

Sixty-ninth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1026

Introduced by

Legislative Management

(Government Finance Committee)

1 A BILL for an Act to amend and reenact sections 23-24-07, 26.1-01-03, 26.1-21-01, 26.1-21-02,
2 26.1-21-04, 26.1-21-07, 26.1-21-09.1, 26.1-21-10, 26.1-21-11, 26.1-21-12, 26.1-21-14,
3 26.1-21-16, 26.1-21-18, 26.1-21-19, 26.1-21-21, 26.1-21-23, 61-06-08, and 61-16.1-05 of the
4 North Dakota Century Code, relating to changing the administration of the state bonding fund
5 from the insurance commissioner to the office of management and budget; to repeal sections
6 26.1-21-03, 26.1-21-08, 26.1-21-09, 26.1-21-13, 26.1-21-15, 26.1-21-17, 26.1-21-20,
7 26.1-21-22, and 26.1-21-24 of the North Dakota Century Code, relating to the administration of
8 the state bonding fund; and to provide a continuing appropriation.

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

10 **SECTION 1. AMENDMENT.** Section 23-24-07 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **23-24-07. Bonds of officers and employees.**

13 The treasurer of the district must be bonded in ~~such an~~ amount ~~as is~~ required by the board
14 of commissioners but ~~such the~~ bond may not be less than one thousand dollars. Other district
15 employees must be bonded in ~~such an~~ amount ~~as determined by the board may prescribe~~. Every
16 officer or employee of whom a bond is required must be deemed bonded with the state bonding
17 fund upon notice of the ~~person's~~ appointment of the individual given to the ~~state insurance-~~
18 ~~commissioner~~ administrator of the fund by the secretary of the district. Upon notification of the
19 state bonding fund of the premium required, the treasurer shall remit the ~~same~~ payment.

20 **SECTION 2. AMENDMENT.** Section 26.1-01-03 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **26.1-01-03. Duties of commissioner.**

23 The commissioner shall:

- 1 1. See that all the laws of this state respecting insurance companies and benevolent
2 societies are executed faithfully.
- 3 2. Report in detail to the attorney general any violation of law relative to insurance
4 companies and their officers or agents.
- 5 3. File the articles of incorporation of all insurance companies organized or doing
6 business in this state, and on application furnish a certified copy thereof.
- 7 4. Furnish the insurance companies required to make reports to the commissioner and
8 the benevolent societies the necessary blank forms for required statements and
9 reports. The commissioner is not required to send blank forms to those insurance
10 companies which submit their reports on printed forms conforming to those furnished
11 by the commissioner.
- 12 5. Preserve in permanent form a full record of the commissioner's proceedings and a
13 concise statement of each company or agency visited or examined.
- 14 6. Furnish at the request of any person, upon the payment of the required fee, certified
15 copies of any record or paper in the commissioner's office, if the commissioner deems
16 it not prejudicial to the public interests to do so, and give such other certificates as
17 may be provided by law.
- 18 7. Submit a biennial report as prescribed by section 54-06-04 to the governor and the
19 secretary of state. In addition to the requirements of section 54-06-04, the report must
20 contain an abstract only of the reports of the various insurance companies doing
21 business in this state showing the condition of the companies.
- 22 8. Upon request, send a copy of the commissioner's annual report to the insurance
23 commissioner, or other similar officer, of every other state and to each company doing
24 business in this state.
- 25 9. Communicate, on request, to the insurance commissioner of any other state any facts
26 that by law it is the commissioner's duty to ascertain respecting companies of this
27 state doing business within that state.
- 28 10. ~~Manage, control, and supervise the state bonding fund.~~
- 29 44. Manage, control, and supervise the state fire and tornado fund and the insurance of
30 public buildings in that fund.
- 31 ~~42-11.~~ Manage, control, and supervise the state fire marshal.

SECTION 3. AMENDMENT. Section 26.1-21-01 of the North Dakota Century Code is amended and reenacted as follows:

26.1-21-01. Definitions.

