

SENATE APPROPRIATIONS COMMITTEE

FISCAL NOTE

BILL NO.

House Bill 2477

PRINTER'S NO.

4471

AMOUNT

No Fiscal Impact

FUND

General

DATE INTRODUCED

April 29, 2010

PRIME SPONSOR

Representative Fabrizio

HISTORY OF BILLReferred to LOCAL GOVERNMENT, April 29, 2010Reported as amended, June 9, 2010

First consideration, June 9, 2010

Re-committed to RULES, June 9, 2010Re-reported as committed, June 14, 2010Re-committed to APPROPRIATIONS, June 14, 2010Re-reported as amended, June 22, 2010

Second consideration, June 24, 2010

Third consideration and final passage, June 28, 2010 (197-0)

In the Senate

Referred to LOCAL GOVERNMENT, July 2, 2010Reported as amended, Oct. 12, 2010

First consideration, Oct. 12, 2010

Re-referred to APPROPRIATIONS, Oct. 12, 2010**DESCRIPTION AND PURPOSE OF BILL**

House Bill 2477 makes omnibus amendments to The County Code (Act 130 of 1955) as follows:

- Amends the Third Class Counties Convention Center Authorities (Alternative Provision) to further provide for the composition and quorum requirements of the governing body.
- Subjects the official records and papers of coroners to the Right-to-Know Law and to exclude autopsy reports.
- Permits the abolishment of the office of jury commissioner in certain second class A counties.

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- Permits the abolishment of the office of jury commissioner in counties of the third through eighth class.
- Establishes the County Officer and Employee Fiscal Security Act as a subchapter in The County Code.

Convention Center Authorities

House Bill 2477 amends section 2399.61 of The County Code to increase the size of the governing body of certain Third Class County Convention Center Authorities from nine members to eleven members. Consequently, the legislation also increases the quorum required from five to six members. House Bill 2477 changes the appointing authorities as follows:

- Seven members shall be appointed by the county council, or its equivalent body, of the county in which the convention center facilities are located. For the first seven members, the terms are as follows:
 - 1 one-year term
 - 2 two-year terms
 - 2 three-year terms
 - 2 four-year terms
 - Thereafter, all terms will be for four years. In all cases, the beginning of the term shall be January 1 after the appointment.
- Two members shall be appointed by the mayor, or equivalent, of the city in which the convention center is located.
 - For the first two members, the terms shall be two years and four years, respectively.
 - Thereafter, the terms of the members shall be four years.
- Two members shall be appointed by the Governor with the advice and consent of a majority of the members of the Senate.

The legislation shall apply as follows to a city, which, on the bill's effective date, has established a Third Class County Convention Center:

- The bill will not affect the term of a member serving on the effective date of the bill
- The reduction of appointments from three to two members shall apply as follows:

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- To an office which is vacant on the effective date of the bill.
- If no vacancy, to a member who, on the effective date, is serving past the expiration date of the member's term until a successor is appointed.
- If neither of the above, the first member whose term expires after the effective date of the bill.

House Bill 2477 shall apply as follows to a county, which, on the bill's effective date, has established a Third Class County Convention Center:

- The bill will not affect the term of a member serving on the effective date of the bill and the member shall complete the term to which the member is appointed as follows:
 - One term shall expire December 31, 2010.
 - One term shall expire December 31, 2012.
 - Two terms shall expire December 31, 2013.
- The seven appointments made by the county shall be as follows:
 - Three initial appointments shall be made after the effective date for the following terms:
 - One term to expire December 31, 2010.
 - Two terms to expire December 31, 2011.
 - The remaining four appointments shall be made to fill the vacancies resulting from the expiration of the terms.

The legislation eliminates provisions relating to county-only appointed governing boards.

Coroners Right-to-Know Law

House Bill 2477 provides that access to a coroner's records be subject to the act of February 14, 2008 (P.L. 6 No. 3), known as the Right-to-Know Law. The Right-to-Know Law contains a specific exception for autopsy reports, which means that autopsy reports would not be considered a public record.

Although a lower court held that an autopsy report was not included as a public record, the Supreme Court in January, 2009 held that an autopsy report was a public document under provisions of the Coroner's Act that predate the Right-to-Know Law.

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Office of Jury Commissioner

The governing body of a county of the second class A having a population under the 2000 Federal Decennial Census in excess of 595,000 residents, but less than 625,000 residents, may adopt a resolution abolishing the office of jury commissioner. In addition, the office of jury commissioner may be abolished in counties of the third through eighth class.

The legislation requires that a county review its procedures to ensure that lists of potential jurors are a representative cross-section of the community prior to adopting such resolution. Upon approval of the resolution, the office of jury commissioner shall expire at the completion of the current jury commissioners' terms of office. The resolution shall not be passed in any year in which the office of jury commissioner is on the ballot.

County Officer and Employee Fiscal Security Act

The Local Government Commission sponsored the "County Officer and Employee Fiscal Security Act", and the following description of the legislation relies on the Commission's summary.

