

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1438 Session of 2011

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

AS REPORTED FROM COMMITTEE ON LOCAL GOVERNMENT, HOUSE OF REPRESENTATIVES, AS AMENDED, JUNE 14, 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.

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

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

17 PART I

18 PRELIMINARY PROVISIONS (Reserved)

19 PART II

20 CREATION, ALTERATION AND FUNCTIONS (Reserved)

21 PART III

22 GOVERNMENT AND ADMINISTRATION

23 Subpart

24 A. General Provisions

25 CHAPTER 11

26 GENERAL PROVISIONS

27 Subchapter

28 A. (Reserved)

29 B. Required Fiscal Security for Officers and Employees

30 Sec.

1 1121. Short title and scope of subchapter.
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11 1131. Custody and filing of required security documents.
12 1132. Payment of premiums and commissions on collections.
13 1133. Other requirements, references and approvals.
14 § 1121. Short title and scope of subchapter.

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

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

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

30 § 1122. Definitions.

1 The following words and phrases when used in this subchapter
2 shall have the meanings given to them in this section unless the
3 context clearly indicates otherwise:

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

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

14 (1) for county officers and employees as a comprehensive
15 group;

16 (2) for a group of named county officers and employees;
17 or

18 (3) for county officers and employees in scheduled
19 positions.

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

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

28 "County officers and employees." Elected and appointed
29 county officials, the deputies and other appointees of county
30 elected and appointed officials and county employees, whether

1 acting on behalf of the county or as agents of a Commonwealth
2 agency or a governing authority, who are required to receive,
3 account for or hold any money or property by virtue of their
4 office or employment.

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

17 "Governing authority." Includes:

18 (1) The Supreme Court.

19 (2) Any agency or unit of the unified judicial system
20 exercising a power or performing a duty under 42 Pa.C.S. §
21 1721 (relating to delegation of powers).

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

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

1 (P.L.723, No.230), known as the Second Class County Code.

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

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

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

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

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

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

1 the officer's or employee's duties or to account properly for
2 all money and property received by virtue of the officer's or
3 employee's position or employment.

4 § 1123. Required security.

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

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

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

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

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

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

18 subchapter, THE COUNTY SHALL OBTAIN additional coverage in the ←

19 form of adequate insurance indemnifying IT against the loss of ←

20 money and property through robbery, burglary and larceny, shall ←

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

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

23 virtue of the officer's or employee's office or employment BY ←

24 PARTIES OTHER THAN THOSE REQUIRED TO OBTAIN SECURITY IN

25 ACCORDANCE WITH THIS CHAPTER.

26 (d) Primary liability.--

27 (1) Except as provided in paragraph (2), the county
28 shall be primarily liable for a claim for the loss of money

29 and property which a county officer or employee is required

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

1 employee's office or employment, to the extent that the loss
2 is or could have been the subject of required security under
3 this subchapter.

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

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

14 § 1124. Official security and officers.

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

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

28 (1) Each county commissioner.

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

30 (3) The controller.

1 (4) The county treasurer.
2 (5) The prothonotary of the court of common pleas.
3 (6) The sheriff.
4 (7) The coroner.
5 (8) The clerk of the courts of the court of common
6 pleas.

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

9 (10) The recorder of deeds.

10 (11) The register of wills.

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

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

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

18 § 1125. Other county officers and employees.

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

26 § 1126. County officers and employees acting as agents.

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

1 in the form of a bond or otherwise.

2 § 1127. Bonds or blanket bond as security coverage.

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

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

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

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

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

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

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



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

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

16 § 1128. Insurance as security coverage.

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

20 § 1129. Form of required security.

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

1 State in the approval process.

2 § 1130. Amount of coverage.

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

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

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

26 § 1131. Custody and filing of required security documents.

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

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

8 (b) Department of State filing.--

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

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

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

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

1 the equivalent officer in a home rule or optional plans county
2 to the Commonwealth agency or governing authority. No charge or
3 fee shall be imposed for any copy provided in accordance with
4 this subsection.

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

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

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

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

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

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

8 § 1132. Payment of premiums and commissions on collections.

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

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

27 § 1133. Other requirements, references and approvals.

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

1 agent of a Commonwealth agency or governing authority may be
2 satisfied by including this obligation within the coverage of
3 required security supplied in accordance with this subchapter.

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

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

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

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

23 Section 2. Repeals are as follows:

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

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

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

1 known as The County Code.

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

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

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

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

22 Section 4. This act shall take effect immediately.