~~In~~As used in this chapter, ~~unless the context otherwise requires:~~

1. "Blanket bond" means a bond that covers collectively all public employees and public officials ~~without the necessity of scheduling names or positions as a part of the bond, and a bond whereby new public employees and new public officials entering employment or office during the period of the bond are automatically included without notice to the fund.~~
2. "Fund" means the state bonding fund.
3. "International peace garden" means an entity located upon the international boundary line between the United States and Canada used and maintained as a memorial to commemorate the long-existing relationship of peace and good will between the people and the governments of the United States and Canada and to further international peace among the nations of the world.
4. "Office" means the office of management and budget.
- ~~5.~~ 5.6. "Political subdivision" means a county, township, park district, school district, city, ~~and~~or any other unit of local government which is created either by statute or by the Constitution of North Dakota for local government or other public purposes.
- ~~5.6.~~ 5.7. "Public employee" means an individual employed by a state agency or any political subdivision, an officer or employee eligible under section 57-15-56, an employee under section 61-16.1-05, ~~and~~or an officer or employee of an international peace garden. ~~"Public employee"~~The term does not include an individual employed by an occupational and professional board or commission under title 43 or by the state bar association.
- ~~6.7.~~ 6.8. "Public official" means an elected or appointed officer or deputy of a state agency or a political subdivision, ~~except for.~~ The term does not include an officer of an occupational and professional board or commission under title 43 or of the state bar association.
- ~~7.8.~~ 7.9. "State agency" means a state board, bureau, commission, department, agency, industry, ~~and~~or institution and the international peace garden.

1 **SECTION 4. AMENDMENT.** Section 26.1-21-02 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **26.1-21-02. State bonding fund - ~~Management by commissioner~~Office of management**
4 **and budget - Administrative services - Continuing appropriation - Report.**

5 A fund must be maintained as a fund

- 6 1. There is created in the state treasury the state bonding fund for the bonding of public
7 employees and public officials. All~~The fund consists of all~~ assessments, interest,
8 profits on investments, and all investment earnings, and other income collected under
9 this chapter ~~must be paid into the fund.~~
- 10 2. The commissioner~~office~~ shall manage the fund. The office may contract for
11 administrative services from the North Dakota insurance reserve fund or another entity
12 to assist with the management of the fund. A contract for administrative services must
13 have a two-year term ending on June thirtieth of each odd-numbered year, and the
14 contract may not be terminated except at the end of the two-year term. If either party
15 does not anticipate renewing the contract for another two-year term, the party shall
16 give notice of the intent to not renew by September thirtieth of the even-numbered
17 year during the two-year term.
- 18 3. Moneys in the fund are appropriated to the office on a continuing basis for paying
19 claims against the fund, contracting for administrative services as provided under
20 subsection 2, paying costs incurred by the state auditor for investigations under
21 section 26.1-21-12, and paying reinsurance costs under section 26.1-21-21.
- 22 4. If the balance of the fund is less than three million dollars, the office shall collect
23 assessments from state agencies and political subdivisions. If the balance of the fund
24 exceeds three million dollars, the office shall waive assessments until the balance of
25 the fund is less than two million dollars at which time the office shall resume collecting
26 assessments.
- 27 5. If the office determines the interests of the fund are jeopardized by the misconduct or
28 inefficiency of any public official, the office shall notify the state auditor to conduct an
29 investigation.

1 6. The office shall include a summary of the fund in the biennial report submitted in
2 accordance with section 54-06-04. The summary must include the revenues,
3 expenditures, and balance of the fund.

4 **SECTION 5. AMENDMENT.** Section 26.1-21-04 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **26.1-21-04. Attorney general is attorney for fund.**

7 The attorney general shall act as ~~attorney~~legal counsel for the ~~commissioner~~office in any
8 proceeding to which the ~~commissioner~~office is a party on behalf of the fund.

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

11 **26.1-21-07. Coverage - Assessments - Minimum.**

12 1. The amount of coverage afforded to each state agency or political subdivision must be
13 determined by the ~~commissioner~~office based upon the amount of money or property
14 handled and the opportunity for defalcation ~~but the amount must at least. Except as~~
15 otherwise required by law, the minimum amount of coverage must equal the amount of
16 money or property actually handled or ten thousand dollars, whichever is less. The
17 coverage may be greater than but not less than the amount required by law or
18 determined under law for a position.