The "County Officer and Employee Fiscal Security Act" will provide a means of protection in the event of a loss of money or other property by county officers or employees due to a breach of fiduciary duty, a failure to perform duties faithfully or to account properly for all money and property received by virtue of the office or employment, or because of fraudulent or dishonest acts, including, but not limited to, embezzlement, theft, forgery, similar acts of dishonesty, or fraud. It would permit the county commissioners, or the legislative policy-making bodies in home rule counties, to set the amount of security, in most instances, and to select the form of the security (i.e., bond, blanket bond, or crime-fidelity insurance) that will be used to protect counties in the event of loss by a county official or employee acting in a fiduciary capacity with regard to county or Commonwealth funds or property.

The "County Officer and Employee Fiscal Security Act" would apply to counties of the second through eighth class, including counties of these classes which have adopted a home rule charter or an optional plan. It is intended to modernize the bonding requirements for county officials and employees and to offer optional alternative means for counties to protect against the loss of money and other property by county officers or employees. This proposal would not apply to the bond provisions of Local Tax Collection Law as they apply to county treasurers when acting as tax collectors.

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It should be noted that the amounts of the bonds stipulated for various county officials as provided in law have not been increased in approximately 50 years and, for the most part, are woefully insufficient.

Security coverage, in HB 2477, encompasses security for the following:

- Specified county officers and employees, including those identified in current law as required to be bonded.
- Other county officers and employees, including the deputies and other appointees who are required to receive, account for, or hold any money and other property by virtue of their office or employment.
- County officers and employees acting as agents of the Commonwealth or the judicial branch.

Additional coverage is also provided for and this may be supplemental to, or part of, the security coverage. Additional coverage is intended to provide adequate insurance indemnifying against the loss of money and property through robbery, burglary, and larceny, consistent with existing law (e.g. Section 431 of The County Code).

A county is granted the power to decide whether it wants to provide security using individual bonds, blanket bonds, crime-fidelity insurance, or a combination thereof. Statutorily imposed forms are eliminated but counties may consult with interested parties, to the form of the security.

Statutory amounts of security established in The County Code and the Second Class County Code or elsewhere are repealed. A county governing body shall annually determine the amount of the required security and may utilize a risk manager to do so. Statutory amounts or approvals are eliminated but, in any case in which a Commonwealth agency is explicitly authorized by law to approve the amount of a bond, it will continue to have the right to do so with regard to the bond or other security being provided under this proposal.

The county is to acquire the required security and pay the premiums and costs associated with it; but a Commonwealth agency will remain subject to any independent duty, imposed by law, to purchase its own insurance coverage.

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The county is to be primarily liable for a claim for the loss of money and property which a county officer or employee is required to receive, account for, or hold by virtue of his or her office or employment, to the extent that the loss is or could have been the subject of required security, but only to the extent that recovery of the loss cannot be obtained from other insurance or bond protection provided by the Commonwealth agency or any other person or entity asserting a claim. Moreover, a county's rights to reimbursement, subrogation, indemnification, or restitution are preserved.

When a county is obtaining security for persons acting as agents of the Commonwealth or the judicial branch, the right of consultation is provided to the Commonwealth or the judicial branch with regard to the security provided. This legislation supersedes any other requirement for a county officer to provide a bond or other security to a Commonwealth agency or to have the bond or security filed with that agency.

Documents evidencing required security are to be recorded with the recorder of deeds and no tax, fee, or other charge shall be imposed for this recording. After recording, the documents shall be returned to the chief clerk or other similar person in a home rule or an optional plan county who shall maintain custody. No additional filing is required except for filing a copy of the recorded documents with the Department of State in satisfaction of section 809 of "The Administrative Code of 1929," requiring the department to file bonds of county officers in addition to issuing commissions to elected officials. Notwithstanding the provision of any other law, no tax, fee, or other charge shall be imposed as a result of the issuance of the commissions to elected county officials, and no fee may be made for the recording of required security documents or commissions.

Identified sections of The County Code and the Second Class County Code are being specifically repealed by this proposal, and there is also an inconsistent repealer. Compliance with the provisions of this legislation will serve as compliance with any other provision of law requiring bonding for county officers and employees, except in limited cases in which a Commonwealth agency is, by law, given the authority to approve the amount of a bond or insurance.

A county may utilize the act's provisions after its effective date and a county shall have in place required security in accordance with this act prior to the time that any elected county official takes office after the municipal election next following the effective date of this act. Bonds and insurance which, on the effective date of this act, cover county officers and employees, shall remain in force and effect until required security is purchased.

The act would take effect immediately.

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FISCAL IMPACT:

It is presumed there would be no costs to the Commonwealth and very little or no costs to county governments. Increasing the composition of a certain Third Class County Convention Center Authority from nine to eleven members will have minimal cost. Board members are not compensated; however, they may be reimbursed for actual expenses incurred while conducting official business.

To the extent that counties opt to abolish the office of jury commissioner, a county may realize cost savings resulting from elimination of the position.

The County Commissioners Association of Pennsylvania has indicated that House Bill 2477, with regard to the "County Officer and Employee Fiscal Security Act", should not cost counties more money because many, if not all counties, purchase crime insurance at limits much higher than the antiquated bond levels presently set forth in The County Code.