

Introduced by

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

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

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

12 **26.1-21-01. Definitions.**

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

- 14 1. "Blanket bond" means a bond that covers collectively all public employees and public  
15 officials ~~without the necessity of scheduling names or positions as a part of the bond,~~  
16 ~~and a bond whereby new public employees and new public officials entering~~  
17 ~~employment or office during the period of the bond are automatically included without~~  
18 ~~notice to the fund.~~
- 19 2. "Fund" means the state bonding fund.
- 20 3. "International peace garden" means an entity located upon the international boundary  
21 line between the United States and Canada used and maintained as a memorial to  
22 commemorate the long-existing relationship of peace and good will between the  
23 people and the governments of the United States and Canada and to further  
24 international peace among the nations of the world.

1       4.   "Office" means the office of management and budget.

2       5.   "Political subdivision" means a county, township, park district, school district, city,  
3       and any other unit of local government which is created either by statute or by the  
4       Constitution of North Dakota for local government or other public purposes.

5       5-6. "Public employee" means an individual employed by a state agency or any political  
6       subdivision, an officer or employee eligible under section 57-15-56, an employee  
7       under section 61-16.1-05, and an officer or employee of an international peace  
8       garden. ~~"Public employee"~~The term does not include an individual employed by an  
9       occupational and professional board or commission under title 43 or by the state bar  
10      association.

11      6-7. "Public official" means an elected or appointed officer or deputy of a state agency or a  
12      political subdivision, ~~except for.~~ The term does not include an officer of an  
13      occupational and professional board or commission under title 43 or of the state bar  
14      association.

15      7-8. "State agency" means a state board, bureau, commission, department, agency,  
16      industry, and institution and the international peace garden.

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

19      **26.1-21-02. State bonding fund - Management by commissionerOffice of management**  
20      **and budget - Administrative services - Continuing appropriation - Report.**

21      ~~A fund must be maintained as a fund~~

22      1.   There is created in the state treasury the state bonding fund for the bonding of public  
23      employees and public officials. AllThe fund consists of all assessments, interest,  
24      ~~profits on investments, and all~~investment earnings, and other income collected under  
25      this chapter ~~must be paid into the fund.~~

26      2.   The commissioneroffice shall manage the fund. The office may contract for  
27      administrative services from the North Dakota insurance reserve fund to assist with  
28      the management of the fund.

29      3.   Moneys in the fund are appropriated to the office on a continuing basis for paying  
30      claims against the fund, contracting for administrative services as provided under

- 1           subsection 2, paying costs incurred by the state auditor for investigations under  
2           section 26.1-21-12, and paying reinsurance costs under section 26.1-21-21.  
3        4. If the balance of the fund is less than three million dollars, the office shall collect  
4           assessments from state agencies and political subdivisions. If the balance of the fund  
5           exceeds three million dollars, the office shall waive assessments until the balance of  
6           the fund is less than two million dollars at which time the office shall resume collecting  
7           assessments.  
8        5. If the office determines the interests of the fund are jeopardized by the misconduct or  
9           inefficiency of any public official, the office shall notify the state auditor to conduct an  
10           investigation.  
11       6. The office shall include a summary of the fund in the biennial report submitted in  
12           accordance with section 54-06-04. In December of each odd-numbered year, the  
13           office shall publish the summary in four newspapers of general circulation within the  
14           state. The summary must include the revenues, expenditures, and balance of the  
15           fund.

16        **SECTION 3. AMENDMENT.** Section 26.1-21-04 of the North Dakota Century Code is  
17 amended and reenacted as follows:

18        **26.1-21-04. Attorney general is attorney for fund.**

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

21        **SECTION 4. AMENDMENT.** Section 26.1-21-07 of the North Dakota Century Code is  
22 amended and reenacted as follows:

23        **26.1-21-07. Coverage - Assessments - Minimum.**

- 24        1. The amount of coverage afforded to each state agency or political subdivision must be  
25           determined by the ~~commissioner~~office based upon the amount of money or property  
26           handled and the opportunity for defalcation ~~but the amount must at least. Except as~~  
27           otherwise required by law, the minimum amount of coverage must equal the amount of  
28           money or property actually handled or ten thousand dollars, whichever is less. The  
29           coverage may be greater than but not less than the amount required by law or  
30           determined under law for a position.