19 2. The coverage for a state legislative or judicial branch agency, ~~however,~~ may be
20 determined by the legislative council or supreme court, respectively.

21 3. Notwithstanding any other provision of law, the ~~commissioner~~office may issue bonds in
22 ~~such amounts as the commissioner determines necessary to carry out the purposes of~~
23 ~~the fund and, in, In~~ determining the amount of coverage to be offered, the
24 ~~commissioner~~office may consider the reserves necessary to pay the bonds and for all
25 other necessary costs or expenses to carry out the purposes of the fund.

26 4. The office shall determine the amount of the bond assessment. The minimum
27 assessment is two dollars and fifty cents per public employee per year. Each state
28 agency and political subdivision shall pay the assessment in advance, and the
29 assessments collected must be deposited in the fund unless the assessment is waived
30 in accordance with section 26.1-21-02.

1 **SECTION 7. AMENDMENT.** Section 26.1-21-09.1 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **26.1-21-09.1. Bonds of agents appointed to distribute hunting and fishing licenses or**
4 **stamps - ~~Premiums~~Assessment - Determination of eligibility.**

5 The annual ~~premium~~assessment for a bond of an agent appointed by the director of the
6 game and fish department to distribute hunting and fishing licenses or stamps pursuant to
7 section 20.1-03-17 is ten dollars. ~~The premium must be paid to the fund pursuant to rules~~
8 ~~adopted by the commissioner. The commissioner shall deposit the premiums with the state~~
9 ~~treasurer to the credit of the fund. The commissioner~~office may reduce or waive the
10 ~~premium~~assessment if it is ~~determined~~the office determines that funds received pursuant
11 ~~to~~under this section are sufficient to cover potential claims on the bonds of agents appointed to
12 distribute hunting and fishing licenses or stamps. The ~~commissioner~~office shall determine the
13 conditions and qualifications of agents bonded under this section. The minimum amount of
14 coverage ~~afforded~~ under this section is fifteen thousand dollars per agent per year.

15 **SECTION 8. AMENDMENT.** Section 26.1-21-10 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **26.1-21-10. Automatic insurance of state and political subdivisions.**

- 18 1. Each state agency and ~~each~~ political subdivision shall apply to be bonded in the fund
19 ~~no less often than on a biennial basis~~at least once per biennium or when a change in
20 coverage is requested, whichever occurs first. Unless an application is denied within
21 sixty days from the date it is received by the ~~commissioner~~office, the application will be
22 ~~deemed~~ approved and bond coverage in force. If a bond is in the discretion of the
23 state agency or political subdivision and a bond is not requested, the state agency or
24 political subdivision is exempt from this section.
- 25 2. The application must include a:
 - 26 a. The requested amount of bond coverage based on the amount of money and
27 property handled ~~and~~, the opportunity for defalcation_; and any other condition
28 imposed by law ~~and list~~_;
 - 29 b. An amount equal to twenty-five percent of the money in control of the public
30 officials or employees for which the bond is requested for the preceding year

based on the total monthly balances. ~~In addition, the application must include-~~
~~any; and~~

c. Any other information requested by the ~~commissioner~~office 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, revenues for the last budget period by type, expenditures for the last budget period by type, the number of people that handle money, any portion of the last audit, and any financial procedures.

3. A blanket bond automatically includes coverage for new employees and new public officials.

SECTION 9. 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~~Claims - Limitation on filing of claims against fund - Register of claims - Review and payment of claims.

1. 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; the treasurer of the state or state agency or political subdivision 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~~office against the fund.

2. ~~Any person injured by a default or wrongful act 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, the claim is waived. A claim filed under this section must contain an abstract of the facts upon which the claim is based and must be verified by the claimant or by someone in the claimant's behalf. The claim and all papers relating to the claim must remain on file with the commissioner.~~The office may prescribe the forms for claims.

