date of filing of the
30 claim with the commissioner. The liability of the fund is limited to a breach of a condition of the
31 bond that occurred within two years before the date of filing of the claim with the commissioner

SECTION 14. AMENDMENT. Section 26.1-21-16 of the North Dakota Century Code is amended and reenacted as follows:

26.1-21-16. Suit by party injured by default of public employee or public official - Subrogation - Right of appeal. Any A person, ~~limited liability company, or corporation~~ injured by the default or wrongful act of any public employee or public official may sue the public employee or public official ~~and to~~. To effect recovery from the fund ~~shall, that person must join~~ the fund as codefendant. A judgment must be obtained against the public employee or public official to create liability upon the bond. If the judgment is obtained against the public employee or public official, ~~it~~ the judgment must specify that to the extent to which the fund is liable upon the bond of the public employee or public official, the judgment must be paid out of any money in the fund or that which may accrue to the fund. If the judgment is paid out of the fund, the fund has a right to recover and is subrogated to the right of the judgment creditor to recover against ~~such the~~ public employee or public official. ~~In~~ The commissioner may act for the fund ~~in all proceedings to enforce such the right of subrogation, the commissioner shall act for and in behalf of the fund, and in any action or proceeding the commissioner may appeal from any~~ appealable an order or ~~from any~~ judgment against the fund the same as other parties to civil actions ~~may appeal~~.

SECTION 15. AMENDMENT. Section 26.1-21-17 of the North Dakota Century Code is amended and reenacted as follows:

26.1-21-17. Allowed liability claims payable from fund - Administrative expenses - Methods of payment. ~~All A liability claims which are claim~~ allowed against the fund must be paid upon warrants drawn upon the state treasurer against the fund. ~~Such warrants~~ The warrant must be prepared by the office of management and budget pursuant to the directions of the commissioner. Payments for administrative expenses of the state bonding fund must be made within the limitations of legislative appropriations upon warrant-checks prepared by the office of management and budget after the approval of vouchers by the commissioner.

SECTION 16. AMENDMENT. Section 26.1-21-18 of the North Dakota Century Code is amended and reenacted as follows:

26.1-21-18. Commissioner may make examinations - Request for accounting - Reporting defaulting official to governor. If the commissioner ~~is of the opinion at any time~~ determines that the interests of the fund are jeopardized by the misconduct or inefficiency of

1 any public official, the commissioner shall ~~make, or~~ request the state auditor to make, an
2 examination, and, if necessary, shall cause an action for an accounting to be instituted against
3 ~~such the~~ public official for the purpose of requiring a complete disclosure of the business of the
4 office of which ~~such the~~ public official is an incumbent. ~~Such The~~ action must be brought in the
5 name of the commissioner as plaintiff, and the court in ~~such the~~ action may interplead all
6 concerned parties concerned. ~~Whenever the The~~ commissioner ~~deems it advisable, the~~
7 ~~commissioner shall~~ may make a complaint to the governor requesting the governor to institute
8 an investigation with the purpose of removing from the office any defaulting public official or any
9 public official who so conducts the affairs of the public official's office as to endanger the fund.

10 **SECTION 17. AMENDMENT.** Section 26.1-21-19 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **26.1-21-19. Cancellation of liability of fund - When permitted - Effect.** ~~The~~
13 ~~commissioner, after~~ After due investigation ~~and if in the commissioner's judgment the interests~~
14 ~~of the fund require, the commissioner~~ may cancel the liability of the fund for the acts of any
15 public employee or public official, ~~such. The~~ cancellation ~~to take~~ takes effect thirty days after
16 written notice ~~thereof. In such case, the~~ If a public official whose official's or public employee's
17 bond is canceled, or the public employee whose coverage is canceled under a blanket bond,
18 the public official or public employee may secure, at personal expense, a bond executed by a
19 duly authorized surety company in an amount determined by the commissioner. Evidence of a
20 surety bond purchased under this section must be filed with the commissioner.

21 **SECTION 18. AMENDMENT.** Section 26.1-21-23 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **26.1-21-23. Public official may furnish private bond - Premiums payable from**
24 **public moneys only to fund.** ~~Any person elected or appointed to office, in lieu of the bond~~
25 provided for in this chapter, may furnish a bond issued by a duly authorized surety company in
26 an amount determined by the commissioner, but not an officer or board of the state or of any
27 political subdivision may not pay for ~~any such the surety bond or bonds~~ out of any public funds.
28 Evidence of a bond purchased under this section must be filed with the commissioner.

29 **SECTION 19. AMENDMENT.** Section 54-09-02 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **54-09-02. Duties of secretary of state.** In addition to the duties prescribed by the
2 constitution, the secretary of state shall:

- 3 1. Receive bills and resolutions from every session of the legislative assembly, and
4 shall perform such other duties as may devolve upon the secretary of state by
5 resolution of the two houses, or either of them.
- 6 2. Keep a register of and attest the official acts of the governor.
- 7 3. Affix the great seal with the secretary of state's attestation to commissions and
8 other public instruments to which the official signature of the governor is required.
- 9 4. Record and maintain records of all conveyances made to the state and all articles
10 of incorporation filed in the secretary of state's office.
- 11 5. ~~Record and maintain records of the official bond of any state official who furnishes~~
12 ~~in lieu of the bond furnished by the state bonding fund a bond by a duly authorized~~
13 ~~surety company.~~
- 14 6. Maintain records for all books distributed by the secretary of state and direct the
15 county auditor of each county to do the same as provided by law.
- 16 7. 6. Furnish on demand to persons paying the fees therefor a certified copy of all or any
17 part of any law, record, or other instrument filed, deposited, or recorded in the
18 secretary of state's office.
- 19 8. 7. Keep records of all the fees, commissions, and compensation of whatever nature
20 or kind earned, collected, or charged by the secretary of state, with the date, name
21 of payer, and the nature of the services in each case.
- 22 9. 8. Biennially report to the governor with copies filed in the secretary of state's office
23 as prescribed by section 54-06-04 all moneys received from any source for
24 services performed and accompany the report with a detailed statement under oath
25 of the manner in which the appropriations for the secretary of state's office have
26 been expended during the preceding two fiscal years.
- 27 10. 9. Immediately after the laws, resolutions, and journals of the legislative assembly are
28 bound, distribute the laws, resolutions, and journals to the persons entitled thereto
29 by law or rules of the senate and house of representatives.
- 30 11. 10. Keep records of cities as prescribed by law.

Fifty-ninth
Legislative Assembly

- 1 ~~42.~~ 11 Indicate on each bill passed by the legislative assembly the date of filing in the
- 2 secretary of state's office.
- 3 ~~43.~~ 12 Perform all other duties as are prescribed by law.