CHAPTER 26.1-22
STATE FIRE AND TORNADO FUND

26.1-22-01. Definitions.

In this chapter, unless the context otherwise requires:

1. "Fund" means the state fire and tornado fund.
2. "Indirect loss" means a loss in income or the additional expenses incurred because of a property loss.
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. "Permanent contents" refers only to such public property, either owned or leased, usually kept or used in or about public buildings insured in the fund, and to all public personal property usually kept or used in or about all buildings used for public purposes, or within one hundred feet [30.48 meters] of all such buildings, or while on sidewalks, streets, alleys, yards, detached platforms, and in or on railway cars. The term includes similar property owned by an international peace garden or a winter show. The term does not include automobiles, trucks, tractors, road machinery, or similar property used principally outside such buildings.
5. "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.
6. "Replacement cost" is the cost to replace a building or its permanent contents with a similar structure of like materials or a similar product at current prices.
7. "Winter show" means an agricultural exhibition sponsored each year in March by a nonprofit corporation.

26.1-22-02. State fire and tornado fund under management of commissioner - Purpose of fund.

The commissioner shall manage the fund. The fund must be maintained as a fund to insure the various state industries, the various political subdivisions, any international peace garden, and any winter show against loss to the public buildings, or buildings owned by an international peace garden or a winter show, and 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. At the option of the insured, the fund may insure against other risks of direct physical loss and indirect loss from those risks. All moneys collected under this chapter must be paid into the fund for use only for the purposes provided for in this chapter.

26.1-22-02.1. Insurance against indirect losses.

The commissioner shall provide, upon request of an entity insured with the fund, coverage by the fund for an indirect loss incurred because of a loss arising out of a peril insured against by the fund.

26.1-22-03. Employment of assistants - Expenditures from fund - Continuing appropriation.

To carry out this chapter, the commissioner may utilize any information on file in the state fire marshal's department and any of the employees of the commissioner and the commissioner may employ necessary assistants or contract for services of assistants from the North Dakota insurance reserve fund and may incur necessary expenses. All expenditures made for these purposes, other than services contracted and paid for by moneys from the fund and any necessary expenses paid from moneys from the reserve balance within the fund, must remain within the limits of legislative appropriations and must be paid out of the fund upon warrants

prepared by the office of management and budget drawn upon the state treasurer after the approval of vouchers by the office of the budget. Moneys from the reserve balance within the fund are appropriated to the commissioner on a continuing basis for the purposes of this section.

26.1-22-03.1. North Dakota insurance reserve fund - Producers - Commission.

The North Dakota insurance reserve fund may use the services of producers licensed under this title to assist policyholders. Any commission paid to a producer under this section must be paid out of the premium income of the fund and must be assessed against the policyholders that benefit from the producer.

26.1-22-04. Investment of fund.

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

26.1-22-05. Public, international peace garden, and winter show buildings insurable in fund.

The public buildings and fixtures and permanent contents therein belonging to the state, the various state industries except the state mill and elevator association if the association exercises the option provided in section 26.1-22-10, and the political subdivisions must, and the buildings and fixtures and the permanent contents therein belonging to an international peace garden or a winter show may, be insured under this chapter. No officer or agent of the state or of any political subdivision, and no person having charge of any public buildings belonging to the state, any state industry, or any political subdivision, may pay out any public moneys or funds on account of any insurance against loss by fire, lightning, inherent explosion, windstorm, cyclone, tornado and hail, explosion, riot attending a strike, aircraft, smoke, vehicles, or any other risks of direct physical loss, or contract in any manner for, or incur any indebtedness against, the state or any political subdivision on account of any such insurance upon any of the buildings or fixtures and permanent contents therein belonging to the state or any political subdivision, except in the manner provided in this chapter.

26.1-22-06. Commissioner to adopt guidelines on insurable values.

The commissioner shall adopt guidelines to be used by state agencies, departments, offices, officers, boards, commissions, international peace gardens, and winter shows for the purpose of determining insurable values of state-owned property and property belonging to an international peace garden or a winter show for insurance coverage as authorized by law. The commissioner shall adopt guidelines in determining insurable values to assist state agencies and institutions and political subdivisions in determining whether to select indirect loss coverage. Notwithstanding any other provision of this chapter, the expenses for necessary loss prevention inspections and rating inspections for the purpose of determining the proper premium rate to be applied to the property insured by the fund must be paid out of the fund.

26.1-22-06.1. Replacement cost appraisal required on state-owned property.

