

SENATE APPROPRIATIONS COMMITTEE

FISCAL NOTE

BILL NO. Senate Bill 834

PRINTER'S NO. 852

AMOUNT

No Fiscal Impact

FUND

General Fund

DATE INTRODUCED

March 14, 2011

PRIME SPONSOR

Senator Eichelberger

HISTORY OF BILL

Referred to LOCAL GOVERNMENT, March 14, 2011

Reported as committed, April 12, 2011

First consideration, April 12, 2011

Re-referred to APPROPRIATIONS, May 3, 2011

Re-reported as committed, Sept. 26, 2011

DESCRIPTION AND PURPOSE OF BILL

Senate Bill 834 amends Title 16 (Counties) by establishing the County Officer and Employee Fiscal Security Act as a subchapter in The County Code.

The Local Government Commission sponsored Senate Bill 834, and the following description of the legislation is based 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 SB 834, 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 or the Governor 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.

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.

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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 or the Governor is, by law, given the authority to approve the amount of a bond or insurance.

The act would take effect immediately. 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.

FISCAL IMPACT:

It is presumed there would be no costs to the Commonwealth. Senate Bill 834 updates the fiscal security requirements of counties. The County Commissioners Association of Pennsylvania has indicated that Senate Bill 834 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.