

State of Arkansas

76th General Assembly

Regular Session, 1987

HOUSE BILL 1416

By: Reps. Willems, Thicksten, D. Roberts

"AN ACT TO PROVIDE FOR A SELF-INSURED FIDELITY BOND PROGRAM FOR STATE OFFICIALS AND EMPLOYEES, COUNTY OFFICIALS AND EMPLOYEES, MUNICIPAL OFFICIALS AND EMPLOYEES, AND SCHOOL DISTRICT OFFICIALS AND EMPLOYEES; TO PROVIDE FOR A GOVERNMENTAL BONDING BOARD; AND FOR OTHER PURPOSES."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. It is hereby found and determined that the State of Arkansas, and the counties, municipalities, and school districts of the State of Arkansas are expending large sums of money each year for premiums on Blanket Bonds for officers and employees; that considerable savings might be effected by the establishment of a self-insured fidelity bond program for state officials and employees, County officials and employees, Municipal officials and employees, and School District officials and employees, that this Act is designed to establish a Governmental Bonding Board to develop a self-insured fidelity bond program for such officials and employees; to provide that such self-insured fidelity bonds would be in lieu of the various blanket bonds which are presently required under Acts 4, 5, 13, 286 and 557 of 1985 for various officials and employees; and to thereby effectuate substantial savings in the cost of blanket bonds for such officials and employees.

SECTION 2. For purposes of this Act, the term:

- (a) "State" means the State of Arkansas;
- (b) "County" or "counties" means the county or counties of the State of Arkansas;
- (c) "Municipal", "municipality", or "municipalities" refers to or means the municipalities of the State of Arkansas;
- (d) "School district", or "school districts" means the school districts

of the State of Arkansas;

(e) "State officers and employees" means all elected and appointed salaried officials of the State, and their salaried State employees, the salaried officials and salaried employees of all State boards and commissions, excluding only members of the General Assembly and non-salaried appointed members of the various state boards and commissions;

(f) "State public official" or "State public employee" means any elected or appointed salaried officer of the State of Arkansas and the salaried governmental employees of any such elected or appointed officer, excluding members of the General Assembly, and the non-salaried members of the various State boards and commissions;

(g) "County public official" or "County public employee" means any elected officer of the counties and the employees or deputies of any elected officer, excluding members of the Quorum Court and the members of the various county boards and commissions and officials and employees of county hospitals, county nursing homes, and conservation and improvement districts;

(h) "Municipal public official" or "Municipal public employee" means any elected officer of the municipalities and the employees or deputies of any elected officer, and specifically including salaried municipal employees of municipally owned utilities, excluding members of the city council other than the mayor and the members of the various municipal boards and commissions and officials and employees of municipal hospitals, nursing homes and improvement districts;

(i) "School district public official" or "School district public employee" means all school district salaried officials and salaried school district employees whether elected or appointed, excluding the members of local school boards of directors; and

(j) "Commissioner" means the Insurance Commissioner of the State of Arkansas.

SECTION 3. There is hereby established a self-insured Fidelity Bonding Program for State officials and employees, county officials and employees, municipal officials and employees, and school district officials and employees, as defined in Section 2 of this Act, to be administered by the Governmental Bonding Board.

SECTION 4. The fidelity bond coverage provided by the self-insured Fidelity Bond Program shall cover actual losses sustained by the participating governmental entities as defined in Section 2 of this Act through any fraudulent or dishonest act or acts committed by any of the officials or employees, acting alone or in collusion with others during the bond period, to an amount not exceeding \$300,000 per occurrence. Such coverage shall not include compensatory, punitive or exemplary damages, and no interest or penalty amounts shall accrue on bond claims made pursuant to this Act, including, but not limited to, investigative expenses, legal fees, or court costs.

