Testimony for House Bill 291

October 23, 2017

Representative Anielski, Chair
Representative Hambley, Vice-Chair
Representative Holmes, Ranking Member

Chairman Anielski, Vice-Chair Hamley, and Ranking Member Holmes, thank you for this opportunity to provide testimony for HB #291. My name is Kevin Fink and I am a commercial insurance broker with Arthur J. Gallagher & Co., one of the largest brokers in the world. I want to make it explicitly clear I am speaking as citizen of the state and not on behalf of Gallagher. However, during my 27 year tenure with Gallagher, a tenure specializing in public entities, I have developed significant experience with Public Official Bonds and public Employee Dishonesty insurance coverage.

It is important that the public treasury is protected from financial loss in the event of dishonest acts of elected officials or the officials' failure to perform duties as required by law. A Public Officials Bond is the current statutorily required method to do this for the officials of many governmental entities. While this method of protection may be reasonable for certain elected positions, I would opine it is woefully inadequate in fulfilling this goal for many others. As an extreme example, a County Dog Warden is required to have a minimum bond of $500 not to exceed $2,000. Most governmental entities have deductibles larger than the bond amount. Similarly, many of officials in positions with the greatest potential for theft or with authority to make decisions noncompliant with the law have bond limit requirements insufficient given the passage of time subsequent to the date the code was made effective.

In addition to providing a sound option to rectify these deficiencies, HB #291 also allows for:

- elimination of the indirect cost associated with the time and aggravation of placing, tracking, renewing or replacing numerous bonds, which exceed 30 for some entities; and,
- repurposing the expenditure of bond premiums for broader insurance coverage better protecting the treasury or other services for its constituents.

It should be made clear that Public Official Bonds differ from Employee Dishonesty insurance policies. Surety bonds are more like extending credit and an obligee would generally expect the surety company to weed out applicants that cannot fulfill their obligations. Public Official Bonds guarantee taxpayers that the public official will do what the law requires – that he or she will faithfully perform the duties of office. Employee Dishonesty alone is not enough because faithful performance is not synonymous with honesty. It includes honesty along with many other important factors. For example, a County official may have lost funds through the failure of a bank he thought was sound. Having failed to obtain the proper depository security, the official could be liable for restitution to the County. The official did not act dishonestly, but he certainly failed to faithfully perform his duties as prescribed by law.

Thus, in order to provide for the protections beyond dishonest acts afforded through a Public Official Bond, the Employee Dishonesty insurance policy must be written as specified in HB #291. Specifically, this requires the Employee Dishonesty policy:

- include a Faithful of Performance of Duty endorsement;
- eliminate any exclusion for "Loss caused by any treasurer or tax collector by whatever name known"; and,
- eliminate any exclusion for "Loss caused by any 'employee' required by law to be individually bonded".

There are other differences between bonds and insurance. Notably, the Principal (the public official) must typically agree to reimburse the Surety for any claims or expenses incurred by the Surety. A claim against the bond that doesn't turn out to be legitimate could result in the Principal being required to completely reimburse the surety company for any expenses incurred in investigation of the claim. I don't find this potential expense for an illegitimate claim to be fair nor an incentive to serve in public office. Under an insurance policy, the governmental entity (the Obligee under the bond) must document and prove its financial loss.

HB #291 is an effective measure to address all these issues as a cost effective alternative to current law.

Thank you for the opportunity to present this information.

Very truly yours,

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