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STATE BONDING FUND AND SURETY BONDS - MISCELLANEOUS ISSUES

This memorandum reviews miscellaneous issues relating to the state bonding fund. These issues include the requirements for a bond from the state bonding fund, the history of the trigger and cap for premium collections under the bonding fund, the transfer of money in the bonding fund to the general fund, and the options to bonding for certain licensed occupations.

STATE BONDING FUND - BOND REQUIREMENTS

Research does not reveal any requirement under North Dakota Century Code (NDCC) Chapter 26.1-21, the state bonding fund law, for public employees and officials to be bonded through the state bonding fund. The requirement for a bond comes from statutes requiring a bond in limited circumstances. The circumstances are limited because in 1999 Senate Bill No. 2360 removed a number of requirements for state officials and employees to furnish a bond in a particular amount. The legislative history reveals that the reason for the removal was that the bonds required by these statutes were separate from the bond provided by the state bonding fund. Testimony stated the bonding requirements were removed because the individual being bonded was already covered by the state bonding fund. Although many entities that are not required to obtain a bond do so because there is no premium charged, technically they would not need to obtain a bond or a bond from the state bonding fund.

This legislative history does not contain testimony on the two sections of law that may have provided reasoning to the contrary. Under NDCC Section 26.1-21-07, the coverage under the bonding fund may be greater, but not less than, the amount required by law for the position. Under Section 26.1-21-10, the provisions of the chapter on state bonding "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 and the state or its political subdivisions, respectively, as the obligee in any such bond." These two sections show the consideration of other statutes that require bonds and place certain conditions on bonds, and appear to incorporate them into a bond obtained under the state bonding fund.

STATE BONDING FUND - PREMIUM TRIGGER AND CAP

Under NDCC Section 26.1-21-09, the Insurance Commissioner determines the premium for the bond. The premiums must be waived unless the bonding fund falls below a certain level. Once the bonding fund falls below a certain level, premiums must be resumed until the bonding fund reaches a certain cap.

The bonding fund was created in 1915. In 1915 the fund had the following cap: once the bonding fund reached the amount of $100,000, any excess was distributed to the various political subdivisions for which entities within the subdivision were required to be bonded in an amount in proportion to the amount of premium paid by the political subdivision. In 1947 the law provided that premiums are triggered when the bonding fund is depleted below the sum of $1 million. The cap for the termination of collection of premiums was set at $1.2 million. In 1953 the law provided that the trigger for the collection of premiums was $2.5 million. The cap for the termination of collection of premiums was $3 million. A premium has not been charged for coverage since 1953. In 2003, Senate Bill No. 2015 amended Section 26.1-21-09 to lower the trigger for the collection of premiums from $2.5 million to $2 million. The threshold for the termination of collection of premiums remains at $3 million.

STATE BONDING FUND - TRANSFERS TO GENERAL FUND

In the bienniums since 1993, the Legislative Assembly has transferred money from the bonding fund to the general fund two times. In the 1993-95 biennium, House Bill No. 1005 transferred $2.5 million from the bonding fund to the state general fund. During the 2001-03 biennium, Senate Bill No. 2015 transferred $2.8 million from the bonding fund to the state general fund.

SURETY BONDS - OPTIONS

State law requires that certain persons be bonded to be licensed to engage in certain kinds of work. This bond is obtained through a private surety company and not through the state bonding fund. There are two examples of occupations that do not buy a surety bond but instead pay into a special fund that pays for certain bad acts. These occupations are electricians and real estate brokers and salespersons.

North Dakota Century Code Chapter 43-09 provides for the regulation of electricians. The electricians are governed by the State Electrical Board under Section

43-09-05 and are required to be licensed under Section 43-09-09. Under Section 43-09-14, before doing electrician work a master electrician must deposit a bond of $5,000 and a Class B electrician must deposit a bond of $4,000 with the board. In addition, a master electrician must deposit $50 and a Class B electrician must deposit $40 in lieu of a surety bond. This deposit is placed in a special fund to be used for the completion of installations abandoned by electricians in the amount of $5,000 for a master electrician and $4,000 for a Class B electrician. The deposit is waived if the special fund exceeds $50,000. Presently the fund is over $50,000.

A representative from the electrical board has explained that the special fund was created to allow safety problems caused by improper installations to be addressed quickly, e.g., when a bond was required, bond companies took too much time in paying claims. Although electricians are exempt from surety bonds, under NDCC Section 43-09-20 a master electrician must have public liability insurance of $100,000 and a Class B electrician must have public liability insurance of $50,000.

Real estate brokers and salespersons are regulated under NDCC Chapter 43-23. Brokers and salespersons are not required to be bonded; however, the secretary-treasurer of the Real Estate Commission must be bonded in the amount of $60,000. The secretary-treasurer handles fees collected from brokers and salespersons, including a fee of $20 which is credited to the education, research, and recovery fund. The fee is not required for the renewal of a license unless the fund is less than $60,000. Under Section 43-23.2-03, a person who obtains a final judgment from a court against a broker or salesperson on the grounds of fraud or dishonesty may file an application with the court for payment out of the fund for a loss up to $15,000 that is unpaid on the judgment. Although brokers and salespersons are exempt from purchasing a surety bond, under Section 43-23-19 brokers and salespersons must carry errors and omissions insurance.