

January 26, 2016

TECHNICAL BULLETIN

TO: Council Chairmen
Chief Administrative Officers
Finance Directors

FROM: SCAC Staff

RE: Blanket Fidelity Bond for County Officials and Employees - 2005 Act No. 58

Bonds for county officials and employees vary in the amount required and who has the authority to set them. Some amounts are set specifically by statute, while others are set by the county, clerk of court, or the Attorney General. There appears to be no rhyme or reason as to how they are determined or who gets to determine the amount of bond. More importantly, the amounts are inadequate to protect the public in the event a public official or employee engages in misconduct that has financial consequences to the public, especially with the liability limits under the Torts Claim Act. For example, the sheriff's and the clerk of court's bond is ten thousand dollars, while the coroner's is set at two thousand dollars. Magistrates' bond shall not be less than twenty-five percent of the collections for the previous year reported to the county treasurer as required by law; provided however, that if collections for the previous year did not exceed a total of two thousand dollars, the county governing body in its discretion shall be authorized to waive any bond requirements for such magistrate. At the other extreme, there are two statutory provisions setting the bond for probate judges. One sets bond at five thousand dollars (§14-23-40), while another provision sets it at one hundred thousand dollars (§14-23-1050).

Additionally since these bonds are specific for the individual in these positions and not the position itself, for the individuals, every time there is turnover in a position, the county has to secure a new bond, which can be an administrative nightmare. This problem was highlighted in the 2015 Court of Appeals case of *State v. Griffin*, in which the defendant in this criminal action asserted that his arrest was unlawful because the arresting sheriff deputies were not properly bonded at the time of his arrest.

Section 4-11-65 (Act No. 58 of 2005) allows the governing body of a county to purchase a blanket fidelity bond to cover all or a portion of the county officials and employees. This provision is a more convenient, simplified method of bonding county officials and employees. Whereas individual fidelity bonds cover the individual person, blanket fidelity bonds typically cover the county officials' position and thus does not need to be repurchased each time there is a turnover. In many cases, blanket bonds also provide increased coverage at a lower rate and require less administrative time and attention. Some counties have used this provision to purchase fidelity bonds in order to comply with the specific statutory bond requirements.

If a county chooses to purchase a blanket fidelity bond to cover all or portion of county officials, the bond amount must meet or exceed the minimum bond required by statute. For example, if a county chooses to purchase a blanket fidelity bond covering the probate judge (\$100,000 statutory requirement), treasurer (\$20,000 statutory requirement) and the sheriff (\$10,000 statutory requirement) then the minimum value of the bond cannot be less than \$100,000.

Act No. 58 requires the county governing body to pass a resolution noting the purchase of a fidelity bond or the replacement of a fidelity bond covering one or more county officials or employees.

While it would be ideal to have a uniform fidelity bond requirement for every county, it would be impractical to do so due to the differences in exposure loss in each county. For example, in a county with a larger budget/asset base, if an official stole funds, the loss exposure could be substantially greater than in a smaller county. In addition, insurance companies would not likely be willing to provide the same amount of bond coverage for those two counties based on the differences in their assets. The fidelity bond would be limited to loss due to illegal activities of officials or employees such as embezzlement, fraud, or larceny.

It is also important to note that SCAC provides a blanket crime liability coverage of \$100, 000.00 for every county that is a member of the Property and Liability Trust.

This *Technical Bulletin* does not constitute legal advice. It is intended for general information on this topic. Please consult your county attorney for specific issues affecting your county.