COUNTY ADVISORY BULLETIN

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Phone: 614-221-5627 • Fax: 614-221-6986 • www.ccao.org

Bulletin 2019-03 **March, 2019**

Insurance Policy in Lieau of Individual Surety Bonds

APPLICABLE LEGISLATION: Sub. HB 291 (132nd General Assembly)

Revised Code Sections: Amends ORC Sections 3.30, 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, 5593.05 and **Enacts** ORC Section 3.061

LEAD SPONSOR: Rep. Scott Wiggam

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

SENATE COSPONSORS: Coley, Gardner, Hackett, Jordan, Kunze, Obhof, Peterson, Terhar, Uecker, Wilson

EFFECTIVE DATE: April 7, 2019

Background

Currently counties are required to obtain surety bonds in order to protect the government and public from financial loss caused by a public official, in addition to holding officeholders personally accountable for the officeholder's actions.

This coverage is different from the standard public entity policy that a local government might purchase to protect itself from employee-attributable financial losses, as this type of insurance, in general prior to this bill, had been prohibited from replacing the individual bonds.

Commonly known as employee dishonesty faithful performance (EDFP) coverage, this coverage does not cover theft by elected officials with statutorily required surety bonds due to an Atorney General's opinion that the statute requiring an individual bond cannot be fulfilled by "blanket" EDFP coverage.

House Bill 291 authorizes counties to utilize a policy of insurance or coverage document, in place of a surety bond, to protect political subdivisions from financial or property loss caused by fraudulent or dishonest actions, including criminal conduct, of an office holder or an employee subject to a surety requirement. HB 291, in essence, allows EDFP coverage to replace individual bonds.

The bill, as introduced, allowed a political subdivision to acquire this coverage through a policy of insurance. However, because political subdivision joint self-insurance pools do not technically offer a "policy of insurance," CCAO obtained an amendment to insure that a "coverage document" issued by an insurance pool (such as CORSA) could also be utilized to provide the coverage.

Bill Provisions

House Bill 291 enacts new ORC Sec. 3.061 to allow counties to obtain an "employee dishonesty and faithful performance of duty policy" in place of surety bonds that are required for its officers, employees, and appointees. House Bill 291 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, to protect a political subdivision from financial or property loss caused by dishonest or fraudulent actions by an individual.

The bill specifies that the policy of insurance covers losses caused by fraudulent or dishonest actions by an individual or the individual's failure to perform a duty. Counties that choose not to purchase such a policy must still continue to comply with the exisiting requirements for the use of bonds.

Policy Coverage

The policy must cover all officers, employees, and appointees of the county who would otherwise be required to file a bond. The coverage amount for an officer, employee, or appointee must be equal to or exceed the maximum amount of the bond otherwise required by law. If existing law does not specify an amount for the bond, or specifies only a minimum amount, the policy must provide coverage for an amount that is determined by the County Commissioners or the County Council members of a County. Continuing law states that a public official is personally liable for all public money the official or the official's subordinate receives or collects.

Comparison of Surety Bond to 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. A surety bond holds the officeholder personally accountable for the 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 financial loss 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 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 act 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 or the official's subordinate receives or collects. As noted earlier, 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.