Once every six years each state agency and institution shall obtain from the fund a replacement cost appraisal on all buildings and fixtures and permanent contents under its control. The fund shall determine the manner of conducting the appraisal. Annually, except for any year an appraisal is conducted, the agency or institution shall adjust the appraisal amount in the manner authorized by the fund.

26.1-22-07. Certain property of state and of Bank of North Dakota excepted.

Repealed by S.L. 1989, ch. 357, § 3.

26.1-22-08. Townships and school districts have option as to insurance on certain property.

This chapter does not apply to the property of any township or school district located outside of the incorporated limits of a city unless the clerk of the township or business manager of the school district, at the direction of the board of township supervisors or the school board, files with the commissioner a written application for insurance and a request that the township or school district come under this chapter. To be effective, the application must be approved in writing by the commissioner.

26.1-22-09. Buildings to be reported to commissioner.

In each odd-numbered year, or upon application for insurance, the state board of higher education, and each officer, department, or agent of the state and of any industry thereof having in charge any public building belonging to the state, each county auditor, city auditor, township clerk, and school district business manager, as the case may be, the agent for an international peace garden, and the agent for a winter show, if applicable, shall report to the commissioner the insurable value of each public building, or of each building owned by an international peace garden or a winter show with the exception of buildings insured by private insurance companies, and of the fixtures and permanent contents therein, with the exception of fixtures and permanent contents insured by private insurance companies, belonging to the state, political subdivision, an international peace garden, or a winter show, and shall supply such other information as may be required by the commissioner on forms provided by the commissioner.

26.1-22-10. Commissioner to provide insurance on buildings and personal property.

Upon application the commissioner shall provide for insurance against loss by fire, lightning, inherent explosion, windstorm, cyclone, tornado and hail, explosions, riot attending a strike, aircraft, smoke, vehicles, or any other risks of direct physical loss, all in the manner and subject to the restrictions of the standard fire insurance policy and standard endorsement, and no other hazards, in the fund, on all buildings owned by the state, state industries, political subdivisions, international peace gardens, and winter shows, and the fixtures and permanent contents in such buildings, to the extent of not to exceed the insurable value of such property, as the value is agreed to between the commissioner and the officer or board having control of such property, or, in case of disagreement, by approval through arbitration. The commissioner may allow personal property to be insured on a blanket basis.

All buildings and the contents of the buildings owned by the state mill and elevator association, in lieu of coverage under this chapter, may, at the option of the industrial commission, be insured by private insurance companies licensed to do business in this state, against at least all the types of hazards insured against by the fund. If the industrial commission exercises the option provided in this section, the commission shall seek competitive sealed bids, shall invite the fund to submit a bid, and may reject any or all bids received.

All public buildings owned by a political subdivision, in lieu of coverage provided for in this section, may at the option of the governing body of the political subdivision be insured on the basis of competitive sealed bids, through the fund which must be invited to submit a sealed bid or private insurance companies licensed to do business in this state, against damage resulting from hazards, which include those types of hazards that may be insured against by the fund. The governing body may reject any or all such bids.

All public libraries owned by the state or political subdivisions may, in addition to the coverage provided for in this section, be covered against damage through vandalism. If this coverage cannot be extended to the public libraries situated within this state, the libraries may contract for this coverage with private insurance companies; provided, that this coverage meets the recommendations of the insurance code of the American library association.

26.1-22-10.1. State-owned property - Insured at replacement cost.

State-owned buildings constructed after 1939 and fixtures and permanent contents insured under this chapter must be insured at replacement cost or for another value in accordance with underwriting guidelines adopted by the commissioner.

26.1-22-10.2. School district - Leased property - Insurability.
Expired under S.L. 2015, ch. 155, § 6.

26.1-22-11. Arbitration.
In case the commissioner and the board or officer having charge of any property are unable to agree upon the insurable value of the property, the value must be determined by a recognized appraisal company at the expense of the state industry, political subdivision, an international peace garden, or a winter show owning the property, if the appraisal company arbitrator meets with the approval of both the commissioner and the board or officer concerned. If they are unable to agree on an arbitrator, then the matter must be submitted to arbitration by a board of arbitration selected as provided by this section. The commissioner and the board or officer in charge of the property each shall select one competent, disinterested contractor, architect, experienced appraiser, appraisal company, or one of the members of such board, and the two so chosen shall select a third person of similar qualification. The three arbitrators shall proceed to determine the insurable value of the property, and the decision of the arbitrators, or a majority of them, must be given in writing to the commissioner and the board or officials concerned and is binding upon both parties. Each party to the dispute shall pay the expense and charges of the arbitrator chosen by the party, and the expense and the charges of the third arbitrator must be borne equally by both parties to the dispute. The decision by the board of arbitration must be made within thirty days from the time the matter is submitted to it. Until the commissioner and board or officer in charge have agreed, or in case of dispute, until the decision of the appraisal company or arbitrators, the property must continue to be valued in the same amount as previously, or in case of new buildings or property, in the amount fixed by the commissioner. The same procedure must be followed in case of new construction or in any increase or decrease in values.

