



North Dakota Legislative Council

Prepared for the Government Finance Committee
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ADMINISTRATION OF THE STATE FIRE AND TORNADO FUND AND THE STATE BONDING FUND STUDY - BACKGROUND MEMORANDUM

Section 63 of Senate Bill No. 2015 (2023) provides the Legislative Management consider studying the feasibility and desirability of changing administration of the state fire and tornado fund and the state bonding fund from the Insurance Commissioner to the Director of the Office of Management and Budget (OMB). The study is to be conducted in collaboration with the Insurance Commissioner and the Director of OMB. The study must include an analysis of the statutory changes necessary to facilitate OMB's administration of the fund. The Legislative Management assigned the study to the Government Finance Committee.

STATE FIRE AND TORNADO FUND

The state fire and tornado fund was created in 1919 to insure political subdivisions and state agencies against losses to public buildings and permanent fixtures. The fund is established in North Dakota Century Code Chapter 26.1-22. Section 12 of Article X of the Constitution of North Dakota provides a continuing appropriation for the payment of losses from the state fire and tornado fund. Funding for administrative expenses was appropriated from the fund by the Legislative Assembly each biennium until the 2019-21 biennium when Section 26.1-22-03 was amended in Senate Bill No. 2010 (2019) to provide continuing appropriation authority from the reserve balance within the fund to the Insurance Commissioner to pay contractual fund administration costs and any necessary expenses. Section 26.1-22-14 requires a minimum fund balance of \$12 million and authorizes the Insurance Commissioner to increase the assessment on policies to maintain the minimum fund balance.

Pursuant to Sections 26.1-22-04 and 21-10-06, the state fire and tornado fund is invested by the State Investment Board (SIB). As reported by the Retirement and Investment Office (RIO), the fund had a balance of \$18.3 million on June 30, 2023, and had an annualized net investment return of 4.06 percent for the 5-year period ended June 30, 2023. The fund is invested in global equities (35 percent), global fixed income (55 percent), and cash (10 percent). An analysis of the state fire and tornado fund with more detailed information regarding revenues and expenditures is attached as [Appendix A](#).

STATE BONDING FUND

The state bonding fund was created in 1915 to provide bond coverage of public employees. The state bonding fund is managed by the Insurance Commissioner, and the amount of coverage provided to each state agency is determined by the Insurance Commissioner based on the amount of money and property handled by the agency and the opportunity for default. The fund is established in Chapter 26.1-21. Section 12 of Article X of the Constitution of North Dakota provides a continuing appropriation for the payment of losses from the state bonding fund. Pursuant to Section 26.1-21-09 the premium is \$2.50 per employee per year. If the balance of the fund is less than \$2 million, premiums are assessed until the balance of the fund is \$3 million at which point the premiums are no longer assessed unless the balance of the fund decreases below \$2 million. No premiums have been charged, possibly since 1953, because the bonding fund's balance has exceeded the minimum level of \$2 million established by the Legislative Assembly. Funding for administrative expenses was appropriated from the fund by the Legislative Assembly each biennium until the 2019-21 biennium when Section 26.1-21-03 was amended in Senate Bill No. 2010 (2019) to provide continuing appropriation authority from the reserve balance in the state bonding fund to the Insurance Commissioner to pay contractual fund administration costs.

Pursuant to Sections 26.1-21-05 and 21-10-06, the state bonding fund is invested by SIB. As reported by RIO, the fund had a balance of \$3.7 million on June 30, 2023, and had an annualized net investment return of 1.48 percent for the 5-year period ended June 30, 2023. The fund is invested in global fixed income (55 percent) and cash (45 percent). An analysis of the state bonding fund with more detailed information regarding revenues and expenditures is attached as [Appendix B](#).

