

IC 5-4

ARTICLE 4. OFFICERS' BONDS AND OATHS

IC 5-4-1

Chapter 1. Filing, Recording, and Terms of Bonds and Oaths

IC 5-4-1-1

Oaths; officers and deputies; prosecuting attorneys and deputies

Sec. 1. (a) Except as provided in subsection (c), every officer and every deputy, before entering on the officer's or deputy's official duties, shall take an oath to support the Constitution of the United States and the Constitution of the State of Indiana, and that the officer or deputy will faithfully discharge the duties of such office.

(b) A prosecuting attorney and a deputy prosecuting attorney shall take the oath required under subsection (a) before taking office.

(c) This subsection applies to a deputy of a political subdivision. An individual appointed as a deputy is considered an employee of the political subdivision performing ministerial functions on behalf of an officer and is not required to take the oath prescribed by subsection (a). However, if a chief deputy assumes the duties of an office during a vacancy under IC 3-13-11-12, the chief deputy must take the oath required under subsection (a) before entering on the official duties of the office.

(Formerly: Acts 1852, IRS, c.13, s.1.) As amended by P.L.49-1989, SEC.2; P.L.176-1999, SEC.119.

IC 5-4-1-1.1

Repealed

(Repealed by P.L.176-1999, SEC.134.)

IC 5-4-1-1.2

Failure of officer of political subdivision to take and deposit oath

Sec. 1.2. (a) This section does not apply to an individual appointed or elected to an office the establishment or qualifications of which are expressly provided for in the Constitution of the State of Indiana or the Constitution of the United States.

(b) Subject to subsection (c), an individual appointed or elected to an office of a political subdivision may take the oath required under section 1 of this chapter at any time after the individual's appointment or election.

(c) An individual appointed or elected to an office of a political subdivision must take the oath required by section 1 of this chapter and deposit the oath as required by section 4 of this chapter not later than thirty (30) days after the beginning of the term of office.

(d) If an individual appointed or elected to an office of a political subdivision does not comply with subsection (c), the office becomes vacant.

As added by Acts 1980, P.L.8, SEC.28. Amended by P.L.176-1999, SEC.120; P.L.26-2000, SEC.32.

IC 5-4-1-2

Endorsement

Sec. 2. (a) The oath required by section 1 of this chapter, except in the case of a notary public or in those cases specified in section 3 of this chapter, shall be endorsed on or attached to the:

- (1) commission;
- (2) certificate if a certificate was issued under IC 3-10-7-34, IC 3-12-4, or IC 3-12-5; or
- (3) certificate of appointment pro tempore under IC 3-13-11-11; signed by the person taking the oath, and certified to by the officer before whom the oath was taken, who shall also deliver to the person taking the oath a copy of the oath.

(b) A copy of the oath of office of a prosecuting attorney shall be:

- (1) recorded on the bond required by section 20 of this chapter; or
- (2) attached to the commission of the prosecuting attorney.

(Formerly: Acts 1852, IRS, c.13, s.2.) As amended by Acts 1978, P.L.23, SEC.1; P.L.49-1989, SEC.3; P.L.10-1992, SEC.26; P.L.3-1993, SEC.240; P.L.3-1997, SEC.416; P.L.176-1999, SEC.121.

IC 5-4-1-3

Legislators; governor and lieutenant governor

Sec. 3. (a) Members of the general assembly shall take the oath described by section 1 of this chapter before taking their seats. The oath shall be entered on the journals.

(b) The governor and lieutenant-governor shall each take the oath described by section 1 of this chapter. The oath shall be entered on the journals of each chamber of the general assembly.

(Formerly: Acts 1852, IRS, c.13, s.3.) As amended by P.L.221-2005, SEC.141.

IC 5-4-1-4

Copy of oath; deposit

Sec. 4. (a) As used in this section, "political subdivision" has the meaning set forth in IC 36-1-2-13.

(b) The copy of the oath under section 2 of this chapter shall be deposited by the person as follows:

- (1) Of all officers whose oath is endorsed on or attached to the commission and whose duties are not limited to a particular county or of a justice, judge, or prosecuting attorney, in the office of the secretary of state.
- (2) Of the circuit court clerk, officers of a political subdivision or school corporation, and constables of a small claims court, in the circuit court clerk's office of the county containing the greatest percentage of the population of the political subdivision or school corporation.
- (3) Of a deputy prosecuting attorney, in the office of the clerk of the circuit court of the county in which the deputy prosecuting attorney resides or serves.

