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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 1438 Session of  
2011

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INTRODUCED BY GINGRICH, ROSS, CREIGHTON, FREEMAN AND  
SANTARSIERO, MAY 3, 2011

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REFERRED TO COMMITTEE ON LOCAL GOVERNMENT, MAY 3, 2011

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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.

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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.

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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.

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

11 (1) for county officers and employees as a comprehensive  
12 group;

13 (2) for a group of named county officers and employees;  
14 or

15 (3) for county officers and employees in scheduled  
16 positions.

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

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

25 "County officers and employees." Elected and appointed  
26 county officials, the deputies and other appointees of county  
27 elected and appointed officials and county employees, whether  
28 acting on behalf of the county or as agents of a Commonwealth  
29 agency or a governing authority, who are required to receive,  
30 account for or hold any money or property by virtue of their

1 office or employment.

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

14 "Governing authority." Includes:

15 (1) The Supreme Court.

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

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

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

29 "Money." Coin or currency of the United States or of any  
30 other country, travelers checks, personal checks, bank checks

1 and bank notes in current use and having a face value, money  
2 orders and securities.

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

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

11 "Required security." Security coverage and additional  
12 coverage provided in compliance with this subchapter.

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

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

1 § 1123. Required security.

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

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

7 (1) Section 1124 (relating to official security and  
8 officers).

9 (2) Section 1125 (relating to other county officers and  
10 employees).

11 (3) Section 1126 (relating to county officers and  
12 employees acting as agents).

13 (c) Additional coverage.--Supplemental to or as part of the  
14 security coverage to be provided in accordance with this  
15 subchapter, additional coverage in the form of adequate  
16 insurance indemnifying against the loss of money and property  
17 through robbery, burglary and larceny, shall be provided for  
18 each county officer or employee who is required to receive,  
19 account for or hold any money and other property by virtue of  
20 the officer's or employee's office or employment.

21 (d) Primary liability.--

22 (1) Except as provided in paragraph (2), the county  
23 shall be primarily liable for a claim for the loss of money  
24 and property which a county officer or employee is required  
25 to receive, account for or hold by virtue of the officer's or  
26 employee's office or employment, to the extent that the loss  
27 is or could have been the subject of required security under  
28 this subchapter.

29 (2) The county shall not be primarily liable for a claim  
30 for the loss of money and property under paragraph (1) to the

1 extent that recovery of the loss can be obtained from other  
2 insurance or bond protection provided by the Commonwealth  
3 agency or any other person or entity asserting a claim.

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

9 § 1124. Official security and officers.

10 (a) Official security.--Each county shall obtain official  
11 security in the form of bonds, a blanket bond or a crime-  
12 fidelity insurance policy, which is endorsed with faithful  
13 performance of duty coverage, on behalf of the officers set  
14 forth in subsection (b) or the equivalent officers in home rule  
15 or optional plans counties, whether elected, appointed or  
16 appointed to fill a vacancy, before those officers begin their  
17 official duties.

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

22 (1) Each county commissioner.

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

24 (3) The controller.

25 (4) The county treasurer.

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

27 (6) The sheriff.

28 (7) The coroner.

29 (8) The clerk of the courts of the court of common  
30 pleas.



1           (9) The clerk of the orphans' court division of the  
2           court of common pleas.

3           (10) The recorder of deeds.

4           (11) The register of wills.

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

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

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

12 § 1125. Other county officers and employees.

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

20 § 1126. County officers and employees acting as agents.

21          Each county shall obtain security coverage for county  
22          officers and employees acting as agents of a Commonwealth agency  
23          or governing authority in accordance with this subchapter or any  
24          other law, regulation or rule requiring the posting of security  
25          in the form of a bond or otherwise.

26 § 1127. Bonds or blanket bond as security coverage.

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

30                 (1) The bond or blanket bond shall be joint and several,

1 with one or more surety companies authorized to do business  
2 in this Commonwealth and licensed by the Insurance  
3 Commissioner.

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

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

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

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

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

25 (4) The county, the Commonwealth, a political  
26 subdivision or other interested persons may sue upon the bond  
27 in its name or for its own use. Acts of the General Assembly  
28 pertaining to actions and limitations of actions upon  
29 official bonds given to the Commonwealth shall apply to the  
30 bonds provided for in this subchapter just as if they were

1 given to the Commonwealth, except as otherwise specifically  
2 provided in this subchapter.

3 (b) Combined offices.--In counties in which one or more of  
4 the county offices set forth in section 1124(b) (relating to  
5 official security and officers) are combined, if officers are  
6 covered by individual bonds, a single bond covering the combined  
7 offices shall suffice for the officer holding the combined  
8 offices.

9 § 1128. Insurance as security coverage.

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

13 § 1129. Form of required security.

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

25 § 1130. Amount of coverage.

26 (a) Governing body.--The governing body shall establish a  
27 procedure pursuant to which the governing body shall annually  
28 determine the form and amount of required security that will be  
29 reasonably sufficient to protect against the risks of loss in  
30 compliance with this subchapter.

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

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

19 § 1131. Custody and filing of required security documents.