3. The office may administer oaths and examine witnesses in connection with a claim presented to the office.

- 1 4. The office shall maintain a register of all claims filed against the fund, including a brief
2 description of each claim, the name of the public entity, the amount and character of
3 the claim, the action taken upon the claim, and the date action was taken.
- 4 5. The office shall retain claims and documents relating to claims as provided by law.
- 5 6. The office shall review all claims presented to the office. The office shall notify the
6 state auditor if any public employee or public official defaults or creates a liability
7 against the fund, and the state auditor may conduct an investigation under section
8 26.1-21-12.
- 9 7. The office shall determine the allowable amount of the claim. The office may delay a
10 determination of the allowable amount of the claim until receipt of the auditor's report
11 under section 26.1-21-12. The office shall present all records relating to the claim,
12 including the allowable amount determined by the office, to the attorney general for
13 review.
- 14 8. The attorney general shall review the validity of the claim and the allowable amount
15 determined by the office. Upon approval by the attorney general, the office shall pay
16 the allowable amount to the claimant from the fund.

17 **SECTION 10. AMENDMENT.** Section 26.1-21-12 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **~~26.1-21-12. Commissioner to notify state auditor of default of public employee or~~**
20 **~~public official - Duty of state auditor - Investigations - Review of coverage.~~**

21 ~~If any public employee or public official defaults or creates a liability against the fund, the~~
22 ~~commissioner shall notify the state auditor. The state auditor shall investigate, or cause to be~~
23 ~~investigated, the accounts of the public employee or public official and file a report with the~~
24 ~~commissioner stating any amount due from the fund because of the default or wrongful act. For~~
25 ~~these services, the auditor or investigating firm must be paid out of the fund all reasonable costs~~
26 ~~incurred.~~

- 27 1. Upon notification from the office of jeopardized fund interests under section
28 26.1-21-02, the state auditor may investigate the relevant state agency or political
29 subdivision and may provide a report to the office regarding any findings.

2. The state auditor may evaluate the blanket bond coverage when conducting an audit of a state agency or political subdivision. The state auditor may recommend changes in the amount of coverage in the audit report.

3. Costs incurred by the state auditor under subsection 1 must be paid from the fund.

4. The state auditor may contract for an investigation under subsection 1.

SECTION 11. AMENDMENT. Section 26.1-21-14 of the North Dakota Century Code is amended and reenacted as follows:

26.1-21-14. ~~Filing claim is condition precedent to bringing action~~ Action against the fund - Failure to act is disallowance - Limitation - Interest.

1. ~~An action may not be maintained brought against the fund upon a claim until the a claim has been presented for allowance as provided into the office under this chapter and the commissioner office has refused to allow the claim. A claim that has not been allowed within sixty days after presentation for allowance is disallowed. The filing and disallowance of the claim must be alleged in the complaint in any action brought against the fund.~~

2. An action brought against the fund for a claim must be commenced within one year after presenting the claim to the office. The liability of the fund is limited to a breach of a condition of the bond which occurred within two years before the date of presenting the claim to the office.

SECTION 12. 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.~~

~~A person injured by the default or wrongful act of any public employee or public official may sue the public employee or public official. To effect recovery from the fund, 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, 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 payment 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~~

1 against the public employee or public official. The ~~commissioner~~office may act for the fund in all
2 proceedings to enforce the right of subrogation and ~~may appeal from an order or judgment~~
3 ~~against the fund~~ in the same manner as other parties to civil actions.

4 **SECTION 13. AMENDMENT.** Section 26.1-21-18 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **26.1-21-18. ~~Commissioner may make examinations – Request for accounting~~Action**
7 **against a public official - Reporting defaulting official to governor.**

8 If the ~~commissioner~~office determines that the interests of the fund are jeopardized by the
9 misconduct or inefficiency of any public official, the ~~commissioner~~ shall ~~request the state auditor~~
10 ~~to make an examination, and, if necessary, shall cause an~~office may bring an action for an
11 ~~accounting to be instituted against the public official for the purpose of requiring a~~to require
12 complete disclosure of the business of the ~~office~~state agency or political subdivision of which
13 the public official is an incumbent. The action must be brought in the name of the
14 ~~commissioner~~office as plaintiff, and the court in the action may interplead all concerned parties.
15 The ~~commissioner~~ may make a complaint to the governor requesting the governor to institute
16 an investigation with the purpose of removing from the office any defaulting public official or any
17 public official who so conducts the affairs of the public official's office as to endanger the fund.

