

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 834 Session of 2011

INTRODUCED BY EICHELBERGER, ROBBINS, ERICKSON, WOZNIAK AND BLAKE, MARCH 14, 2011

AS AMENDED ON THIRD CONSIDERATION, OCTOBER 17, 2011

AN ACT

1 Amending Title 16 (Counties) of the Pennsylvania Consolidated
2 Statutes, adding provisions for required fiscal security
3 through bonding, blanket bonding and insuring of elected and
4 appointed county officers and employees; providing for
5 determining the form, amount and payment of premiums for and
6 the filing and recording of the required security and for the
7 subsequent issuance of official commissions; and making
8 related repeals.

9 TABLE OF CONTENTS

10 TITLE 16

11 COUNTIES

12 PART I. PRELIMINARY PROVISIONS (Reserved)

13 PART II. CREATION, ALTERATION AND FUNCTIONS (Reserved)

14 PART III. GOVERNMENT AND ADMINISTRATION

15 Subpart A. General Provisions

16 Chapter 11. General Provisions

17 Subchapter A. (Reserved)

18 Subchapter B. Required Fiscal Security for Officers and

19 Employees

20 § 1121. Short title and scope of subchapter.

21 § 1122. Definitions.

- 1 § 1123. Required security.  
2 § 1124. Official security and officers.  
3 § 1125. Other county officers and employees.  
4 § 1126. County officers and employees acting as agents.  
5 § 1127. Bonds or blanket bond as security coverage.  
6 § 1128. Insurance as security coverage.  
7 § 1129. Form of required security.  
8 § 1130. Amount of coverage.  
9 § 1131. Custody and filing of required security documents.  
10 § 1132. Payment of premiums and commissions on collections.  
11 § 1133. Other requirements, references and approvals.

12 The General Assembly of the Commonwealth of Pennsylvania  
13 hereby enacts as follows:

14 Section 1. Title 16 of the Pennsylvania Consolidated  
15 Statutes is amended by adding parts to read:

16 PART I

17 PRELIMINARY PROVISIONS (Reserved)

18 PART II

19 CREATION, ALTERATION AND FUNCTIONS (Reserved)

20 PART III

21 GOVERNMENT AND ADMINISTRATION

22 Subpart

23 A. General Provisions

24 CHAPTER 11

25 GENERAL PROVISIONS

26 Subchapter

27 A. (Reserved)

28 B. Required Fiscal Security for Officers and Employees

29 Sec.

30 1121. Short title and scope of subchapter.

1 1122. Definitions.

2 1123. Required security.

3 1124. Official security and officers.

4 1125. Other county officers and employees.

5 1126. County officers and employees acting as agents.

6 1127. Bonds or blanket bond as security coverage.

7 1128. Insurance as security coverage.

8 1129. Form of required security.

9 1130. Amount of coverage.

10 1131. Custody and filing of required security documents.

11 1132. Payment of premiums and commissions on collections.

12 1133. Other requirements, references and approvals.

13 § 1121. Short title and scope of subchapter.

14 (a) Short title of subchapter.--This subchapter shall be  
15 known and may be cited as the County Officer and Employee Fiscal  
16 Security Act.

17 (b) Scope of subchapter.--This subchapter applies to  
18 security coverage and additional coverage in the form of bonds,  
19 blanket bonds or insurance, protecting against events of loss of  
20 money or property as a result of misconduct by officers and  
21 employees in counties of the second class, second class A, third  
22 class, fourth class, fifth class, sixth class, seventh class or  
23 eighth class, including counties of these classes which have  
24 adopted a home rule charter or an optional plan.

25 (c) Inapplicability.--This subchapter shall not apply to  
26 bonds of county treasurers acting as tax collectors as provided  
27 in section 4 of the act of May 25, 1945 (P.L.1050, No.394),  
28 known as the Local Tax Collection Law.

29 § 1122. Definitions.