(Formerly: Acts 1852, IRS, c.13, s.4.) As amended by Acts 1980, P.L.8, SEC.29; Acts 1980, P.L.24, SEC.2; P.L.8-1987, SEC.7; P.L.49-1989, SEC.4; P.L.32-1992, SEC.1; P.L.3-1995, SEC.141; P.L.3-1997, SEC.417; P.L.176-1999, SEC.122; P.L.254-1999, SEC.5; P.L.14-2000, SEC.14.

IC 5-4-1-5

Repealed

(Repealed by Acts 1980, P.L.8, SEC.38.)

IC 5-4-1-5.1

Officers and employees of political subdivisions; filing and recording of bond; copy of oath of office to be recorded with bond

Sec. 5.1. (a) "Political subdivision" as used in this section has the meaning set forth in IC 36-1-2-13 and excludes any department or agency of the state.

(b) Every elected or appointed officer, official, deputy, or employee of a political subdivision who is required by section 18 of this chapter to file an official bond for the faithful performance of duty, except the county recorder and deputies and employees of the recorder, shall file the bond in the office of the county recorder in the county of residence of the officer, official, deputy, or employee. The county recorder and deputies and employees of the recorder shall file their bonds in the office of the clerk of the circuit court.

(c) The bonds described in subsection (b) shall be filed within ten (10) days of their issuance or, if approval is required, within ten (10) days after their approval by the person required to approve the bonds. The recorder shall record all of the bonds filed under this section, indexing them alphabetically under the name of the principal and referring to the title, office, and page number where recorded. The bonds shall be kept in a safe and convenient place in the recorder's office with a reference to the date filed and record and page where recorded.

(d) Every county officer who is required to give bond shall have a copy of the oath of office recorded with the bond.

As added by Acts 1980, P.L.8, SEC.30. Amended by Acts 1981, P.L.47, SEC.1; P.L.3-1997, SEC.418.

IC 5-4-1-6

Secretary of state; filing official bond

Sec. 6. The official bond of the secretary of state shall be filed and recorded in the recorder's office of Marion County.

(Formerly: Acts 1852, IRS, c.13, s.6.) As amended by Acts 1980, P.L.8, SEC.31.

IC 5-4-1-7

Preservation of certified copy; fees

Sec. 7. It shall be the duty of every officer with whom such certified copies and bonds shall be filed to preserve the same, and, on demand, give certified copies thereof, or of the record, attested with

his official seal, and for the same he shall receive the same fees allowed by law for certified copies in other cases.

(Formerly: Acts 1852, IRS, c.13, s.7.)

IC 5-4-1-8

Approval of bonds

Sec. 8. (a) The official bonds of officers, if sufficient, shall be approved as follows:

(1) Of county officers required to give bonds, by the clerk of the circuit court unless otherwise specified in this section.

(2) Of county sheriff, county coroner, county recorder, county auditor, county treasurer, and clerk of the circuit court, by the county executive.

(3) Of county assessor, township trustee, and township assessor (if any), by the county auditor.

(4) Of city officers, except the executive and members of the legislative body, by the city executive.

(5) Of members of the board of public works or of the board of public works and safety in cities, by the city legislative body.

(6) Of clerk-treasurer and marshal of a town, by the town legislative body.

(7) Of a controller of a solid waste management district established under IC 13-21 or IC 13-9.5 (before its repeal), by the board of directors of the solid waste management district.

(b) A person who approves an official bond shall write the approval on the bond.

(c) A bond must be approved before it is filed.

(Formerly: Acts 1852, IRS, c.13, s.8.) As amended by Acts 1980, P.L.8, SEC.32; Acts 1981, P.L.47, SEC.2; P.L.8-1989, SEC.17; P.L.33-1992, SEC.1; P.L.1-1996, SEC.35; P.L.146-2008, SEC.33.

IC 5-4-1-9

Time limitation for bond; failure to comply

Sec. 9. An officer required to give an official bond shall give the bond before the commencement of his term of office. If the officer fails to give the bond before that time, the officer may not take office.

(Formerly: Acts 1852, IRS, c.13, s.9.) As amended by Acts 1980, P.L.8, SEC.33; Acts 1980, P.L.24, SEC.3.

IC 5-4-1-10

Bonds payable to state

Sec. 10. All official bonds shall be payable to the state of Indiana; and every such bond shall be obligatory to such state, upon the principal and sureties, for the faithful discharge of all duties required of such officer by any law, then or subsequently in force, for the use of any person injured by any breach of the condition thereof.

(Formerly: Acts 1852, IRS, c.13, s.10.)

IC 5-4-1-11

First recovery; exhaustion of penalty

Sec. 11. No official bond shall be void on a first recovery, but suits may be instituted thereon, from time to time, until the penalty thereof is exhausted.