26.1-22-12. Policy fee.
Repealed by S.L. 1989, ch. 357, § 3.

26.1-22-13. Reserve balance - Payment of loss.
All assessments, interest, and profits on investments and all other income of the fund must be added to a reserve balance within the fund. All losses incurred, including loss adjustment expenses and operating expenses appropriated by the legislative assembly, must be paid from the reserve balance in the manner provided by law.

26.1-22-14. Assessments and reporting of premiums and losses.
If the reserve balance is less than twelve million dollars, the commissioner shall determine the amount of money necessary to bring the reserve balance up to twelve million dollars. The commissioner shall then levy an assessment against every policy in force with the fund. The assessment must be computed as follows:

The eighty percent or ninety percent coinsurance rate established by the insurance services office for each insured property for which that rate may be applicable, and the full rate established for policies providing coverage against indirect losses and for properties to which the eighty percent or ninety percent coinsurance rate is not applicable under the rules of the insurance services office, must be applied to the amount of insurance provided in each policy and the result of the application of the rate to the amount of insurance sets the tentative assessment to be made against the policy. The total of all tentative assessments must then be ascertained. The percentage of the assessment necessary to restore the reserve balance to the sum of twelve million dollars must then be computed and collected on each policy; provided, that until the reserve balance reaches twelve million dollars, the assessment must be in an amount determined by the commissioner but may not exceed sixty percent of the rates set by the insurance services office for insured property unless the reserve balance is depleted below three million dollars. In case of a fractional percentage the next higher whole percent must be used in such computation.

The commissioner shall submit, not later than December thirty-first of every five-year period, all data concerning premiums written and losses incurred during the previous five-year period ending June thirtieth to the insurance services office so that the experience of the fund may be included in the computation of rates to apply to the classes of business written by the fund.

26.1-22-15. Collection of premiums and assessments.

The commissioner, as soon as possible after providing for insurance coverage against any indirect loss or loss of property belonging to the state, a political subdivision, an international peace garden, or a winter show, shall certify to the insured the amount of premium or assessment due. The certificate must give the name of the insured, the amount of insurance written thereon, and the amount of the premium or assessment, and if applicable, the location and description of the insured property. The proper officer shall remit to the commissioner the amount of the premium or assessment within sixty days after the date of the certification. The commissioner shall deposit the premiums and assessments with the state treasurer to the credit of the fund. If the premiums or assessments are not paid within sixty days after the date on which they are certified, they shall bear interest at the rate of six percent per annum and collection thereof may be enforced by appropriate action. The attorney general and the state's attorney of the relevant county shall bring appropriate actions to enforce the collections of the premium and assessment upon request of the commissioner. Payment of the premiums or assessments certified pursuant to this section may be made by any state department, officer, board, institution, or agency and by any political subdivision, out of any available funds, notwithstanding that no specific appropriation or tax levy has been made therefor.

26.1-22-16. Rejection of certain risks.

If the commissioner finds that any risk is unreasonably hazardous, the commissioner may require the board or officer having control of the risk to make any improvements or changes necessary to remove the extra hazard. If the board or agency fails to make the improvements or changes within six months after the demand by the commissioner, the commissioner may cancel the insurance on the renewal upon thirty days' notice. No cancellation may be made by the commissioner without the approval of the industrial commission. If a dispute arises between the commissioner and the board or official having control of the risk, either as to the insurability thereof or as to the compliance by the board or officer with the requirements of the commissioner, the dispute must be submitted to a board of arbitration as provided in section 26.1-22-11 and the decision of the board of arbitration is binding on both parties. If the insurance on any risk is canceled as provided in this section, the board or officer in charge of the risk may procure insurance from any authorized insurance company, and the premium is a proper charge against the state, state industry, or political subdivision owning the property.

26.1-22-17. Loss - How paid.