- 1        2. The coverage for a state legislative or judicial branch agency, ~~however,~~ may be  
2        determined by the legislative council or supreme court, respectively.
- 3        3. Notwithstanding any other provision of law, the ~~commissioner~~office may issue bonds in  
4        ~~such amounts as the commissioner determines necessary to carry out the purposes of~~  
5        ~~the fund and, in,~~ In determining the amount of coverage to be offered, the  
6        ~~commissioner~~office may consider the reserves necessary to pay the bonds and for all  
7        other necessary costs or expenses to carry out the purposes of the fund.
- 8        4. The assessment is two dollars and fifty cents per public employee per year. Each state  
9        agency and political subdivision shall pay the assessment in advance, and the  
10       assessments collected must be deposited in the fund. The office may waive the  
11       assessment as provided under section 26.1-21-02.

12        **SECTION 5. AMENDMENT.** Section 26.1-21-09.1 of the North Dakota Century Code is  
13        amended and reenacted as follows:

14        **26.1-21-09.1. Bonds of agents appointed to distribute hunting and fishing licenses or**  
15        **stamps - ~~Premiums~~Assessment - Determination of eligibility.**

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

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

28        **26.1-21-10. Automatic insurance of state and political subdivisions.**

- 29        1. Each state agency and ~~each~~ political subdivision shall apply to be bonded in the fund  
30        ~~no less often than on a biennial basis~~at least once per biennium or when a change in  
31        coverage is requested, whichever occurs first. Unless an application is denied within

1           sixty days from the date it is received by the ~~commissioner~~office, the application will be  
2           deemed approved and bond coverage in force. If a bond is in the discretion of the  
3           state agency or political subdivision and a bond is not requested, the state agency or  
4           political subdivision is exempt from this section.

5           2. The application must include a:

6           a. The requested amount of bond coverage based on the amount of money and  
7           property handled and, the opportunity for defalcation, and any other condition  
8           imposed by law and list;

9           b. An amount equal to twenty-five percent of the money in control of the public  
10           officials or employees for which the bond is requested for the preceding year  
11           based on the total monthly balances. In addition, the application must include  
12           any; and

13           c. Any other information requested by the ~~commissioner~~office to determine the  
14           amount of money and property handled and the opportunity for defalcation,  
15           including the procedure used to determine the amount of bond requested,  
16           revenues for the last budget period by type, expenditures for the last budget  
17           period by type, the number of people that handle money, any portion of the last  
18           audit, and any financial procedures.

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

21           **SECTION 7. AMENDMENT.** Section 26.1-21-11 of the North Dakota Century Code is  
22           amended and reenacted as follows:

23           **26.1-21-11. Default of public employees or public officialsClaims - Limitation on filing**  
24           **of claims against fund - Register of claims - Review and payment of claims.**

25           1. Within sixty days after the discovery of any default or wrongful act on the part of any  
26           public employee or public official for which the fund is or may become liable, the state  
27           auditor, county auditor, city auditor, township clerk, or business manager of the school  
28           district; the treasurer of the state or state agency or political subdivision if the  
29           defaulting officer is the auditor or clerk of the state or state agency or political  
30           subdivision; and any other officer having supervision of a defaulting public employee  
31           or public official shall file a claim with the ~~commissioner~~office against the fund.

- 1        2. Any person injured by a default or wrongful act may present the claim to the  
2        ~~commissioner~~office within sixty days after the discovery of such default or wrongful  
3        act. If a claim is not filed within the time limited by this section, the claim is waived.
- 4        3. A claim filed under this section must contain an abstract of the facts upon which the  
5        claim is based and must be verified by the claimant or by ~~someone~~ an individual on  
6        the claimant's behalf. ~~The claim and all papers relating to the claim must remain on file~~  
7        ~~with the commissioner~~The office may prescribe the forms for claims.
- 8        4. The office may administer oaths and examine witnesses in connection with a claim  
9        presented to the office.
- 10       5. The office shall maintain a register of all claims filed against the fund, including a brief  
11       description of each claim, the name of the claimant, the amount and character of the  
12       claim, the action taken upon the claim, and the date action was taken.
- 13       6. The office shall retain claims and documents relating to claims as provided by law.
- 14       7. The office shall review all claims presented to the office. The office shall notify the  
15       state auditor if any public employee or public official defaults or creates a liability  
16       against the fund, and the state auditor shall conduct an investigation under section  
17       26.1-21-12.
- 18       8. Upon receipt of the auditor's report under section 26.1-21.12, the office shall  
19       determine the allowable amount of the claim. The office shall present all records  
20       relating to the claim, including the allowable amount determined by the office, to the  
21       attorney general for review.
- 22       9. The attorney general shall review the validity of the claim and the allowable amount  
23       determined by the office. Upon approval by the attorney general, the office shall pay  
24       the allowable amount to the claimant from the fund.