SECTION 5. (a) The fidelity bond coverage provided by the self-insured Fidelity Bond Program shall not cover losses sustained by the participating governmental entities as a result of:

(1) Liability imposed upon or assumed by the participating governmental entities to exonerate or indemnify an official or employee from or against liability incurred by such official or employee in the performance of duties; or

(2) Damages for which the participating governmental entity is legally liable as a result of:

(i) the deprivation or violation of the civil rights of any person by an official or employee; or

(ii) the tortious conduct of an official or employee, except conversion of property of other parties held by the participating governmental entity in any capacity.

(b) Such fidelity bond coverage shall not cover losses sustained by any party other than the participating governmental entities.

(c) In case of a loss alleged to have been caused to a participating governmental entity through acts or defaults by an official or employee covered under the fidelity bond coverage afforded under the provisions of this Act, and the participating governmental entity or the Division of Legislative Audit shall be unable to designate the specific official or employee causing such loss, the participating governmental entity shall nevertheless have the benefit of fidelity bond coverage.

SECTION 6. There is hereby created the Governmental Bonding Board ("Board") which shall be composed of the following five (5) members:

- (a) The President of the Association of Arkansas Counties;
- (b) The President of the Arkansas Municipal League;
- (c) The Director of the Arkansas Department of Education - General Education Division;
- (d) The Director of the Department of Finance and Administration; and
- (e) The Arkansas Insurance Commissioner, who shall serve as chairman.

SECTION 7. The Governmental Bonding Board shall receive no compensation for their service but members other than the Directors of the Departments of Education, Finance and Administration, and the Arkansas Insurance Commissioner shall be entitled to per diem for each day spent in attending meetings of the Board or otherwise attending official business of the Board at the rate prescribed by law for members of the General Assembly for attending joint interim committee meetings, plus mileage at the rate prescribed by state travel regulations for state employees. The per diem and mileage of members of the Governmental Bonding Board shall be paid by the Department of Insurance from funds specifically appropriated to the Department for such purpose or from other funds available to the Department for paying such per diem and mileage.

The Governmental Bonding Board shall meet at such times as necessary to carry out the responsibilities and duties of the Board, at the call of the Chairman of the Board, or upon the request of a majority of the Board.

All action of the Board shall be by majority vote of the membership in attendance.

SECTION 8. It shall be the responsibility of the Governmental Bonding Board to develop and administer the self-insured Fidelity Bond Program for state officers and employees, state public officials and public employees, and county, municipal, and school district public officials and public employees.

SECTION 9. (a) There is hereby established on the books of the State Treasurer, the State Auditor, and the Chief Fiscal Officer of the State a separate fund to be known as the Fidelity Bond Trust Fund ("Fund"). No money shall be appropriated from this Fund for any purpose except for the use and benefit of participating governmental entities for bond claims and for Board expenses including but not limited to actuarial, consultant, and service

contract fees. The Fund established herein shall be administered by and disbursed at the direction of the Board.

(b) The assets of the Fund may be invested and reinvested as the Board may determine with the advice of the State Board of Finance. All incomes derived through investment of the Fund as established herein shall be credited, as investment income, to the Fund. For the purposes of investment, Fund monies invested and interest earned thereon shall be administered as Trust Funds pursuant to the provisions of Subsection B of Section 9 of Act 12 of 1965 (First Extraordinary Session), as amended, the same being Ark. Stat. Ann. §13-429 (b). Further, all monies deposited to the Fund shall not be subject to any deduction, tax, levy, or any other type of assessment.

(c) The bond premiums collected by the Board under the provisions of this Act shall be deposited in the Fund created in Subsection (a) of this Section.

SECTION 10. The Commissioner, at the direction of the Board, shall receive and disburse funds necessary for the establishment and operation of the self-insured Fidelity Bond Program. The State Risk Manager shall assist in the operations of the program, and shall submit to the Board recommendations for the establishment of:

- (a) Premium schedules for all participating governmental entities;
- (b) Schedules for deductible amounts;
- (c) Loss histories, loss reporting, and loss payment procedures;
- (d) Program enrollments;
- (e) Annual review of funds income, balances, and expenditures;
- (f) Proposed invitations to bid, and retention levels, if the Board determines that excess bonds or reinsurance is necessary;
- (g) Such other information required by the Board for efficient operation of the self-insured Fidelity Bond Program.