30 The following words and phrases when used in this subchapter

1 shall have the meanings given to them in this section unless the  
2 context clearly indicates otherwise:

3 "Additional coverage." Insurance that covers each county  
4 officer or employee who is required to receive, account for or ←  
5 hold any money or property by virtue of his or her office or  
6 employment and which, at a minimum, indemnifies the county  
7 against the loss of money and property through robbery, burglary  
8 and larceny AT A MINIMUM FOR THE LOSS OF MONEY OR PROPERTY ←  
9 THROUGH ROBBERY, BURGLARY AND LARCENY COMMITTED BY PARTIES OTHER  
10 THAN OFFICERS OR EMPLOYEES REQUIRED TO RECEIVE OR HOLD MONEY.

11 "Blanket bond." Security coverage in the form of a bond for  
12 county officers and employees as follows:

- 13 (1) for county officers and employees as a comprehensive  
14 group;  
15 (2) for a group of named county officers and employees;  
16 or  
17 (3) for county officers and employees in scheduled  
18 positions.

19 "Bond." Security coverage under which a surety guarantees  
20 the performance of a duty by a county officer or employee in  
21 compliance with this subchapter.

22 "County." A county of the second class, second class A,  
23 third class, fourth class, fifth class, sixth class, seventh  
24 class or eighth class, including counties of these classes which  
25 have adopted or may adopt a home rule charter or an optional  
26 plan.

27 "County officers and employees." Elected and appointed  
28 county officials, the deputies and other appointees of county  
29 elected and appointed officials and county employees, whether  
30 acting on behalf of the county or as agents of a Commonwealth

1 agency or a governing authority, who are required to receive,  
2 account for or hold any money or property by virtue of their  
3 office or employment.

4 "Crime-fidelity insurance." Insurance that is endorsed with  
5 faithful performance of duty coverage and which insures, at a  
6 minimum, against events of loss of money or other property,  
7 resulting from one or more fraudulent or dishonest acts,  
8 including, but not limited to, embezzlement, theft, forgery,  
9 similar acts of dishonesty or fraud by a county officer or  
10 employee acting alone or in collusion with others, or from a  
11 breach of fiduciary duty or a failure of a county officer or  
12 employee to perform faithfully the officer's or employee's  
13 duties or to account properly for all money and property  
14 received, held or required to be accounted for OR HELD, by ←  
15 virtue of the officer's or employee's office or employment.

16 "Governing authority." Includes:

17 (1) The Supreme Court.

18 (2) Any agency or unit of the unified judicial system  
19 exercising a power or performing a duty under 42 Pa.C.S. §  
20 1721 (relating to delegation of powers).

21 "Governing body." The county board of commissioners or the  
22 body vested with the legislative authority of the county in  
23 counties which have adopted a home rule charter or an optional  
24 plan.

25 "Home rule charter." A charter adopted under 53 Pa.C.S. Pt.  
26 III Subpt. E (relating to home rule and optional plan  
27 government) or its predecessor, the former act of April 13, 1972  
28 (P.L.184, No.62), known as the Home Rule Charter and Optional  
29 Plans Law, or Article XXXI-C of the act of July 28, 1953  
30 (P.L.723, No.230), known as the Second Class County Code.

1 "Money." Coin or currency of the United States or of any  
2 other country, travelers checks, personal checks, bank checks  
3 and bank notes in current use and having a face value, money  
4 orders and securities.

5 "Official security." Security on behalf of a county officer  
6 to provide protection from events of loss or misconduct when the  
7 officer fails to faithfully perform the duties of the office.

8 "Optional plan." An optional plan adopted under 53 Pa.C.S.  
9 Pt. III Subpt. E (relating to home rule and optional plan  
10 government) or its predecessor, the former act of April 13, 1972  
11 (P.L.184, No.62), known as the Home Rule Charter and Optional  
12 Plans Law.

13 "Required security." Security coverage and additional  
14 coverage provided in compliance with this subchapter.

15 "Securities." All negotiable and nonnegotiable instruments  
16 or contracts representing either money or other property,  
17 including revenue and other stamps in current use, tokens and  
18 tickets and evidences of debt issued in connection with credit  
19 or charge cards, which cards are not issued by the county.

