



North Dakota House of Representatives

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COMMITTEES:
Appropriations

01/13/2025

HB 1027

House Industry, Business and Labor Committee

Representative Warrey, Chairman

Chairman Warrey and members of the Industry, Business and Labor Committee:

I am Representative Emily O'Brien, from District 42, Grand Forks, North Dakota.

House Bill 1027 is derived from your Interim Government Finance Committee and was reported to Legislative Management. The study must include an analysis of the statutory changes necessary to facilitate the office of management and budget's administration of these funds. This was approved during the 68th Regular Legislative Session in Senate Bill 2015 and 68th Special Legislative Session in House Bill 1541.

We studied the feasibility and desirability of changing administration of the state fire and tornado fund and state bonding fund from the insurance commissioner to the director of the office of management and budget. The state fire and tornado fund, as codified in Chapter 26.1-22, was created in 1919 to insure political subdivisions and state agencies against losses to public buildings and permanent fixtures. The funds are invested by the State Investment Board and the Insurance Commissioner contracts with the North Dakota Insurance Reserve Fund (NDIRF) for the administration of the funds pursuant to continuing appropriation authority. The Insurance Commissioner administered the funds until 2019 when the Legislative Assembly provided continuing appropriations for the funds and authorized the Insurance Commissioner to contract for administration of the funds.

We received information from representatives of the Insurance Department that provided information regarding the administration of the funds and similar self-insurance programs in other states. Florida, Kentucky, and North

Carolina administer similar funds under their risk management offices. The Legislative Assembly removed 3 FTE positions from the Insurance Department during the 2019 legislative session when the department started contracting for the administration of the funds.

The testimony received indicated that the department supports changing the administration of the funds from the department to Office of Management and Budget due to a conflict of interest with regulating NDIRF and contracting for administrative services from NDIRF.

During the interim, I contacted OMB in regard to this study and proposals moving forward. The interim committee ended up receiving information from OMB and opposing the change due to concerns about administering the funds if the contracted services from NDIRF were discontinued. We also received information from NDIRF regarding the identification of undervalued properties after taking over administration of the fund and an alternative scenario in which NDIRF would issue insurance policies to political subdivisions apart from the funds.

Two bill drafts were recommended, House Bill 1027 which you will hear now and House Bill 1026, which will be heard tomorrow morning at 9:00 AM.

This bill relates to changing the administration of the state fire and tornado fund from the Insurance Commissioner to OMB. The bill changes the administration of the funds, removes obsolete references, provides updates for consistency and clarity, and require a 2-year contract for administrative services with NDIRF or another entity.

There is a fiscal note attached to House Bill 1027 that was provided by the Office of Management and Budget. The Office of Management and Budget states that they do not have the staff to directly administer the Fund should the current contractual relationship with the North Dakota Insurance Reserve Fund terminate. In Section 3, Subsection 2, the office is giving the authority and may contract for administrative services.

Before you, is what has derived from that study: House Bill 1027.

Section 1

Page 2, Lines 20 and 21: Removes the authority from the Insurance Commissioner to manage, control, and supervise the state fire and tornado fund and the insurance of public buildings in that fund. And renumbered accordingly.

Section 2

Page 2, Line 26: Specifies utilized under Chapter 26.1-22-01.

Page 3, Line 4, Subsection 4: Adds definition 'Office" meaning the Office of Management and Budget.

Page 3, Line 13, Subsection 6: technical code revision

Page 3, Line 19, Subsection 8: Adds definition 'State agency" meaning a state board, bureau, commission, department, agency, industry, or institution and the international peace garden.

And renumbered accordingly.

Section 3

Page 3, Line 26-30, Amends the Title and Subsection 1: Changes the title and transfers the management from the Insurance Commissioner to the Office of Management and Budget and provides a continuing appropriation.

Page 4, Lines 1-17, Subsection 2: Gives the office of management and budget the authority to manage the fund, utilizing any information in the file from the North Dakota insurance reserve fund or any other entity to assist with the management of the fund. Additionally, allowing the authority to enter into a contract for administrative services. A contract for administrative services must have a two-year term ending on June thirtieth of odd-numbered years, and the contract may not be terminated except at the end of the two-year term. If either party does not anticipate renewing the contract for another two-year term, notice must be given by September thirtieth of the even-numbered year during the two-year term.