SECTION 11. The Board, with the assistance of the Insurance Department shall:

- (a) Prepare a billing certification to be remitted to the Department of Finance and Administration and upon receipt thereof the Director of the Department of Finance and Administration shall pay the same from funds specifically appropriated therefor by the General Assembly or from other funds available therefor and funds so appropriated or otherwise made available for

such purpose shall not be subject to reduction as a result of any shortfall of projected revenues, for premiums for fidelity bonds for State public officials and employees and State officers and employees;

(b) Prepare a billing certification to be remitted to the Chief Fiscal Officer of the State who shall pay the same from funds withheld from the County Aid Fund which are due each county participating in the self-insured Fidelity Bond Program for premiums for fidelity bonds for County public officials and employees;

(c) Prepare a billing certification to be remitted to the Chief Fiscal Officer of the State who shall pay the same from funds withheld from the Municipal Aid Fund which are due each municipality participating in the self-insured Fidelity Bond Program for premiums for fidelity bonds for Municipal public officials and employees; and

(d) Prepare a billing certification to be remitted to the Chief Fiscal Officer of the State who shall pay the same from funds withheld from the Public School Fund which are due each school district participating in the self-insured Fidelity Bond Program for premiums for fidelity bonds for school district officials and employees.

Upon receipt of such funds, the Commissioner shall deposit such funds in the Fund created in Section 9 of this Act.

SECTION 12. It shall be the duty and responsibility of the Legislative Auditor with the approval of the Legislative Joint Auditing Committee to give notice and make proof of loss to the Board on fidelity bonds on behalf of any State public official, officer or employee, county public official or employee, municipal public official or employee, or school district official or employee when the audit report of the records of any such official, officer or employee reflects any shortages or other liability for which such public official, officer or employee may be liable.

All such losses shall be investigated by the Division of Legislative Audit. The Legislative Auditor shall cooperate in any investigations by the Arkansas State Police or any other law enforcement agency. The Legislative Auditor shall notify and cooperate with the appropriate Prosecuting Attorney on all such matters that appear to involve a criminal offense.

The Legislative Auditor shall request the appropriate Prosecuting Attorney or the Attorney General to assist in obtaining restitution for

losses.

SECTION 13. Upon the receipt of the proof of loss from the Legislative Auditor, the Board shall determine whether such loss is covered under the Fidelity Bond Program. If the Board determines that such loss is covered under the Fidelity Bond Program, the Commissioner shall authorize fidelity bond loss payments from the Fund to the participating governmental entity on a timely basis. All vouchers for bond claim payments shall include as supporting documents a copy of the payment recommendation by the State Risk Manager and a copy of the proof of loss from the Legislative Auditor. Any loss payment may be adjusted by any applicable deductibles or restitution payments.

Upon fidelity bond loss payment from the Fund, the recipients of such loss payment shall, to the extent of such payment, assign to the Fund all rights and claims that they may have against the official, officer, or employee involved. The fund shall be subrogated to all of the rights of the recipients of the fidelity bond loss payment to the extent of the payment.

The Commissioner shall timely notify the Legislative Auditor if the Board determines that the loss is not covered under the Fidelity Bond Program.

SECTION 14. The fidelity bond coverage provided under this Act shall be in lieu of all statutory required bonds for the various public officers, officials and employees participating in the self-insured Fidelity Bond Program, and the various laws specifically requiring surety bonds or blanket bonds for the respective public officials, officers, and employees shall not be applicable so long as the fidelity bonds as provided in this Act are in effect covering such officials, officers, and employees. In the event such coverage shall cease to be provided for any or all of such officials, officers, or employees pursuant to this Act, the laws currently in effect providing for surety bonds or blanket bonds shall again become applicable to such officials, officers, and employees.

SECTION 14. All laws and parts of laws in conflict with this Act are hereby repealed.

SECTION 15. If any provision of this Act or the application thereof to

any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

