

CHAPTER 26.1-21 STATE BONDING FUND

26.1-21-01. Definitions.

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. "Political subdivision" means a county, township, park district, school district, city, and 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. "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 an officer or employee of an international peace garden. "Public employee" does not include an individual employed by an occupational and professional board or commission under title 43 or by the state bar association.
6. "Public official" means an elected or appointed officer or deputy of a state agency or a political subdivision, except for an officer of an occupational and professional board or commission under title 43 or of the state bar association.
7. "State agency" means a state board, bureau, commission, department, agency, industry, and institution and the international peace garden.

26.1-21-02. State bonding fund - Management by commissioner.

A fund must be maintained as a fund for the bonding of public employees and public officials. All assessments, interest, profits on investments, and all other income collected under this chapter must be paid into the fund. The commissioner shall manage the fund.

26.1-21-03. Commissioner may employ or contract for assistants - Continuing appropriation.

The commissioner may employ assistants or contract for the services of assistants from the North Dakota insurance reserve fund as may be necessary to operate the state bonding fund. Moneys in the reserve fund of the state bonding fund are appropriated to the commissioner on a continuing basis for the purpose of employing or contracting for services as provided under this section.

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

The attorney general shall act as attorney for the commissioner in any proceeding to which the commissioner is a party on behalf of the fund.

26.1-21-05. Investment of fund.

Investment of the fund is under the supervision of the state investment board in accordance with chapter 21-10.

26.1-21-06. Condition of bond created by chapter - Limitation.

Unless otherwise provided, the bond provided under this chapter is a blanket bond. The blanket bond is a fidelity bond. The blanket bond is conditioned on the public employee or public official, as principal, rendering a true account of all moneys and property possessed as a public

employee or public official, and delivering the money or the property as required by law. The provisions of this chapter and of any statute requiring a bond constitute the bond of each public official and public employee for the purposes of any law of this state requiring the bond and constitute the entire contract between the fund and a state agency or a political subdivision as the obligee for the bond.

26.1-21-07. Coverage.

The amount of coverage afforded to each state agency or political subdivision must be determined by the commissioner based upon the amount of money or property handled and the opportunity for defalcation but the amount must at least equal the amount of money or property actually handled or ten thousand dollars, whichever is less. The coverage may be greater than but not less than the amount required by law or determined under law for a position. The coverage for a state legislative or judicial branch agency, however, may be determined by the legislative council or supreme court, respectively. Notwithstanding any other provision of law, the commissioner may issue bonds in such amounts as the commissioner determines necessary to carry out the purposes of the fund and, in determining the amount of coverage to be offered, the commissioner may consider the reserves necessary to pay the bonds and for all other necessary costs or expenses to carry out the purposes of the fund.

26.1-21-08. Review of coverage by auditor.

When conducting an audit examination of a state agency or political subdivision, the auditor may evaluate the blanket bond coverage and, if necessary, the auditor may include recommendations for changes in the amount of that coverage in the auditor's report.

26.1-21-09. Premiums - Amount to whom paid - Minimum.

The commissioner shall determine the premium for a blanket bond. Each state agency and political subdivision shall pay the premium in advance to the fund and the premiums collected must be kept in the fund. The minimum premium for each bond must be two dollars and fifty cents per public employee per year. Payments must be made for one year or for a longer term as prescribed by the commissioner. The premiums referred to in this section must be waived until the reserve fund of the state bonding fund has been depleted below the sum of two million dollars. The collection of premiums must be resumed on the bonds, at the rates provided under this section, whenever the reserve fund is depleted below the sum of two million dollars. The premiums must continue to be collected until the reserve fund reaches a total of three million dollars, at which time all premiums must again be waived until the reserve fund has been depleted below the sum of two million dollars.

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

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

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

1. Each state agency and each political subdivision shall apply to be bonded in the fund no less often than on a biennial basis or when a change in coverage is requested, whichever occurs first. Unless an application is denied within sixty days from the date it is received by the commissioner, the application will be deemed approved and bond coverage in force. If a bond is in the discretion of the state agency or political

subdivision and a bond is not requested, the state agency or political subdivision is exempt from this section.

2. The application must include a requested amount of bond coverage based on the amount of money and property handled and the opportunity for defalcation and any other condition imposed by law and list twenty-five percent of the money in control of the public 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 information requested by the commissioner 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.

26.1-21-10.1. State employee - Defense.