Page 4, Lines 18-22, Subsection 3: Policy for the appropriation- moneys in the fund are appropriated to the office on a continuing basis for paying claims against the fund for losses, including loss adjustment expenses; contracting for administrative services under subsection 2; paying loss prevention inspection and rating inspection expenses to determine the proper assessment rates for property insured by the fund; and paying reinsurance expenses under section 26.1-22-21.

Section 4

Page 4, Lines 26-29: Removes commissioner and replaced with office and clarifies entities insured under the state fire and tornado fund.

Section 5

Begins on Page 4, legislative change is on Page 5, line 4: Removing premium, replacing with assessment.

Section 6

Page 5, Lines 8-9, Amends the Title: Removes commissioner and replaced with office - Replacement cost appraisal.

Page 5, Lines 10-26, Subsection 1: technical correction - summarizing every state agency, political subdivision, and winter show insured under the fund. The entities insured under the fund shall report any additional information required by the office to administer this chapter. OMB shall provide forms for reporting.

Page 5, Lines 27-30 and Page 6, Lines 1-2, Subsection 2: One every six years, each state agency insured under the fund shall obtain replacement cost appraisal on all buildings, fixtures, and permanent contents under the agency's custody which are insured under this chapter. The office shall determine the manner of conducting appraisal. Annually, except for any year an appraisal is conducted, each state agency insured under the fund shall adjust the appraised value as required by the office.

Section 7

Page 6, Lines 5-6, Amends the Title: Removes Commissioner to provide insurance and replaces with insurance for buildings and personal property - Additional coverage - Township and school district property.

Page 6, Lines 10-11, Subsection 1: Removes commissioner and replaces with office.

Page 6, Lines 12-15, Subsection 1a: Clarifies Insurance under this section applies to all buildings owned by state agencies with technical corrections in code.

Page 6, Lines 16-19, Subsection 1b: Clarifies Insurance coverage under this section may not exceed the insurable value of the property.

Page 6, Lines 20-22, Subsection 1c: Adds additional subsection, state-owned buildings constructed after 1939 and fixtures and permanent contents insured under this chapter must be insured at replacement cost unless the office approves an alternate value.

Page 6, Line 23, Subsection 1d: Removes commissioner and replaces with office.

Page 6, Lines 24-30, Page 7, Lines 1-2, Subsection 2: Removes language for coverage of the buildings owned by the state mill and replaced with An insurance policy under this chapter must include the name

of the insured, the location and description of the insured property, the amount of insurance coverage, and the amount of the assessment.

Page 7, Lines 3-16, Subsection 3: Removes the language for all public buildings owned by a political subdivision, may at the option of the governing body of the political subdivision be insured..... and replaced with beginning on line 9, In lieu of or in addition to the coverage under this section, a state agency, political subdivision, or winter show may purchase insurance from an authorized insurance company for:

Subsection 3a. All buildings and the contents of the buildings owned by the state mill and elevator association.

Subsection 3b. All public buildings owned by a political subdivision.

Subsection 3c. All public libraries owned by the state or a political subdivision for damage through vandalism.

Page 7, Lines 17-24, Subsection 4: Removes the language for all public libraries..... and replaced with The office shall develop guidelines to be used by state agencies political subdivisions, and winter shows to determine the insurable values of property for insurance coverage and indirect loss coverage under this chapter.

Page 7, Lines 25-28, Subsection 5: Adds that this chapter does not apply to the property of any township or school district located outside of the incorporated limits of a city unless the township or school district requests and applies for insurance coverage under this chapter. The application must be approved in writing by the office to be effective.

Page 7, Lines 29-31, Subsection 6: Adds that a state agency, political subdivision, or winter show may not make payments, enter contracts, or incur debt for insurance on buildings, fixtures, or permanent contents except as provided under this chapter.