OTHER SIMILAR FUNDS

Risk Management Fund

The North Dakota Supreme Court abolished the doctrine of sovereign immunity in September 1994, and as a result, the Legislative Assembly passed the Tort Claims Act in Senate Bill No. 2080 (1995) to create a risk management fund for claims against the state. As introduced, the bill provided for the Insurance Commissioner to administer the risk management fund; however, the bill was amended by the House Appropriations Committee to change the administration of the fund from the Insurance Commissioner to the Director of OMB. Based on the testimony for the bill, the administration was changed to the Director of OMB because of OMB's role in overseeing the state's finances and coordinating activities with all state agencies. As approved, the bill appropriated \$1,207,000 to OMB for the administration of the fund, including \$254,000 for 2 full-time equivalent (FTE) positions, \$135,000 for operating expenses, and \$818,000 for claims and legal services.

The risk management fund is established in Section 32-12.2-07, and OMB is responsible for administering the fund. The fund includes continuing appropriation authority for OMB to pay claims, and OMB may assess premiums to state agencies to provide adequate funding for the claims and administrative expenses. Funding for the administration of the risk management fund, including funding for FTE positions, is appropriated from the fund by the Legislative Assembly as a part of OMB's biennial budget.

The State Investment Board invests the fund pursuant to Sections 32-12.2-07 and 21-10-06. The fund had a balance of \$4.3 million on June 30, 2023, and had an annualized net investment return of 4.36 percent for the 5-year period ended June 30, 2023, as reported by RIO. The fund is invested in global equities (30 percent), global fixed income (65 percent), and cash (5 percent).

Workforce Safety and Insurance Fund

The Workforce Safety and Insurance (WSI) fund is administered by WSI to pay claims to injured workers. The fund is established in Chapter 65-04, and WSI has a continuing appropriation to pay compensation to injured employees or to pay death claims pursuant to Section 12 of Article X of the Constitution of North Dakota. Employers are assessed premiums as determined by WSI to provide adequate funding for the claims and the operations of the agency. Funding for the agency's operations is appropriated from the fund by the Legislative Assembly each biennium.

The State Investment Board invests the fund pursuant to Sections 65-04-31 and 21-10-06. The fund had a balance of \$2.07 billion on June 30, 2023, and had an annualized net investment return of 3.39 percent for the 5-year period ended June 30, 2023, as reported by RIO. The fund is invested in global equities (20 percent), global fixed income (62 percent), real assets (17 percent), and cash (1 percent).

Petroleum Tank Release Compensation Fund

The petroleum tank release compensation fund is administered by the Department of Environmental Quality in consultation with the Petroleum Release Compensation Board to pay claims resulting from petroleum spills or leaks from storage tanks. The fund was administered by the Insurance Commissioner until the administration was transferred with the creation of the Department of Environmental Quality in Senate Bill No. 2327 (2017). Chapter 23.1-12 provides for the remediation of petroleum releases, including the establishment of the fund in Section 23.1-12-01. Pursuant to Section 23.1-12-29, the department has a continuing appropriation from the fund to provide reimbursements for remediation of petroleum releases, but funding for the administrative expenses is appropriated from the fund by the Legislative Assembly.

The State Investment Board invests the fund pursuant to Sections 23.1-12-30 and 21-10-06. The fund had a balance of \$5.9 million on June 30, 2023, and had an annualized net investment return of 1.50 percent for the 5-year period ended June 30, 2023, as reported by RIO. The fund is invested in global fixed income (50 percent) and cash (50 percent).

PROPOSED STUDY PLAN

The following is a proposed study plan for the committee's consideration:

1. Receive information from the Insurance Commissioner regarding the current administration of the state fire and tornado fund and the state bonding fund.
2. Receive information from the Insurance Commissioner and Director of OMB regarding best practices for fund administration and examples of similar funds in other states.

3. Receive comments from the Insurance Commissioner and the Director of OMB regarding the feasibility and desirability of changing the administration of the state fire and tornado fund and the state bonding fund from the Insurance Commissioner to the Director of OMB.
4. Receive comments from other interested persons regarding the study.
5. Develop recommendations and any bill drafts necessary to implement the recommendations.
6. Prepare a final report for submission to the Legislative Management.

ATTACH:2