20 (a) Custody.--The governing body shall direct the chief  
21 clerk or equivalent officer in a home rule or optional plan  
22 county to present the documents evidencing required security  
23 obtained in accordance with this subchapter to the recorder of  
24 deeds or equivalent officer in a home rule or optional plan  
25 county for recording. No tax, fee or other charge shall be  
26 imposed for the recording of documents in compliance with this  
27 section. Following the recording, the documents shall be  
28 returned to the chief clerk or equivalent officer in a home rule  
29 or optional plan county, who shall maintain the custody of these  
30 documents on behalf of the governing body.

1 (b) Department of State filing.--

2 (1) In compliance with section 809 of the act of April  
3 9, 1929 (P.L.177, No.175), known as The Administrative Code  
4 of 1929, it shall be sufficient for a copy of the recorded  
5 documents evidencing the required security for county  
6 officers to be filed with the Department of State in  
7 accordance with deadlines established by the department.

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

15 (3) Notwithstanding the provision of any other law, no  
16 tax, fee or other charge shall be imposed as a result of the  
17 issuance of commissions to elected county officials, and no  
18 fee may be imposed for the recording of required security  
19 documents or commissions.

20 (c) Copies.--If requested by the Commonwealth agency or  
21 governing authority on whose behalf a county officer or employee  
22 is acting as an agent, a copy of recorded documents evidencing  
23 the required security shall be provided by the chief clerk or  
24 the equivalent officer in a home rule or optional plans county  
25 to the Commonwealth agency or governing authority. No charge or  
26 fee shall be imposed for any copy provided in accordance with  
27 this subsection.

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

30 (e) Retention of documents.--Documents evidencing required

1 security shall be held by the custodian thereof for the longer  
2 of the following periods:

3 (1) For at least one year after the officer's term of  
4 office or employee's period of employment and, in the case of  
5 a county officer or employee who is acting as an agent for a  
6 Commonwealth agency or governing authority, for at least one  
7 year after the settlement of accounts with the Commonwealth  
8 agency or the governing authority.

9 (2) For the period of time required by the act of August  
10 14, 1963 (P.L.839, No.407), entitled "An act creating a  
11 county records committee; imposing powers and duties upon it;  
12 authorizing the Pennsylvania Historical and Museum Commission  
13 to assist and cooperate with it; defining county records; and  
14 authorizing the disposition of certain county records by  
15 county officers in counties of the second to eighth class,"  
16 or the rules and regulations adopted pursuant thereto.

17 (f) Evidence.--A copy of original documents evidencing  
18 required security, certified as true and correct by the  
19 custodian thereof, or a copy of the recorded documents  
20 evidencing required security, certified as true and correct by  
21 the recorder of deeds, shall be competent evidence thereof in  
22 any judicial proceeding, in the same manner as the original  
23 would be if produced and offered in evidence.

24 (g) Sufficiency of filing and recording.--Notwithstanding  
25 any other provision of law, it shall be sufficient to file and  
26 record documents evidencing required security in accordance with  
27 this subchapter without further acknowledgment, filing or  
28 recording of these documents with any other county officer or  
29 with any other Commonwealth agency, except as required by this  
30 subchapter.

1 § 1132. Payment of premiums and commissions on collections.

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

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

20 § 1133. Other requirements, references and approvals.

21 (a) Compliance .--A requirement in another law, regulation  
22 or rule that a bond be provided by a county officer or employee  
23 to secure the faithful performance of duty or to act as the  
24 agent of a Commonwealth agency or governing authority may be  
25 satisfied by including this obligation within the coverage of  
26 required security supplied in accordance with this subchapter.

27 (b) Reference to bonds.--Reference to bonds of county  
28 officers and employees in any other law shall be construed and  
29 read together with this subchapter, and if a conflict exists  
30 between this subchapter and the reference to bonds of county

1 officers and employees in any other law, the provisions of this  
2 subchapter shall prevail.

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

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

10 (2) If any other law explicitly authorizes a  
11 Commonwealth agency or the Governor to approve the amount of  
12 a bond or other security of a county officer or employee, the  
13 amount of required security under this subchapter shall be  
14 subject to approval by the Commonwealth agency or the  
15 Governor, which approval shall not be unreasonably withheld.

16 Section 2. Repeals are as follows:

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

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

21 (i) Sections 420, 421, 422, 423, 424, 425, 426, 427,  
22 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 802,  
23 803, 804 of the act of August 9, 1955 (P.L.323, No.130),  
24 known as The County Code.

25 (ii) Sections 420, 421, 422, 423, 424, 425, 426,  
26 427, 428, 429, 430, 431, 802, 803, 804, 1261 and 1262 of  
27 the act of July 28, 1953 (P.L.723, No.230), known as the  
28 Second Class County Code.

29 (iii) As much of section 3103 of the Second Class  
30 County Code, as reads as follows: "The bond of the fire



1 marshal shall be in the sum of ten thousand dollars  
2 (\$10,000) and the bonds of the deputy fire marshals shall  
3 be in the sum of five thousand dollars (\$5000)."

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

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

15 Section 4. This act shall take effect immediately.