Page 8, Lines 1-3, Subsection 7: Adds that if the insurance is canceled under section 26.1-22-16, the state agency, political subdivision, or winter show may procure insurance from any authorized insurance company.

Page 8, Lines 4-6, Subsection 8: Adds that if a disagreement or dispute arises under this section, the office and the state agency, political subdivision, or winter show shall settle the disagreement or dispute under section 26.1-22-11.

Section 8

Page 8, Line 9, Amends the Title: Adds 'of value or loss' to Arbitration

Page 8, Lines 11-22, Subsection 1: Removes the commissioner and the board or officer having charge, and replaces with if the office and the state agency, political subdivision, or winter show having custody and disagree about the insurable value of the property or the amount of loss insured, the office and the state agency, political subdivision, or winter show may agree to have the value or loss determined by a competent, disinterested contractor, architect, experienced appraiser, appraisal company, or a member of those respective professional boards at the expense of the state agency, political subdivision, or winter show owning the property.

Page 8, Lines 23-25, Subsection 2: Adds if the office and the state agency, political subdivision, or winter show are unable to resolve a disagreement under subsection 1, the determination must be arbitrated as provided in this subsection.

Page 8, Lines 26-31, Subsection 2a: Adds The office and the state agency, political subdivision, or winter show having custody of the property each shall select one competent, disinterested contractor, architect, experienced appraiser, appraisal company, or a member of those respective professional boards. The two selected arbitrators shall select a third arbitrator with similar qualifications.

Page 9, Lines 1-7, Subsection 2b: Removes and the decision of the arbitrators, or a majority of them, must be given in writing to the commissioner and the board or officials concerned and - and adds or the amount of loss insured within thirty days after the section of the first two arbitrators. Upon determination by a majority of the arbitrators, the arbitrators shall notify the parties of the determination in writing. The determination is binding on both parties.

Page 9, Lines 8-14, Subsection 2c: Removes the expense and charges and is amended to just expenses of the arbitrator chosen by the party. The expenses of the third arbitrator must be paid equally by both parties to the dispute. And removes the decision by the board of arbitration must be made within thirty days from the time the matter is submitted to it....

Page 9, Lines 15-19, Subsection 2d: Adds in 'while the value is being determined under this section, property' must continue to be valued in the same amount as previously determined, or in case of new buildings or property, in the amount determined by the office.

Page 9, Lines 20-21, Subsection 3: Adds a new section This section applies to existing property, new construction, and property with a change in value.

Section 9

Page 9, Lines 24-25, Amends the Title to read: Assessments - Collections - Minimum fund balance - Bond and borrowing authorization.

Page 9, Lines 26-29, Subsection 1: Adds 'Upon providing insurance coverage under this chapter, the office shall certify to the insured the amount of the assessment. The state agency, political subdivision, or winter show shall submit to the office the payment of the assessment within sixty days after the date of the certification. The office shall deposit the assessments in the fund.'

Page 9, Lines 30-21, Page 10, Lines 1-3, Subsection 2: Adds 'If the assessment is not paid within sixty days after the date of the certification, the attorney general and the state's attorney of the relevant county shall bring appropriate actions to enforce the collection of the assessment upon request of the office. A judgment obtained under this section must include an interest rate of six percent per year.'

Page 10, Lines 4-9, Subsection 3: Amends the subsection to read: 'If the fund balance is less than twelve million dollars, the office shall levy an assessment on every policy in force with the fund to increase the fund balance of the fund to twelve million dollars calculated as follows.'

Page 10, Lines 10-17, Subsection 3a: Provides technical corrections to read 'The eighty or ninety percent coinsurance rate for each eligible insured property the full rate for policies providing coverage against indirect losses, and the full rate for properties that are not eligible for the eighty or ninety percent coinsurance rate, must be applied to the amount of insurance provided in each policy to determine the tentative assessment against each policy.'

Page 10, Lines 18-19, Subsection 3b: Removes 'must then be ascertained' and should read: 'The total of all tentative assessments is the sum of the amounts calculated under subdivision a.'