20 "Security coverage." A bond, a blanket bond or a crime-  
21 fidelity insurance policy, which is endorsed with faithful  
22 performance of duty coverage, provided in compliance with this  
23 subchapter for the purpose of protecting against the loss of  
24 money and other property sustained as a result of one or more  
25 fraudulent or dishonest acts, including, but not limited to,  
26 embezzlement, theft, forgery, similar acts of dishonesty or  
27 fraud by a county officer or employee acting alone or in  
28 collusion with others or from a breach of fiduciary duty or a  
29 failure of a county officer or employee to perform faithfully  
30 the officer's or employee's duties or to account properly for

1 all money and property received by virtue of the officer's or  
2 employee's position or employment.

3 § 1123. Required security.

4 (a) In general.--A county shall obtain security coverage and  
5 additional coverage for county officers and employees in  
6 accordance with this subchapter.

7 (b) Security coverage.--Security coverage shall be provided  
8 in accordance with the following:

9 (1) Section 1124 (relating to official security and  
10 officers).

11 (2) Section 1125 (relating to other county officers and  
12 employees).

13 (3) Section 1126 (relating to county officers and  
14 employees acting as agents).

15 (c) Additional coverage.--Supplemental to or as part of the  
16 security coverage to be provided in accordance with this

17 subchapter, THE COUNTY SHALL OBTAIN additional coverage in the

18 form of adequate insurance indemnifying IT against the loss of

19 money and property through robbery, burglary and larceny, shall

20 be provided for each county officer or employee who is required

21 to receive, account for or hold any money and other property by

22 virtue of the officer's or employee's office or employment BY

23 PARTIES OTHER THAN THOSE REQUIRED TO OBTAIN SECURITY IN

24 ACCORDANCE WITH THIS CHAPTER.

25 (d) Primary liability.--

26 (1) Except as provided in paragraph (2), the county

27 shall be primarily liable for a claim for the loss of money

28 and property which a county officer or employee is required

29 to receive, account for or hold by virtue of the officer's or

30 employee's office or employment, to the extent that the loss

1 is or could have been the subject of required security under  
2 this subchapter.

3 (2) The county shall not be primarily liable for a claim  
4 for the loss of money and property under paragraph (1) to the  
5 extent that recovery of the loss can be obtained from other  
6 insurance or bond protection provided by the Commonwealth  
7 agency or any other person or entity asserting a claim.

8 (3) With regard to the loss of money or property,  
9 nothing in this subchapter shall be deemed to restrict or  
10 diminish a county's right to reimbursement or subrogation or  
11 to limit any right the county may have to be indemnified or  
12 receive restitution for the loss.

13 § 1124. Official security and officers.

14 (a) Official security.--Each county shall obtain official  
15 security in the form of bonds, a blanket bond or a crime-  
16 fidelity insurance policy, which is endorsed with faithful  
17 performance of duty coverage, ~~on behalf~~ THAT PROTECTS THE COUNTY ←  
18 FROM LOSSES CAUSED BY ACTS of the officers set forth in  
19 subsection (b) or the equivalent officers in home rule or  
20 optional plans counties, whether elected, appointed or appointed  
21 to fill a vacancy, before those officers begin their official  
22 duties.

23 (b) Officers.--The following are the officers or equivalent  
24 officers in home rule or optional plans counties upon whose  
25 behalf official security shall be obtained in accordance with  
26 subsection (a):

27 (1) Each county commissioner.

28 (2) The chief clerk of the county commissioners.

29 (3) The controller.

30 (4) The county treasurer.

1           (5) The prothonotary of the court of common pleas.

2           (6) The sheriff.

3           (7) The coroner.

4           (8) The clerk of the courts of the court of common  
5 pleas.

6           (9) The clerk of the orphans' court division of the  
7 court of common pleas.

8           (10) The recorder of deeds.

9           (11) The register of wills.

10           (12) Probation and parole officers, if required by order  
11 of court to obtain official security.

12           (13) The fire marshal and deputy fire marshals, if  
13 required by law to obtain official security.

14           (14) The secretary of the board of health and the health  
15 officer in a county in which the secretary is required by law  
16 to obtain official security.

17 § 1125. Other county officers and employees.

