Ohio Legislative Service Commission

Bill Analysis Alyssa Bethel

Sub. H.B. 291*

132nd General Assembly

(As Reported by S. Local Gov't, Public Safety and Veterans Affairs)

Reps. Wiggam, Lipps, Seitz, Arndt, Merrin, Goodman, Dean, Stein, Henne, Anielski, Hambley, Carfagna, Antonio, Barnes, Blessing, Brown, Cupp, Dever, Duffey, Edwards, Ginter, Greenspan, Holmes, Johnson, Kick, Lang, Lepore-Hagan, Pelanda, Riedel, Rogers, Romanchuk, Ryan, Schaffer, Scherer, Schuring, Sheehy, Sprague, Thompson, West, Young, Zeltwanger

BILL SUMMARY

- Authorizes counties, townships, municipal corporations, school districts, community schools, and libraries to use an "employee dishonesty and faithful performance of duty policy" in lieu of surety bonds for all officers, employees, and appointees that are required under current law to give a bond.

- Requires the policy to be in effect and to apply to an officer, employee, or appointee before the individual begins a term of office or employment, and prohibits the individual from performing official duties until the policy coverage is documented as required by the legislative authority.

- Specifies that an individual who begins performing official duties before the coverage is effective, or before taking the oath of office as applicable under continuing law, vacates the office.

- Specifies the current law bond requirements do not apply to an officer, employee, or appointee whose political subdivision uses a policy, including the necessity to file the bond before taking office or beginning employment and the disqualification from, or vacating of, the office or employment for failure to file the bond.

* This analysis was prepared before the report of the Senate Local Government, Public Safety and Veterans Affairs Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

CONTENT AND OPERATION

Authority to use an insurance policy in lieu of individual surety bonds

The bill, known as the Protect Local Treasuries Act,[1] authorizes counties, townships, municipal corporations, school districts, community schools, and libraries ("political subdivisions") to adopt a policy to allow for the use of an "employee dishonesty and faithful performance of duty policy" instead of the surety bonds required under current law for its officers, employees, and appointees. The policy covers losses caused by the fraudulent or dishonest actions of an individual or the individual's failure to perform a duty.[2] A political subdivision that chooses not to adopt such a policy must continue to comply with current law requirements for the use of bonds.[3]

Policy coverage and amount

The policy must cover all officers, employees, and appointees of the political subdivision who would otherwise be required to file a bond.[4] The coverage amount for an officer, employee, or appointee under the policy must be equal to or greater than the maximum amount of the bond otherwise required by law; if the law does not specify an amount of coverage for the bond, or specifies only a minimum amount, the policy must provide coverage for an amount determined by the legislative authority[5] or the authority otherwise designated by law to determine the amount of the bond.[6]

Qualification for office or employment

A political subdivision that uses a policy in lieu of bonds must have the policy in effect and applicable to an individual before the individual takes office or begins

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[1] Section 3.

[2] R.C. 3.061(B). The type of insurance offered under the bill's policy may differ from a standard public entity liability policy that a local government might purchase to protect itself from employee-attributable losses, as that type of liability insurance may specifically exclude losses due to criminal or fraudulent actions.

[3] R.C. 3.061(D).

[4] R.C. 3.061(C)(3).

[5] For counties, the board of county commissioners; for townships, the board of township trustees; for municipal corporations, the legislative authority such as the city or village council; for school districts, the board of education; for community schools, the governing authority; for libraries and library districts, the board of library trustees.

[6] R.C. 3.061(C)(4).

employment. An individual cannot perform the official duties of the position until policy coverage is documented as required by the legislative authority. If an individual begins performing official duties before the coverage is effective, the individual vacates the office.[7]

Generally under continuing law, an individual who is required by law to file a bond is not qualified to hold office or employment until the bond is filed.[8] The bill specifies that an individual who is insured under a policy in lieu of a bond is not disqualified from holding office or employment for lack of a bond. Rather, the individual qualifies once the individual has completed their oath of office as applicable and the policy is in effect.[9]

Definition of "employee dishonesty and faithful performance of duty policy"

The bill defines "employee dishonesty and faithful performance of duty policy" as a policy of insurance, or a coverage document issued by a joint self-insurance pool,[10] to protect a political subdivision from financial or property loss caused by the fraudulent or dishonest actions of, and the failure to perform a duty prescribed by law for, an officer, employee, or appointee that is otherwise required by law to give an individual surety bond before entering upon the discharge of official duties.[11]

Comparison of bonds with insurance policy

In its 2018 Ohio Compliance Supplement Implementation Guide, the Ohio Auditor of State's office outlines the differences between a surety bond and an insurance policy.[12] A surety bond holds the officeholder personally accountable for the

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[7] R.C. 3.061(B).

[8] R.C. 3.30.

[9] R.C. 3.30 and 3.061(C)(1) and (2). The individual still must meet all other applicable qualifications for holding the office. R.C. 3.061(E).