(Formerly: Acts 1852, IRS, c.13, s.11.)

IC 5-4-1-12

Defects in form and substance

Sec. 12. No official bond shall be void because of defects in form or substance or in the approval and filing thereof, but, upon the suggestion of such defects, such bond shall be obligatory as if properly executed, filed and approved.

(Formerly: Acts 1852, IRS, c.13, s.12.)

IC 5-4-1-13

Execution

Sec. 13. (a) All official bonds required by statute shall be executed by the principal and one (1) or more freehold sureties except as provided by subsection (b).

(b) The official bonds of county surveyors and township trustees shall be executed by the principal and by two (2) or more freehold sureties or an authorized surety company.

(Formerly: Acts 1852, IRS, c.13, s.13.) As amended by Acts 1980, P.L.8, SEC.34.

IC 5-4-1-14

Copies as evidence

Sec. 14. A copy, a record, or a copy of a record of an official bond legally certified has the same effect in evidence as the original. Suit may be brought on a copy of an official bond as on the original.

(Formerly: Acts 1852, IRS, c.13, s.14.) As amended by Acts 1980, P.L.8, SEC.35.

IC 5-4-1-15

Repealed

(Repealed by Acts 1981, P.L.47, SEC.26.)

IC 5-4-1-15.1

Deputies or employees; bonds and insurance policies

Sec. 15.1. (a) Whenever it is necessary, the appropriate administrative officer of any department or agency of the state may cover deputies or employees of the department or agency by individual bonds, or blanket bonds, or a crime insurance policy endorsed to cover the faithful performance of duties. The administrative officer shall determine the amount of the insurance policy, individual bond, or blanket bond obtained under this section.

(b) An individual bond, or blanket bond, or crime insurance policy endorsed to include faithful performance obtained under this section shall be filed and paid for in the same manner as public official bonds.

(c) This section does not apply to officers required by law to execute and furnish individual official bonds.

(d) The commissioner of insurance shall prescribe the form of the bonds or crime policies required by this section.

As added by Acts 1982, P.L.33, SEC.3. Amended by P.L.49-1995, SEC.3.

IC 5-4-1-16

Repealed

(Repealed by Acts 1981, P.L.47, SEC.26.)

IC 5-4-1-17

Repealed

(Repealed by Acts 1981, P.L.47, SEC.26.)

IC 5-4-1-18

Individual surety bonds for city, town, county, or township officers and employees; blanket bonds and crime policies; amount; review of amount; form

Sec. 18. (a) Except as provided in subsection (b), the following city, town, county, or township officers and employees shall file an individual surety bond:

- (1) City judges, controllers, clerks, and clerk-treasurers.
- (2) Town judges and clerk-treasurers.
- (3) Auditors, treasurers, recorders, surveyors, sheriffs, coroners, assessors, and clerks.
- (4) Township trustees.
- (5) Those employees directed to file an individual bond by the fiscal body of a city, town, or county.
- (6) Township assessors (if any).

(b) The fiscal body of a city, town, county, or township may by ordinance authorize the purchase of a blanket bond or a crime insurance policy endorsed to include faithful performance to cover the faithful performance of all employees, commission members, and persons acting on behalf of the local government unit, including those officers described in subsection (a).

(c) Except as provided in subsections (h) and (i), the fiscal bodies of the respective units shall fix the amount of the bond of city controllers, city clerk-treasurers, town clerk-treasurers, Barrett Law fund custodians, county treasurers, county sheriffs, circuit court clerks, township trustees, and conservancy district financial clerks as follows:

- (1) The amount must equal thirty thousand dollars (\$30,000) for each one million dollars (\$1,000,000) of receipts of the officer's office during the last complete fiscal year before the purchase of the bond, subject to subdivision (2).
- (2) The amount may not be less than thirty thousand dollars (\$30,000) nor more than three hundred thousand dollars (\$300,000) unless the fiscal body approves a greater amount for the officer or employee.

County auditors shall file bonds in amounts of not less than thirty thousand dollars (\$30,000), as fixed by the fiscal body of the county. The amount of the bond of any other person required to file an individual bond shall be fixed by the fiscal body of the unit at not less than fifteen thousand dollars (\$15,000).

(d) Except as provided in subsection (j), a controller of a solid waste management district established under IC 13-21 or IC 13-9.5 (before its repeal) shall file an individual surety bond in an amount:

(1) fixed by the board of directors of the solid waste management district; and

(2) that is at least thirty thousand dollars (\$30,000).

