Research Plan: Senate Bill 624, Insurance in lieu of Surety Bonds

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Purpose:

The State and Local Government Committee of the Senate sent Senate Bill 624 to the Commission for study, directing it to study "whether insurance policies covering the requirements for an official surety bond would be a suitable alternative" to those bonds.

> **Senate Bill 624** by Norris [**House Bill 1004** by Todd] authorizes any governmental entity to purchase insurance policies to protect against breach of fiduciary duty by public officials and employees.

The bill was discussed in the committee as a "novel idea" that could provide "coverage of a different sort" for those public officials or employees currently covered by surety bonds.

Step 1. Define the Problem

Tennessee law requires the use of surety bonds by public officials and employees to protect against the mismanagement or theft of public funds and to ensure the faithful performance of official duties. Some believe insurance policies would be less expensive than a surety bond in protecting against certain acts and omissions by government officials and employees.

Would insurance policies covering requirements for an official surety bond be a suitable alternative?

How does the coverage provided by a surety bond compare to that provided by insurance?

How do the costs for surety bond coverage compare to that of insurance?

Step 2. Assemble Some Evidence

Review referred legislation

- Review committee hearing on the bill and record comments and concerns of committee members, the bill sponsor, and others speaking for or against the bill.

- Review Senate Bill 624 and related statutes to determine
  - What does the bill do?
  - How would the bill's proposed system work?
- Interview the sponsor, bill proponents, and other stakeholders to determine what is driving this issue?
- Interview staff of the Comptroller of the Treasury, State Department of Commerce and Insurance and the State Attorney General's Office to better understand the implications of the bill.

Collect information about the requirements of surety bonds for public officials and public employees in Tennessee.

- Contact the Comptroller's Office, Commerce and Insurance, MTAS, CTAS, and Attorney General's Office for specifics on how public official bonds operate in Tennessee.
  - Current law
    - What statutes require their use?
    - Individual vs blanket (one bond covering multiple public employees) bond
  - What do surety bonds protect against?
  - Who does the bond protect?
  - How much do they cost?
    - Contact MTAS for details on the amount cities spend on these bonds.
    - Contact CTAS for details on the amount counties spend on these bonds.
  - Who provides the coverage?
  - What additional coverage is provided or required for county and city employees?
  - What is the length of coverage of a surety bond?
  - What is the dollar amount of coverage (penal sum amount)?
  - What are the rights of the public to sue against a surety bond?
- Contact companies that provide surety bond coverage.
  - What is the length of coverage of a surety bond?
  - What does a surety bond cover?
  - Request specifics on how the coverage works.

Collect information on other states' bonding and insurance requirements for breaches of fiduciary duty and faithful performance by public officials

- What are other states insurance and surety bond requirements for public officials-?
  - Where are bonds authorized or required?
  - Where is insurance authorized or required?
  - Where are both allowed?

- How is coverage set up in those states allowing insurance?
  - Blanket policies
  - Individual policies for elected officials?
  - Combination of individual and blanket bonds
- What are the national trends towards using insurance in place of surety bonds for public officials?
- What issues, if any, have states faced when using insurance in lieu of a surety bonds?

  Arkansas – "Self-Insured Fidelity Bond Program." Contact appropriate person knowledgeable on the Arkansas system to discuss the successes and any challenges of the system.

- What alternatives are there for protection other than surety bonds and insurance?
  - What are their requirements?
  - What states use them?
  - How much do they cost?

Step 3. Construct Alternatives

Describe alternative methods of risk-management of public officials in sufficient detail to project outcomes in Step 5.

- Current law: Leave current system unchanged.
- Proposed Change: Insurance as an option for surety bonds
- Other options: Methods used by other states or endorsed in the literature

Step 4. Select Criteria

- Cost
- Effectiveness
  - Coverage
  - Duration
  - Risks
- Ease of Use (potential difficulties with procedural process)
- Acceptability by affected agencies

Step 5. Project Outcomes

- For each alternative,
  - Estimate coverage
  - Estimate potential risks
  - Estimate duration
- Estimate cost

- Estimate the receptiveness of state and local governments to a new risk-management system for public officials
- Estimate the ease of use of each method of risk-management

Step 6. Confront Trade-offs

- How will the differences between the current system and that of insurance affect the public?
- What are the pros and cons of the potential solutions?

Step 7. Decide which alternatives to present to the Commission

Based on the results of Step 6, choose the alternatives that most practically and realistically resolve the problem

Step 8. Produce the Draft Report

Develop and present a draft for review and comment to the Commission

Revisit Steps 5-8.

- Respond to feedback from Commission regarding outcome projections, trade-offs, and selection of alternatives
- Revise and edit the draft to reflect comments of the Commission
- Submit final report to the Commission for approval

- **Problem Statement and Research Plan**
  - May 2013
- **Research**
  - Step 2 (May 2013 through June 2013)
  - Steps 3-4 (June 2013)
  - Steps 5-7 (June 2013)
- **Storyboard, Outline, and Write the Report**
- July 2013
- **Draft Report to the Commission for Comments**
  - August 2013 Commission Meeting
- **Final Report to Commission for Approval**
  - October 2013 Commission Meeting