[10] R.C. 2744.081, not in the bill, authorizes political subdivisions to jointly establish and maintain self-insurance pools pursuant to written agreements for the payment of settlements, judgments, expense, loss, and damage that arises, or is claimed to have arisen, from an act or omission of the political subdivision or any of its employees in connection with a governmental or proprietary function and to indemnify or hold harmless the subdivision's employees against such loss or damage.

[11] R.C. 3.061(A).

[12] Available at https://ohioauditor.gov/references/compliancemanuals/2018/OCSImplementationGuide_2018.pdf, page 76. The Ohio Auditor of State is required to conduct annual or biennial public office audits to ensure that the public entity is complying with current law and that public moneys are not misspent or unaccounted for. See R.C. 117.11, not in the bill.

officeholder's actions because the surety expects to recoup any loss from the officeholder. Injured third parties may recover on the bond as well as the government. Official bonds are not issued for the protection of the officeholder, but rather to protect the government or the public from any injuries caused by the official while in office.

With an insurance policy, losses are expected and rates are adjusted to cover losses and expenses as the law of averages fluctuate. Losses are usually not recoverable and third parties usually may not bring suit. The policy is typically written in favor of the insurance company; premiums are collected to pay for expected losses.

The Auditor of State notes that in theory, an insurance policy could cover the same things as the bond except that the policy may include many exemptions and exclusions. The bill does not specify any details of the policy, preclude any particular exclusions or exemptions, specify deductible amounts, or mandate any specific terms to be included in the policy.

Continuing law specifies that a public official is liable for all public money the official receives or collects or that the official's subordinate receives or collects.[13] As stated above, a bond holds an officeholder personally liable because the surety company seeks reimbursement from the officeholder after paying the political subdivision. An insurance policy, depending on its terms, may not similarly hold an officeholder liable because the risk generally lies with the insurance company, which expects to incur losses. If an officeholder is to be held personally liable for public money the official or a subordinate receives or collects, a political subdivision may need to utilize other means in order to do so.

Examples of required surety bonds

As mentioned, continuing law requires the purchase of surety bonds for a variety of political subdivision officers and employees. The bill excepts these provisions in the case of a political subdivision that chooses to adopt a policy authorizing the use of a policy in lieu of bonds.[14] Some of the laws require that a bond be "conditioned for the faithful discharge" of the officer's official duties and for the officer to pay over all moneys received by the officer in the officer's official capacity.[15] Some are conditioned

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[13] R.C. 9.39, not in the bill. This law is described as a codification of the "Strict and personal liability of public officials for public money." 2009 Op. Att'y Gen. No. 09-033.

[14] R.C. 153.24, 305.04, 309.03, 311.02, 313.03, 315.03, 317.02, 319.02, 321.02, 325.071, 325.12, 329.01, 505.02, 505.03, 507.02, 507.021, 507.03, 509.02, 519.161, 705.27, 705.60, 733.65, 733.69, 735.03, 739.02, 747.01, 749.22, 755.23, 955.12, 1901.32, 1907.20, 2101.03, 2151.12, 2153.10, 2301.12, 2303.02, 3313.23, 3313.25, 3314.011, 3319.05, 3375.32, 5155.04, 5571.04, and 5593.05.

[15] See, for example, R.C. 325.071 (county sheriff) and R.C. 325.12 (county prosecuting attorney).

on the faithful performance of duties and for the payment of any loss or damage that the political subdivision may sustain by virtue of the failure to perform the duties.[16]A few examples of surety bonds required by law are:

- For a **county commissioner**, a bond in a sum of not less than $5,000.[17]

- For a **county auditor**, a bond in a sum of not less than $5,000, nor more than $20,000, as the board of county commissioners requires.[18]

- For a **county treasurer**, a bond in such sum as the board of county commissioners directs, which may include additional sureties on a previously accepted bond. When, in the board's opinion, more money has passed or is about to pass into the treasurer's hands than is or would be covered by the bond, the board may demand an additional bond from the treasurer.[19]

- For a **township trustee**, a bond in the sum of $1,000. When the judge that approves the $1,000 bond deems necessary, the judge may require an additional bond.[20]

- For a **township fiscal officer**, a bond in the sum determined by the board of township trustees, but not less than the minimum sum listed in law. The sums range from $10,000 to $250,000, depending on the monetary size of a township's budget.[21]

- For the **treasurer, auditor, and other officers or employees of a municipal corporation**, a bond in the sum the legislative authority fixes by ordinance or resolution.[22] (Municipal corporations, under their constitutional power of local self-government, already have authority to decide whether to require that a municipal official give some type of surety, and the amount of that surety.[23])

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[16] See R.C. 305.04 (county commissioner).

[17] R.C. 305.04.

[18] R.C. 319.02.

[19] R.C. 321.02.

[20] R.C. 505.02 and 505.03.

[21] R.C. 507.03.

[22] R.C. 705.27.

[23] Ohio Const., art. XVIII, sec. 3.

HISTORY

ACTION	DATE
Introduced	06-26-17
Reported, H. State and Local Government	11-30-17
Passed House (93-0)	12-13-17
Reported, S. Local Gov't, Public Safety & Veteran Affairs	---

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