(e) Except as provided under subsection (d), a person who is required to file an individual surety bond by the board of directors of a solid waste management district established under IC 13-21 or IC 13-9.5 (before its repeal) shall file a bond in an amount fixed by the board of directors.

(f) In 1982 and every four (4) years after that, the state examiner shall review the bond amounts fixed under this section and report in an electronic format under IC 5-14-6 to the general assembly whether changes are necessary to ensure adequate and economical coverage.

(g) The commissioner of insurance shall prescribe the form of the bonds or crime policies required by this section, in consultation with the commission on public records under IC 5-15-5.1-6.

(h) Notwithstanding subsection (c), the state board of accounts may fix the amount of the bond for a city controller, city clerk-treasurer, town clerk-treasurer, Barrett Law fund custodian, county treasurer, county sheriff, circuit court clerk, township trustee, or conservancy district financial clerk at an amount that exceeds thirty thousand dollars (\$30,000) for each one million dollars (\$1,000,000) of receipts of the officer's office during the last complete fiscal year before the purchase of the bond. However, the bond amount may not exceed three hundred thousand dollars (\$300,000). An increased bond amount may be established under this subsection only if the state examiner issues a report under IC 5-11-5-1 that includes a finding that the officer engaged in malfeasance, misfeasance, or nonfeasance that resulted in the misappropriation of, diversion of, or inability to account for public funds.

(i) Notwithstanding subsection (c), the state board of accounts may fix the amount of the bond for any person who is not described in subsection (h) and is required to file an individual bond at an amount that exceeds fifteen thousand dollars (\$15,000). An increased bond amount may be established under this subsection only if the state examiner issues a report under IC 5-11-5-1 that includes a finding that the person engaged in malfeasance, misfeasance, or nonfeasance that resulted in the misappropriation of, diversion of, or inability to account for public funds.

(j) Notwithstanding subsection (d), the state board of accounts may fix the amount of the bond for a controller of a solid waste management district established under IC 13-21 or IC 13-9.5 (before

its repeal) at an amount that exceeds thirty thousand dollars (\$30,000). An increased bond amount may be established under this subsection only if the state examiner issues a report under IC 5-11-5-1 that includes a finding that the controller engaged in malfeasance, misfeasance, or nonfeasance that resulted in the misappropriation of, diversion of, or inability to account for public funds.

(k) Both of the following apply to a bond or crime insurance policy that is filed to comply with this section:

(1) Unless the bond or policy is canceled, the bond or policy must continue in force for the term of office of the individual who files the bond or policy.

(2) The aggregate liability of the surety or insurer is the amount specified in the bond or policy.

As added by Acts 1981, P.L.47, SEC.3. Amended by P.L.54-1989, SEC.1; P.L.49-1989, SEC.5; P.L.33-1992, SEC.2; P.L.49-1995, SEC.4; P.L.1-1996, SEC.36; P.L.28-2004, SEC.56; P.L.146-2008, SEC.34; P.L.176-2009, SEC.1; P.L.117-2011, SEC.1.

IC 5-4-1-19

Individual surety bonds for city, town, county, or township officers and employees; faithful performance of duties

Sec. 19. The bonds prescribed by IC 5-4-1-18 cover the faithful performance of the duties of the officer or employee, including the duty to comply with IC 35-44-1-2 and the duty to account properly for all monies and property received by virtue of his position or employment.

As added by Acts 1981, P.L.47, SEC.4.

IC 5-4-1-20

Individual surety bonds for prosecuting attorneys

Sec. 20. (a) A person elected to the office of prosecuting attorney shall execute an individual surety bond for the faithful performance of the duties of the office. The amount of the bond must be at least eight thousand five hundred dollars (\$8,500).

(b) A person elected to the office of prosecuting attorney may not take office until that person has filed a bond:

(1) in the office of the county recorder of the county in which the person resides; and

(2) within ten (10) days after the bond is issued.

(c) The cost of a bond shall be paid by the county. For multiple county judicial circuits, the cost shall be paid by each county in the judicial circuit in the manner provided by IC 33-38-5-3.

(d) A bond must be:

(1) executed by the person elected prosecuting attorney and one

(1) or more freehold sureties; and

(2) payable to the state as provided in section 10 of this chapter.

(e) A bond is not void on first recovery, and suits may be brought on the bond until the penalty is exhausted.

(f) If a bond has been legally certified, any of the following have

the same effect in evidence as the bond:

- (1) A copy of the bond.
- (2) A record of the bond.
- (3) A copy of a record of the bond.

(g) The county recorder of the county in which the person elected prosecuting attorney resides shall record the bond in an official bond register.

As added by P.L. 49-1989, SEC. 6. Amended by P.L. 98-2004, SEC. 58.