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ELIGIBILITY REQUIREMENTS FOR PARTICIPATION IN THE STATE BONDING FUND, STATE FIRE AND TORNADO FUND, RISK MANAGEMENT FUND, AND PUBLIC EMPLOYEES RETIREMENT SYSTEM

At the October 7, 1997, meeting of the Legislative Audit and Fiscal Review Committee, a request was made for information on the eligibility requirements for participation in the state bonding fund, state fire and tornado fund, risk management fund, and the Public Employees Retirement System. This memorandum will summarize the statutory provisions relating to the eligibility requirements of these funds.

STATE BONDING FUND

The statutory provisions relating to the state bonding fund are contained in North Dakota Century Code (NDCC) Chapter 26.1-21. The Century Code provides that the fund is to be maintained for the bonding of public employees and public officials. It also provides that upon application to the state bonding fund and upon approval by the Commissioner of Insurance, public employees and public officials of the state and each political subdivision are insured in the fund. The chapter provides that any person elected or appointed to office may furnish a bond issued by a duly authorized surety company, in lieu of the state bonding fund, but no officer or board of the state or of any political subdivision may pay for any such bond with public funds.

The eligibility requirements refer to public employees and public officials of the state and each political subdivision as being insured through the state bonding fund. Public employees, public officials, the state, and political subdivisions are defined as follows:

- Public employee is any person employed by the state or any of its political subdivisions, an officer or employee of a nonprofit organization under contract with the board of county commissioners or the governing body of a city to provide services and programs to senior citizens, an officer or employee of a water resource district, or an officer or employee of the International Peace Garden. Public employee specifically excludes a person employed by an occupational or professional board or commission under Title 43 or by the State Bar Association.

- Public official means any officer or deputy, either elected or appointed, of the state or any of its political subdivisions who is required to be bonded by any law of the state. Public official specifically excludes an officer of an occupational or professional board or commission under Title 43 or of the State Bar Association.
- State means state departments, agencies, industries, and institutions and an International Peace Garden.
- Political subdivision means all counties, townships, park districts, school districts, cities, and any other units of local government which are created either by statute or by the Constitution of North Dakota for local government or other public purposes.

Chapter 26.1-21 also provides for the bonding of agents appointed by a county auditor to distribute hunting and fishing licenses or stamps.

STATE FIRE AND TORNADO FUND

The statutory provisions relating to the state fire and tornado fund are contained in NDCC Chapter 26.1-22. The Century Code provides that the fund is to be maintained to insure the various state industries, political subdivisions, International Peace Garden, and winter show against loss to the public buildings, fixtures, and permanent contents therein and against indirect loss through fire, lightning, inherent explosion, windstorm, cyclone, tornado and hail, explosion, riot attending a strike, aircraft, smoke, and vehicles.

The eligibility requirements refer to the various state industries, political subdivisions, International Peace Garden, and winter show as being insured through the state fire and tornado fund. International Peace Garden, political subdivision, and winter show are defined as follows:

- International Peace Garden is defined as an entity located upon the international boundary line between the United States and Canada, used and maintained as a memorial to the long-existing relationship of peace and good will between the United States and Canada.

- Political subdivision is defined as all counties, townships, park districts, school districts, cities, and any other units of local government created either by statute or by the constitution for local government or other public purposes.
- Winter show is defined as an agricultural exhibition sponsored each year in March by a nonprofit corporation.

Unlike the state bonding fund, the statutory provisions relating to the state fire and tornado fund do not specifically exclude occupational or professional boards or commissions and the State Bar Association.

RISK MANAGEMENT FUND

Statutory provisions relating to the risk management fund are contained in NDCC Chapter 32-12.2. The Century Code provides that the state may only be held liable for money damages for an injury caused by the negligence or wrongful act or omission of a state employee acting within the employee's scope of employment under circumstances in which the employee would be personally liable to a claimant in accordance with the laws of this state.

Based on the definitions contained in Chapter 32-12.2, state includes agency, authority, board, body, branch, bureau, commission, committee, council, department, division, industry, institution, instrumentality, and office of the state. State employee includes every present or former officer or employee of the state or any person acting on behalf of the state in an official capacity, temporarily or permanently, with or without compensation. The chapter also defines state institution as the State Hospital, the Developmental Center at Westwood Park, State Penitentiary, Missouri River Correctional Center, North Dakota Youth Correctional Center, School for the Blind, School for the Deaf, and similar facilities providing care, custody, or treatment for individuals. The definition of a state employee specifically excludes independent contractor.

PUBLIC EMPLOYEES RETIREMENT SYSTEM

The statutory provisions relating to the Public Employees Retirement System are contained in NDCC Chapter 54-52. The Century Code provides that all departments, boards, institutions, commissions, or agencies of the state of North Dakota, the Garrison Diversion Conservancy District, district health units, Supreme Court, and the district courts shall participate in a retirement system which provides for the payment of benefits to state employees or to their beneficiaries. The Century Code also provides that a political subdivision may, on behalf of its permanent employees, and permanent noncertified employees in the case of school districts, enter into agreements with the retirement board for the purpose of extending the benefits of the Public Employees Retirement System to those employees.

For purposes of the Public Employees Retirement System eligibility, the following definitions are used:

- Employee is any person employed by a governmental unit, whose compensation is paid out of the governmental unit's funds, or funds administered by a governmental unit, or paid by the federal government through any of its executive or administrative officials.
- Governmental unit refers to the state of North Dakota or a political subdivision thereof.
- Eligible employee is a permanent employee meeting all of the eligibility requirements and who is 18 years or more of age, including appointive and elective officials.

A temporary employee may elect, within 180 days of beginning employment to participate in the Public Employees Retirement System. The temporary employee shall pay monthly to the fund an amount equal to 8.12 percent times the temporary employee's monthly salary. In addition, the temporary employee shall pay an amount equal to one percent times the temporary employee's monthly salary to the retiree health benefit fund.