18           A county shall obtain security coverage with faithful  
19 performance of duty coverage for all county officers and  
20 employees who are not subject to section 1124 (relating to  
21 official security and officers), including deputies and other  
22 appointees in each county office, who are required to receive,  
23 account for or hold any money and other property by virtue of  
24 their office or employment.

25 § 1126. County officers and employees acting as agents.

26           Each county shall obtain security coverage for county  
27 officers and employees acting as agents of a Commonwealth agency  
28 or governing authority in accordance with this subchapter or any  
29 other law, regulation or rule requiring the posting of security  
30 in the form of a bond or otherwise.

1 § 1127. Bonds or blanket bond as security coverage.

2 (a) In general.--A county may comply with section 1123(b)  
3 (relating to required security) by providing bonds or a blanket  
4 bond in accordance with the following:

5 (1) The bond or blanket bond shall be joint and several,  
6 with one or more surety companies authorized to do business  
7 in this Commonwealth and licensed by the Insurance  
8 Commissioner.

9 (2) The bond or blanket bond shall be conditioned upon  
10 each of the following:

11 (i) The faithful performance of all duties required  
12 of the person holding the office or position.

13 (ii) The just and faithful use, accounting or  
14 payment over, according to law, of all moneys and  
15 balances and other property, which is ~~required to be~~ ←  
16 ~~received, accounted for~~ RECEIVED or held by the officer ←  
17 or employee by virtue of the officer's or employee's  
18 office or employment whether on behalf of the county, the  
19 Commonwealth, a political subdivision or any other  
20 person.

21 (iii) The delivery to the successor in office of all  
22 books, papers, documents or other official things, whole,  
23 safe and undefaced, held in right of the office.

24 (3) A bond or blanket bond shall be taken in the name of  
25 the county and, in case of a breach of any of the conditions  
26 thereof by the acts or neglect of a principal on the bond,  
27 shall be for the use of the county, the Commonwealth, a  
28 political subdivision or any other person as that person's  
29 interest shall otherwise appear.

30 (4) The county, the Commonwealth, a political



1 subdivision or other interested persons LISTED OBLIGEEES OR  
2 INSUREDS, AS THE CASE MAY BE, may sue upon the bond in its  
3 name or for its own use. Acts of the General Assembly  
4 pertaining to actions and limitations of actions upon  
5 official bonds given to the Commonwealth shall apply to the  
6 bonds provided for in this subchapter just as if they were  
7 given to the Commonwealth, except as otherwise specifically  
8 provided in this subchapter.

9 (b) Combined offices.--In counties in which one or more of  
10 the county offices set forth in section 1124(b) (relating to  
11 official security and officers) are combined, if officers are  
12 covered by individual bonds, a single bond covering the combined  
13 offices shall suffice for the officer holding the combined  
14 offices.

15 § 1128. Insurance as security coverage.

16 A county may comply with section 1123(b) (relating to  
17 required security) by providing crime-fidelity insurance for  
18 county officers or employees in accordance with this subchapter.

19 § 1129. Form of required security.

20 The form and contents of a bond, a blanket bond or insurance  
21 obtained in compliance with this subchapter shall be approved by  
22 the governing body of the county, after review by the county  
23 solicitor and consultation with the county risk manager, if any.  
24 In cases in which required security is being provided for a  
25 county officer or employee who is acting as an agent for a  
26 Commonwealth agency or the governing authority, the Commonwealth  
27 agency or the governing authority may review and comment on the  
28 form of the required security. The governing body may refer to  
29 sample forms that may be made available by the Department of  
30 State in the approval process.

1 § 1130. Amount of coverage.

2 (a) Governing body.--The governing body shall establish a  
3 procedure pursuant to which the governing body shall annually  
4 determine the form and amount of required security that will be  
5 reasonably sufficient to protect against the risks of loss in  
6 compliance with this subchapter.

7 (b) Risk manager.--The governing body may appoint a risk  
8 manager who, at the request of the governing body, shall compile  
9 and submit information relevant to the determination of an  
10 amount of required security under subsection (a).