Page 10, Lines 20-26, Subsection 3c. Provides technical corrections, and removes language beginning on Line 22 and should read: 'The percentage of the assessment needed to increase the fund balance to twelve million dollars must be calculated and collected on each policy. The assessments may not exceed sixty percent of the rates set by the insurance services office for insured property unless the fund balance is less than three million dollars.'

Page 10, Lines 27-29, Subsection 3d: Removes 'In case of a fractional percentage the next higher whole percent must be used in such computation' and adds ' a fractional percentage must be rounded up to the next whole percent'.

Page 10, Lines 30-31, Page 11, Lines 1-2, Subsection 4: Adds 'If the fund balance is less than two million dollars due to a catastrophe, disaster, or a succession of catastrophes or disasters, the office may issue anticipation bonds or borrow from the Bank of North Dakota to provide the amount needed to increase the fund balance to two million dollars upon approval from the industrial commission.

Page 11, Line 3, Subsection 4a: Adds 'The term of the anticipation bonds or loan may not exceed twenty years.'

Page 11, Lines 4-5, Subsection 4b: Adds 'The office shall levy an assessment on all policies in force under the fund to repay the anticipation bonds or loan.'

Section 10

Page 11, Lines 8-9, Amends Title to: Unreasonably hazardous risks - Mitigation - Insurance cancellation.

Page 11, Lines 10-27, Provides technical corrections replacing the commissioner with office. Line 11, the office may require the state agency, political subdivision, or winter show having control the risk to mitigate or remove the extra hazard. If the state agency, political subdivision, or winter show fails to mitigate or remove the extra hazard within six months after notification from the office, the office may cancel the insurance on the renewal upon thirty days' notice. A cancellation may not be made by the office for property under the industrial commission's custody without the approval of the industrial commission. Line 18-25 removes the language when a dispute arises. Line 25-27, adds 'If a disagreement or dispute arises under this section, the office and the state agency, political subdivision, or winter show shall settle the disagreement or dispute under section 26.1-22-11.

Section 11

Page 12, Line 1, Amends Title to: Losses - Limitation.

Page 12, Lines 2-10, Subsection 1: Provides technical corrections and changes from commissioner to office. It removes Immediately upon the happening or occasion of any such loss or damage, the insured shall notify the commissioner. The notification must be in the manner required by the commissioner and must provide..

Page 12, Lines 11-17, Subsection 2: Adds that 'Immediately after an event causing loss or damage, the insured shall notify the office in a manner prescribed by the office. Listing out what the notification must include. Additionally, changing from the commissioner to office.

Page 12, Lines 18-31, Page 13, Lines 1-4, Subsection 3: Removes language that was replaced in Section 10 on Page 11.

Section 12

Page 13, Lines 7-8, Amends Title to: Excess loss reinsurance - Insurance broker of record.

Page 13, Lines 9-14, Subsection 1: Removes the commissioner and replaced with office.

Page 13, Lines 15 - 26, Subsection 2: Line 15 removes premium and replaced with assessment. Lines 19 - lines 26 are removed, this language was replaced in Section 10.

Page 13, Lines 27-29, Subsection 3: Adds the language: 'The office may contract for insurance broker of record services to assist in procuring excess loss reinsurance. The insurance broker must be licensed to do business in the state.

Section 13

Page 14, Line 1, Amends Title to: Waiver of subrogation of rights during construction.

Page 14, Line 3, Removes commissioner and commissioner's discretion and replaced with ',office may'

Section 14

Page 14, Lines 14-15, and 16, Subdivision c of subsection 1 of section 26.1-23.1-01 is amended to remove commissioner and replaced with office of management and budget under section 26.1-22-02.

Section 15

Page 15, Lines 3-6, Amend Section 37-03-13 of North Dakota Century Code, subsection 2: removes insurance commissioner and replaced with office of management and budget, shall insure in full or in part.

Section 16

Repeals - Sections 26.1-22-03, 26.1-22-05, 26.1-22-06, 26.1-22-06.1, 26.1-22-08, 26.1-22-10.1, 26.1-22-13, 26.1-22-15, 26.1-22-18, 26.1-22-19, and 26.1-22-21.1 of North Dakota Century Code.