All losses occasioned by the perils insured against under this chapter must be paid out of the fund in an amount not exceeding the amount of the insurance upon any particular risk. The loss upon any building or property insured in the fund, whether totally destroyed or partially damaged by reason of the perils, must be adjusted by the commissioner or a duly authorized adjuster or adjusting company. All necessary loss adjustment expenses must be included as a component of the loss and be paid out of the fund. Immediately upon the happening or occasion of any such loss or damage, the insured shall notify the commissioner. The notification must be in the manner required by the commissioner and must provide a description of the property, the amount of insurance carried, the probable amount of loss or damage, and the probable cause of loss or damage. The insured may not disturb the property except as provided in the policy until the commissioner or the commissioner's agent has adjusted the loss or has given notice that the information on which the adjustment is to be made has been secured. Allowances for loss and damage must be paid out of the fund upon warrants drawn by the office of management and budget upon the state treasurer against the fund after the submission of a voucher prepared by the commissioner to the office of management and budget specifying the amount to be paid and the payee to whom the warrants must be drawn. However, if at any time due to a

catastrophe or disaster, or a succession of catastrophes or disasters, the reserve balance has been depleted below two million dollars, the commissioner may, with the approval of the industrial commission, issue premium anticipation certificates in an amount sufficient to bring the reserve balance up to two million dollars. The premium anticipation certificates must be issued for a period of from ten to twenty years, as determined by the commissioner with the approval of the industrial commission, and the interest and principal must be paid and retired by assessments levied on all policies in force with the fund. To retire these premium anticipation certificates, the commissioner shall levy a special assessment on every policy in force with the fund; however, the total of all assessments and premiums provided for in section 26.1-22-14 may not exceed the full rate as developed by an advisory organization at the direction of the commissioner. Any state department may invest its funds in the purchase of the premium anticipation certificates.

26.1-22-18. Arbitration of loss.

In case an agreement as to the amount of loss insured against under this chapter cannot be arrived at between the commissioner or the commissioner's representative and the person or board representing the state, political subdivision, an international peace garden, or a winter show owning the building or property, the loss may be arbitrated as provided by law.

26.1-22-19. Repair or replacement of destroyed buildings.

If the commissioner and the insured agree that the fund shall repair or replace the building destroyed or damaged, no repairs, rebuilding, or replacement may be undertaken by the commissioner or any employees of the commissioner, but if they are deemed necessary or proper in any case, they must be performed by independent contractors. The cost of any repairs, rebuilding, or replacements may not exceed the amount of the insurance carried upon the particular risk.

26.1-22-20. Replacement of policies.

Repealed by S.L. 1989, ch. 357, § 3.

26.1-22-21. Insurance required - Excess loss reinsurance.

The commissioner shall procure and shall keep in force excess loss reinsurance naming the fund as the reinsured. The excess loss reinsurance must be in an amount and for a period determined by the commissioner to be sufficient for the fund. The reinsurance contract must reimburse the fund for losses incurred by the fund under policies issued by the fund and arising out of each occurrence of a covered cause of loss and include at least a sixty-day cancellation notice.

The cost of the excess loss reinsurance must be paid out of the premium income of the fund and must be assessed against the policyholders that benefit from the reinsurance. Excess loss reinsurance must be written only by a company or companies authorized to do business within this state. The contract must be countersigned by a licensed North Dakota resident insurance producer. On the last Monday in June prior to the expiration of the contract, the commissioner, with the approval of the industrial commission, shall contract for the excess loss reinsurance with the company or group of companies submitting the lowest and best bid for the period commencing on the ensuing first day of August. The commissioner, with the approval of the industrial commission, may disregard this section after the commissioner and the commission have studied the available bids for the reinsurance required by this section.

26.1-22-21.1. Insurance broker of record.

The fund may contract for insurance broker of record services to assist in procuring excess loss reinsurance by soliciting bids. The fund may award a contract to an insurance broker licensed by, and in good standing with, the state to serve the interests of the fund and its policyholders under this title. The contract must be for the period of a biennium. The fund may renew, renegotiate, or rebid a contract based upon contract performance, cost, and the best interests of the fund and policyholders.

26.1-22-22. Commissioner may waive subrogation rights during construction.

The commissioner may, in the commissioner's discretion, waive any right of the fund to recover for damage sustained by any structure as a result of fire or explosion caused by a contractor, its employees or agents, in the performance of a contract for the alteration of, or the construction of an addition to, a building insured in the fund.