11 (c) Consultation.-- To determine the amount of security for  
12 a county officer or employee who is acting as an agent for a  
13 Commonwealth agency or governing authority, the governing body  
14 may, or the risk manager shall, if directed by the governing  
15 body, provide written notice to the secretary or head of the  
16 Commonwealth agency or the governing authority. The Commonwealth  
17 agency or governing authority may provide input concerning the  
18 amount of security it believes is reasonably sufficient to  
19 protect against the risks of loss required to comply with this  
20 subchapter. Nothing in this subchapter shall impair the right of  
21 a Commonwealth agency or governing authority from approving the  
22 amount of required security, if it is explicitly authorized by  
23 law to approve the amount of a bond or other security of a  
24 county officer or employee acting as its agent.

25 § 1131. Custody and filing of required security documents.

26 (a) Custody.--The governing body shall direct the chief  
27 clerk or equivalent officer in a home rule or optional plan  
28 county to present the documents evidencing required security  
29 obtained in accordance with this subchapter to the recorder of  
30 deeds or equivalent officer in a home rule or optional plan

1 county for recording. No tax, fee or other charge shall be  
2 imposed for the recording of documents in compliance with this  
3 section. Following the recording, the documents shall be  
4 returned to the chief clerk or equivalent officer in a home rule  
5 or optional plan county, who shall maintain the custody of these  
6 documents on behalf of the governing body.

7 (b) Department of State filing.--

8 (1) In compliance with section 809 of the act of April  
9 9, 1929 (P.L.177, No.175), known as The Administrative Code  
10 of 1929, it shall be sufficient for a copy of the recorded  
11 documents evidencing the required security for county  
12 officers to be filed with the Department of State in  
13 accordance with deadlines established by the department.

14 (2) No other filing or approvals, except as provided in  
15 section 1133(c)(2) (relating to other requirements,  
16 references and approvals) of documents evidencing the  
17 required security for county officers, except that required  
18 in accordance with paragraph (1), shall be required as a  
19 condition for the issuance of commissions to elected county  
20 officials by the Department of State.

21 (3) Notwithstanding the provision of any other law, no  
22 tax, fee or other charge shall be imposed as a result of the  
23 issuance of commissions to elected county officials, and no  
24 fee may be imposed for the recording of required security  
25 documents or commissions.

26 (c) Copies.--If requested by the Commonwealth agency or  
27 governing authority on whose behalf a county officer or employee  
28 is acting as an agent, a copy of recorded documents evidencing  
29 the required security shall be provided by the chief clerk or  
30 the equivalent officer in a home rule or optional plans county

1 to the Commonwealth agency or governing authority. No charge or  
2 fee shall be imposed for any copy provided in accordance with  
3 this subsection.

4 (d) Filing by governing body.--The governing body shall have  
5 the duty to file documents as required by this section.

6 (e) Retention of documents.--Documents evidencing required  
7 security shall be held by the custodian thereof for the longer  
8 of the following periods:

9 (1) For at least one year after the officer's term of  
10 office or employee's period of employment and, in the case of  
11 a county officer or employee who is acting as an agent for a  
12 Commonwealth agency or governing authority, for at least one  
13 year after the settlement of accounts with the Commonwealth  
14 agency or the governing authority.

15 (2) For the period of time required by the act of August  
16 14, 1963 (P.L.839, No.407), entitled "An act creating a  
17 county records committee; imposing powers and duties upon it;  
18 authorizing the Pennsylvania Historical and Museum Commission  
19 to assist and cooperate with it; defining county records; and  
20 authorizing the disposition of certain county records by  
21 county officers in counties of the second to eighth class,"  
22 or the rules and regulations adopted pursuant thereto.

23 (f) Evidence.--A copy of original documents evidencing  
24 required security, certified as true and correct by the  
25 custodian thereof, or a copy of the recorded documents  
26 evidencing required security, certified as true and correct by  
27 the recorder of deeds, shall be competent evidence thereof in  
28 any judicial proceeding, in the same manner as the original  
29 would be if produced and offered in evidence.

30 (g) Sufficiency of filing and recording.--Notwithstanding

1 any other provision of law, it shall be sufficient to file and  
2 record documents evidencing required security in accordance with  
3 this subchapter without further acknowledgment, filing or  
4 recording of these documents with any other county officer or  
5 with any other Commonwealth agency, except as required by this  
6 subchapter.