18 **SECTION 14. AMENDMENT.** Section 26.1-21-19 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **26.1-21-19. ~~Cancellation of liability of fund - When permitted – Effect~~Cancellation of**
21 **coverage - Appeal proceeding.**

- 22 1. After ~~due an~~an investigation, the ~~commissioner~~office may cancel the ~~liability of the~~
23 ~~fund~~bond for the acts of any public employee or public official. The cancellation takes
24 effect thirty days after written notice. If a ~~public official's or public employee's bond is~~
25 canceled, the public official or public employee may secure at personal expense a
26 bond executed by a duly authorized surety company in an amount determined by the
27 commissioner. Evidence of a surety bond purchased under this section must be filed
28 with the commissioner.
- 29 2. The office shall notify the public entity employing the public employee or public official
30 immediately by certified mail when the bond or coverage under a blanket bond is
31 canceled.

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

3 **~~26.1-21-21. Fund may reinsure risks – Premium on reinsurance~~Reinsurance.**

4 The ~~commissioner~~office may reinsure ~~any part of~~ any liability in excess of twenty-five
5 thousand dollars ~~upon~~for any one public official, or group of public officials and public
6 employees under a blanket bond, at a cost not exceeding the ~~rate of premium provided for~~
7 ~~in assessment under~~ this chapter, ~~and the expense of such.~~ The cost of reinsurance must be
8 paid ~~out of~~from the fund.

9 **SECTION 16. AMENDMENT.** Section 26.1-21-23 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **~~26.1-21-23. Public official may furnish private bond – Premiums payable from public~~**
12 **~~moneys only to fund~~Additional bond coverage.**

- 13 1. If a bond or bond coverage for a public employee or public official is canceled under
14 section 26.1-21-19, the public official or public employee may purchase a bond from
15 an authorized surety company for a coverage amount determined by the office. The
16 public official or public employee may not use public funds to pay for the bond.
- 17 2. In lieu of the bond provided for in this chapter, a public officer or public employee may
18 furnish~~secure~~ a bond issued ~~by a duly~~from an authorized surety company ~~in an~~for a
19 coverage amount determined by the ~~commissioner, but an officer or board of the state~~
20 ~~or of any political subdivision may not pay for the surety bond out of any public~~
21 ~~funds~~office. The public official or public employee may not use public funds to pay for
22 the bond.
- 23 3. A state agency or political subdivision may purchase a bond from an authorized surety
24 company to provide coverage in addition to the bond provided by the fund.
- 25 4. Evidence of a bond purchased under this section must be filed with the
26 commissioner~~office.~~

27 **SECTION 17. AMENDMENT.** Section 61-06-08 of the North Dakota Century Code is
28 amended and reenacted as follows:

1 **61-06-08. Officers or employees bonded in state bonding fund - Premium paid by-**
2 **~~whom~~Assessment payment.**

3 Every elective or appointive officer or employee of whom a bond is required under the
4 provisions of this chapter shall be deemed to be bonded in the state bonding fund upon the
5 giving of notice of such election or appointment by the secretary of the district to the ~~insurance-~~
6 ~~commissioner~~administrator of the fund. Upon notification ~~by the insurance commissioner~~ of the
7 amount of the ~~premium of such bond or bonds~~assessment, the secretary of the district ~~forthwith-~~
8 shall remit the ~~same~~payment.

9 **SECTION 18. AMENDMENT.** Section 61-16.1-05 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **61-16.1-05. Bonds of treasurer and appointive officers.**

12 The treasurer of a district shall be bonded in the amount set by the water resource board
13 but the bond shall not be less than one thousand dollars. Other district employees shall be
14 bonded in any amount set by the board. Every officer or employee of whom a bond is required
15 shall be deemed bonded with the state bonding fund upon notice of that appointment given to
16 the ~~state insurance commissioner~~administrator of the fund by the secretary of the district. Upon
17 notification ~~by the state bonding fund of the premium required~~of the assessment, the district
18 treasurer shall remit the ~~same~~payment.

19 **SECTION 19. REPEAL.** Sections 26.1-21-03, 26.1-21-08, 26.1-21-09, 26.1-21-13,
20 26.1-21-15, 26.1-21-17, 26.1-21-20, 26.1-21-22, and 26.1-21-24 of the North Dakota Century
21 Code are repealed.