

**CHAPTER 26.1-23.1**  
**GOVERNMENT SELF-INSURANCE POOLS**

**26.1-23.1-01. Government self-insurance pools - Regulation - Reinsurance.**

1. Any two or more entities that have united to self-insure against their legal liability under chapter 32-12.1 or any state agency that unites with another state agency or political subdivision, or both, to self-insure against their legal liabilities are subject to the provisions of this chapter with the exception of a city and its park district established pursuant to chapter 40-49. Government self-insurance pools may only provide coverage of the following types for pool members, their officers, employees, and agents:
  - a. Casualty insurance, including general, public officials, and professional liability coverages. However, if a court determines by clear and convincing evidence a governing body of a political subdivision took intentional action through an ordinance, administrative rule, or any other official action in violation of any state law, the political subdivision is liable to the self-insurance pool for all attorney fees, expenses, and costs incurred defending the action.
  - b. Automobile insurance, including motor vehicle liability insurance coverage, security for motor vehicles owned or operated as required by chapter 26.1-41, and protection against other liability and laws associated with the ownership of motor vehicles and automobile physical damage coverages.
  - c. Property insurance, including inland marine coverage, money and securities coverage, and extra expense coverage. However, this subdivision does not authorize government self-insurance pools to write those types of insurance coverages offered by the state fire and tornado fund under the provisions of chapter 26.1-22 as they existed on December 31, 1988, unless a government self-insurance pool enters a contract with the office of management and budget to provide services for the state fire and tornado fund under section 26.1-22-02.
  - d. Other coverages authorized by the commissioner and necessary to a pool's membership.
2. A government self-insurance pool may not expose itself to loss on any single risk or hazard in an amount exceeding ten percent of the amount of its admitted assets unless the pool obtains excess insurance or reinsurance with insurance companies approved for such business by the insurance commissioner.

**26.1-23.1-02. Government self-insurance pools not insurers.**

Any government self-insurance pool organized under chapter 32-12.1 is not an insurance company or insurer. The coverages provided by the pools and the administration of the pools do not constitute the transaction of insurance business. Participation in a government self-insurance pool under this chapter does not constitute a waiver of any existing immunities otherwise provided by the constitution or laws of this state. In all respects not specifically provided for under this chapter, a government self-insurance pool is subject to chapters 26.1-01, 26.1-02, 26.1-04, 26.1-25, and 26.1-26 with the exception of sections 26.1-26-06, 26.1-26-07, and 26.1-26-13.1 relating to insurance companies generally.

**26.1-23.1-03. Government self-insurance pool approval from the commissioner.**

Before the insurance commissioner authorizes the operation of a government self-insurance pool, the pool shall provide the following:

1. A financial plan setting forth:
  - a. The insurance coverages to be offered by the pool, applicable deductible levels, and the maximum level of claims to be self-insured against.
  - b. The amount of cash reserves to be set aside for the payment of claims.
  - c. The amount of aggregate excess insurance or reinsurance coverage to be purchased in the event that the pool's resources are exhausted in a given fiscal period.

2. A plan of management which must provide the following:
  - a. The means of establishing the governing authority of the pool and, if the governing authority of the pool is set forth in articles of incorporation, the articles must be filed in the office of the secretary of state and a certified copy must be filed with the commissioner. The commissioner may not issue a certificate to the pool if, in the commissioner's judgment, the company's name too closely resembles the name of an existing corporation or is liable to mislead the public.
  - b. The responsibility of the governing authority with regard to fixing contributions to the pool by participating government political subdivisions, maintaining reserves, levying and collecting assessments for deficiencies, disposing of surplus, and administering the pool in the event of termination or insolvency.
  - c. The basis upon which new members may be admitted to, and existing members may leave or have membership terminated by, the pool.
  - d. The identification of funds and reserves by exposure areas.
  - e. Other provisions necessary or desirable for the operation of the pool.
3. A plan for the election by pool members of a governing authority, which must be a board of directors for the pool.

**26.1-23.1-04. Annual financial statements required - Confidentiality.**

1. Every government self-insurance pool authorized by the insurance commissioner shall file with the commissioner on or before March thirty-first of each year an audited statement of its financial condition and business for the year ending on the preceding December thirty-first. The financial statement must be audited by an independent certified public accountant and the financial statement must be in a form prescribed or approved by the commissioner. The financial statement must be verified by the signature and oath of the pool's authorized representative. If a self-insurance pool fails to provide for the audited financial statement required by this section, the insurance commissioner shall have the audit performed at the expense of the pool. All working papers of the commissioner's staff are confidential and not open for public inspection until the report is final unless the commissioner declares that the material or any part of the material is not confidential. If a self-insured pool is found to be in a deficit condition, the pool shall file a financial plan acceptable to the commissioner to correct the deficit condition.
2. At least triennially, and at such other times as the insurance commissioner deems necessary, the commissioner shall inspect and examine the affairs of every government self-insurance pool. The commissioner shall conduct examinations of each self-insured government pool and all expenses and costs relating to the examination must be paid by the pool.
3. The insurance commissioner shall monitor the financial solvency of government self-insurance pools to ensure that a pool's liabilities for claims, present and contingent, and other expenses are at no time greater than the pool's assets. The commissioner may enjoin a self-insured government pool from conducting further business or take other appropriate regulatory action whenever in the commissioner's judgment a pool is insolvent or otherwise financially impaired.

**26.1-23.1-05. Investment of assets - Subsidiary insurance company coverage.**

A government self-insurance pool may only invest its funds and accumulations in those investments described in sections 26.1-05-19 and 26.1-10-02. If a government self-insurance pool investment is made under section 26.1-10-02, a resulting subsidiary insurance company may not write insurance coverage for:

1. North Dakota governmental entities, which competes with coverage offered by the fire and tornado fund under chapter 26.1-22 as that chapter existed on December 31, 1988;
2. Individuals;
3. For-profit organizations;

4. Nonprofit hospitals, clinics, nursing homes, churches, fraternal organizations, or organizations not performing quasi-governmental functions; or
5. Agricultural business cooperatives.

**26.1-23.1-06. Pool reserve records confidential - Open records.**

1. Information regarding that portion of the funds or liability reserves of a government self-insured pool established for purposes of satisfying a specific claim or cause of action is confidential. A person is not entitled to discover that portion of the funds or liability reserves established for purposes of satisfying a claim or cause of action, except that the reserve is discoverable in any supplementary or ancillary proceeding to enforce a judgment against the pool or a governmental entity participating in the pool.
2. Unless otherwise provided by law, a government self-insurance pool record, as defined under section 44-04-17.1, is subject to chapter 44-04.

**26.1-23.1-07. Self-insurance contracts - Approval of rates and forms.**

No insurance policy, certificate, contract, agreement, or evidence of participation may be issued or delivered by a self-insured government pool nor may any application, rider, or endorsement be used in connection therewith until the rate and form thereof have been filed and approved by the insurance commissioner under sections 26.1-30-19 through 26.1-30-21.

**26.1-23.1-08. Government self-insurance pool - Report.**

A government self-insurance pool organized under this chapter shall provide a report to the legislative management by September thirtieth of each even-numbered year. The report must include information on activities of the pool, including the claims activity, claims payment history, balances, a history of complaints, and executive staff and board compensation.