7 § 1132. Payment of premiums and commissions on collections.

8 (a) Premiums and costs.--The premiums and costs for all  
9 forms of required security for county officials and employees  
10 shall be paid by the county. The requirement of this subchapter  
11 that a county acquire and pay the premiums and costs for  
12 required security shall not relieve a Commonwealth agency on  
13 whose behalf a county officer or employee is acting as an agent  
14 from an obligation, imposed by law, to procure insurance or  
15 bonding protection.

16 (b) Commissions on collections.--Nothing in this subchapter  
17 shall affect the right, provided for in any other law, of a  
18 county officer or employee to retain a commission, for use of  
19 the county, on amounts collected or transmitted as agent for a  
20 Commonwealth agency. Notwithstanding the right to retain  
21 commissions in accordance with this paragraph, no county officer  
22 or employee shall be entitled to retain any additional sums from  
23 amounts collected for or to be transmitted to the Commonwealth  
24 agency for the purpose of paying premiums or costs related to  
25 the acquisition of required security.

26 § 1133. Other requirements, references and approvals.

27 (a) Compliance .--A requirement in another law, regulation  
28 or rule that a bond be provided by a county officer or employee  
29 to secure the faithful performance of duty or to act as the  
30 agent of a Commonwealth agency or governing authority may be

1 satisfied by including this obligation within the coverage of  
2 required security supplied in accordance with this subchapter.

3 (b) Reference to bonds.--Reference to bonds of county  
4 officers and employees in any other law shall be construed and  
5 read together with this subchapter, and if a conflict exists  
6 between this subchapter and the reference to bonds of county  
7 officers and employees in any other law, the provisions of this  
8 subchapter shall prevail.

9 (c) Other approvals.--Notwithstanding any other provision of  
10 law, the following shall apply to required security in the form  
11 of a bond, a blanket bond or insurance:

12 (1) Except as provided in paragraph (2), when required  
13 security is obtained in compliance with this subchapter, it  
14 shall not require the approval of any Commonwealth agency or  
15 the Governor as to form, content or amount.

16 (2) If any other law explicitly authorizes a  
17 Commonwealth agency or the Governor to approve the amount of  
18 a bond or other security of a county officer or employee, the  
19 amount of required security under this subchapter shall be  
20 subject to approval by the Commonwealth agency or the  
21 Governor, which approval shall not be unreasonably withheld.

22 Section 2. Repeals are as follows:

23 (1) The General Assembly declares that the repeals under  
24 paragraph (2) are necessary to effectuate the amendment or  
25 addition of 16 Pa.C.S. Ch. 11 Subch. B.

26 (2) The following acts and parts of acts are repealed:

27 (i) Sections 420, 421, 422, 423, 424, 425, 426, 427,  
28 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 802,  
29 803, 804 of the act of August 9, 1955 (P.L.323, No.130),  
30 known as The County Code.

1           (ii) Sections 420, 421, 422, 423, 424, 425, 426,  
2           427, 428, 429, 430, 431, 802, 803, 804, 1261 and 1262 of  
3           the act of July 28, 1953 (P.L.723, No.230), known as the  
4           Second Class County Code.

5           (iii) As much of section 3103 of the Second Class  
6           County Code, as reads as follows: "The bond of the fire  
7           marshal shall be in the sum of ten thousand dollars  
8           (\$10,000) and the bonds of the deputy fire marshals shall  
9           be in the sum of five thousand dollars (\$5000)."

10          (3) All acts and parts of acts are repealed insofar as  
11          they are inconsistent with this act.

12          Section 3. A county may, at any time after the effective  
13          date of this section, obtain required security in accordance  
14          with 16 Pa.C.S. Ch.11 Subch. B. A county shall have in place  
15          required security in accordance with 16 Pa.C.S. Ch.11 Subch. B  
16          prior to the time that any elected county official takes office  
17          after the municipal election next following the effective date  
18          of this section. Bonds and insurance, which, on the effective  
19          date of this section, cover county officers and employees, shall  
20          remain in force and effect until required security is purchased.

21          Section 4. This act shall take effect immediately.