25       **SECTION 8. AMENDMENT.** Section 26.1-21-12 of the North Dakota Century Code is  
26       amended and reenacted as follows:

27       **~~26.1-21-12. Commissioner to notify state auditor of default of public employee or~~**  
28       **~~public official - Duty of state auditor - Investigations - Review of coverage.~~**

29       ~~If any public employee or public official defaults or creates a liability against the fund, the~~  
30       ~~commissioner shall notify the state auditor. The state auditor shall investigate, or cause to be~~  
31       ~~investigated, the accounts of the public employee or public official and file a report with the~~

1 commissioner stating any amount due from the fund because of the default or wrongful act. For  
2 these services, the auditor or investigating firm must be paid out of the fund all reasonable costs  
3 incurred.

- 4 1. Upon notification from the office of jeopardized fund interests under section  
5 26.1-21-02, the state auditor shall investigate the relevant state agency or political  
6 subdivision and shall provide a report to the office regarding any findings.
- 7 2. Upon notification from the office of a default or liability against the fund under section  
8 26.1-21-11, the state auditor shall investigate the accounts and relevant records of the  
9 public employee or public official and shall file a report with the office identifying any  
10 amount due from the fund because of the default or wrongful act.
- 11 3. The state auditor may evaluate the blanket bond coverage when conducting an audit  
12 of a state agency or political subdivision. The state auditor may recommend changes  
13 in the amount of coverage in the audit report.
- 14 4. Costs incurred by the state auditor under subsections 1 or 2 of this section must be  
15 paid from the fund.
- 16 5. The state auditor may contract for an investigation under subsection 1 or 2.

17 **SECTION 9. AMENDMENT.** Section 26.1-21-14 of the North Dakota Century Code is  
18 amended and reenacted as follows:

19 **26.1-21-14. Filing claim is condition precedent to bringing action**  
20 **Action against the fund - Failure to act is disallowance - Limitation - Interest.**

- 21 1. An action may not be maintainedbrought against the fund upon a claim until thea claim  
22 has been presented for allowance as provided into the office under this chapter and  
23 the commissioneroffice has refused to allow the claim. A claim that has not been  
24 allowed within sixty days after presentation for allowance is disallowed. The filing and  
25 disallowance of the claim must be alleged in the complaint in any action brought  
26 against the fund.
- 27 2. An action brought against the fund for a claim must be commenced within one year  
28 after presenting the claim to the office. Any interest on the claim accumulates from the  
29 date of presenting the claim to the office. The liability of the fund is limited to a breach  
30 of a condition of the bond which occurred within two years before the date of  
31 presenting the claim to the office.

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

3       **26.1-21-16. Suit by party injured by default of public employee or public official -**  
4 **Subrogation - Right of appeal.**

5       A person injured by the default or wrongful act of any public employee or public official may  
6 sue the public employee or public official. To effect recovery from the fund, that person must join  
7 the fund as codefendant. A judgment must be obtained against the public employee or public  
8 official to create liability upon the bond. If the judgment is obtained against the public employee  
9 or public official, the judgment must specify that to the extent to which the fund is liable upon the  
10 bond of the public employee or public official, the judgment must be paid out of any money in  
11 the fund or that which may accrue to the fund. If the judgment is paid out of the fund, the fund  
12 has a right to recover and is subrogated to the right of the judgment creditor to recover against  
13 the public employee or public official. The ~~commissioner~~office may act for the fund in all  
14 proceedings to enforce the right of subrogation and may appeal from an order or judgment  
15 against the fund the same as other parties to civil actions.