Repealed by S.L. 1997, ch. 286, § 11.

26.1-21-10.2. State employee defense - Expenses withdrawn by attorney general.

Repealed by S.L. 1997, ch. 286, § 11.

26.1-21-11. Default of public employees or public officials - Limitation on filing of claims against fund.

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 against the fund. 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.

26.1-21-12. Commissioner to notify state auditor of default of public employee or public official - Duty of state auditor.

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

26.1-21-13. Audit of claims against state bonding fund - Register of claims.

All liability claims against the fund must be audited by the commissioner, and such audit must be approved by the attorney general. The commissioner has the authority to prescribe the forms upon which claims must be presented and may administer oaths and examine witnesses in connection with claims presented to the commissioner. If the commissioner, with the approval of the attorney general, finds a claim or any part thereof to be a valid, just, and proper charge against the fund, the commissioner shall make and file an order to that effect and state therein the amount allowed upon the claim. A brief description of every claim filed against the fund must be entered by the commissioner in a register provided for that purpose showing the name of the claimant, the amount and character of the claim, the action taken upon the claim, and the date when such action was taken.

26.1-21-14. Filing claim is condition precedent to bringing action - Failure to act is disallowance.

An action may not be maintained against the fund upon a claim until the claim has been presented for allowance as provided in this chapter and the commissioner 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.

26.1-21-15. Limitation of time for bringing action against the fund - Interest - Limitation on time for fund liability.

An action may not be maintained against the fund upon any claim unless the action is commenced within one year after filing of the claim with the commissioner. Interest on the claim runs from the date of filing the claim with the commissioner. 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 filing the claim with the commissioner.

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

26.1-21-17. Allowed liability claims payable from fund - Administrative expenses - Methods of payment.

A claim allowed against the fund must be paid upon warrants drawn upon the state treasurer against the fund. The warrant must be prepared by the office of management and budget pursuant to the directions of the commissioner. Payments for administrative expenses of the state bonding fund must be made from the reserve fund of the state bonding fund or must be made within the limitations of legislative appropriations upon warrant-checks prepared by the office of management and budget after the approval of vouchers by the commissioner.

26.1-21-18. Commissioner may make examinations - Request for accounting - Reporting defaulting official to governor.

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

26.1-21-19. Cancellation of liability of fund - When permitted - Effect.

After due investigation, the commissioner may cancel the liability of the fund for the acts of any public employee or public official. The cancellation takes effect thirty days after written

notice. If a public official's or public employee's bond is canceled, the public official or public employee may secure at personal expense a bond executed by a duly authorized surety company in an amount determined by the commissioner. Evidence of a surety bond purchased under this section must be filed with the commissioner.

26.1-21-20. Notice of cancellation - Right to appeal from cancellation - Procedure.

The commissioner shall notify the public employee or public official immediately by registered or certified mail when the public employee's or public official's bond, or coverage under a blanket bond, is ordered canceled, and the public employee or public official shall have twenty days after the receipt of such notice within which to take an appeal from the decision of the commissioner to the district court of the judicial district in which the public employee or public official resides. The court shall hear such appeal at a day to be fixed by the judge thereof not less than ten days nor more than thirty days after the filing of the appeal with the clerk. Notice of such appeal must be served by the appellant upon the commissioner. The case must be tried by the court without a jury.

26.1-21-21. Fund may reinsure risks - Premium on reinsurance.

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

26.1-21-22. Publication of statement of fund - Biennial report.

The commissioner, on or about December first in each odd-numbered year, shall publish in four newspapers of general circulation within the state a copy of the statement of the commissioner's work and of the condition of the fund during the two preceding fiscal years. The commissioner shall include this statement in the biennial report submitted in accordance with section 54-06-04.

26.1-21-23. Public official may furnish private bond - Premiums payable from public moneys only to fund.

In lieu of the bond provided for in this chapter, a public officer or public employee may furnish a bond issued by a duly authorized surety company in an amount determined by the commissioner, but an officer or board of the state or of any political subdivision may not pay for the surety bond out of any public funds. Evidence of a bond purchased under this section must be filed with the commissioner.

26.1-21-24. State agency or political subdivision may purchase bond in addition to fund bond.

Nothing in this chapter prohibits a state agency or political subdivision from purchasing a bond issued by a duly authorized surety company in addition to the bond provided by the fund. A state agency or political subdivision that purchases an additional bond shall file evidence of that bond with the commissioner.