16       **SECTION 11. AMENDMENT.** Section 26.1-21-18 of the North Dakota Century Code is  
17 amended and reenacted as follows:

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

- 20       1. If the ~~commissioner~~office determines that the interests of the fund are jeopardized by  
21 the misconduct or inefficiency of any public official, the ~~commissioner shall request the~~  
22 ~~state auditor to make an examination, and, if necessary, shall cause an~~office may  
23 bring an action for an accounting to be instituted against the public official for the  
24 ~~purpose of requiring a~~require complete disclosure of the business of the ~~office~~state  
25 agency or political subdivision of which the public official is an incumbent. The action  
26 must be brought in the name of the ~~commissioner~~office as plaintiff, and the court in the  
27 action may interplead all concerned parties.
- 28       2. The ~~commissioner may make a complaint to the governor requesting the governor to~~  
29 ~~institute an investigation with the purpose of removing from the office any defaulting~~  
30 ~~public official or any public official who so conducts the affairs of the public official's~~



1           ~~office as to endanger the fund~~office shall report to the governor any defaulting public  
2           ~~official or any public official whose wrongful act brings a liability against the fund.~~

3           **SECTION 12. AMENDMENT.** Section 26.1-21-19 of the North Dakota Century Code is  
4 amended and reenacted as follows:

5           **26.1-21-19. Cancellation of liability of fund - ~~When permitted - Effect~~Cancellation of**  
6 **coverage - Appeal proceeding.**

- 7           1. ~~After due an~~ investigation, the ~~commissioner~~office may cancel the liability of the fund  
8 for the acts of any public employee or public official. The cancellation takes effect thirty  
9 days after written notice. ~~If a public official's or public employee's bond is canceled, the~~  
10 ~~public official or public employee may secure at personal expense a bond executed by~~  
11 ~~a duly authorized surety company in an amount determined by the commissioner.~~  
12 ~~Evidence of a surety bond purchased under this section must be filed with the~~  
13 ~~commissioner.~~
- 14           2. ~~The office shall notify the public employee or public official immediately by certified~~  
15 ~~mail when the bond or coverage under a blanket bond is canceled.~~
- 16           3. ~~Within twenty days of receipt of notification, the public employee or public official may~~  
17 ~~appeal the cancellation to the district court of the judicial district in which the public~~  
18 ~~employee or public official resides. The court shall hear the appeal between ten and~~  
19 ~~thirty calendar days after the filing of the appeal with the clerk. Notice of the appeal~~  
20 ~~must be served by the appellant upon the office. The action must be heard by the~~  
21 ~~court without a jury.~~

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

24           **26.1-21-21. ~~Fund may reinsure risks - Premium on reinsurance~~Reinsurance.**

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

30           **SECTION 14. AMENDMENT.** Section 26.1-21-23 of the North Dakota Century Code is  
31 amended and reenacted as follows:

1        **26.1-21-23. Public official may furnish private bond -- Premiums payable from public-**  
2 **moneys only to fund**Additional bond coverage.

3        1. If a bond or bond coverage for a public employee or public official is canceled under  
4 section 26.1-21-19, the public official or public employee may purchase a bond from  
5 an authorized surety company for a coverage amount determined by the office. The  
6 public official or public employee may not use public funds to pay for the bond.

7        2. In lieu of the bond provided for in this chapter, a public officer or public employee may  
8 furnish~~secure~~ a bond issued by a duly~~from an~~ authorized surety company in~~an~~ for a  
9 coverage amount determined by the~~commissioner, but an officer or board of the state~~  
10 or of any political subdivision may not pay for the surety bond out of any public  
11 fund~~s~~office. The public official or public employee may not use public funds to pay for  
12 the bond.

13        3. A state agency or political subdivision may purchase a bond from an authorized surety  
14 company to provide coverage in addition to the bond provided by the fund.

15        4. Evidence of a bond purchased under this section must be filed with the  
16 commissioner~~office.~~

17        **SECTION 15. REPEAL.** Sections 26.1-21-03, 26.1-21-08, 26.1-21-09, 26.1-21-13,  
18 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  
19 Code are repealed.