



The Surety & Fidelity
Association of America

2008 ANNUAL

STATE LEGISLATIVE REPORT

ON

FIDELITY BONDS

FINAL EDITION

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2008 IN REVIEW

Forty-four states convened in regular session in 2008. Some of the states had a shorter session as it is the second year in a two-year cycle, as well as a presidential election year. For **New Jersey** and **Virginia**, 2008 was the first year of a new two-year session. **Arkansas, Montana, North Dakota, Nevada, Oregon** and **Texas** did not meet in 2008.

Key Fidelity Bond Issues SFAA Addressed in 2008

Most of the state legislation that SFAA tracks and addresses involves contract surety or commercial surety issues. While there is a significant premium volume of fidelity bond business in the industry, almost half of the fidelity bond premium comes from policies written for financial institutions, all of which are federally regulated and have existing bond requirements. Since fidelity bond issues usually stem from federal laws or regulations, there is far less state legislation on fidelity bonds. Because fidelity bonds protect the insured instead of third parties, whether to obtain a fidelity bond is usually an internal management decision rather than a statutory mandate. Nonetheless, there generally are issues and trends at the state level of interest to fidelity bond writers. The following are the key issues that SFAA has tracked in 2008.

Pharmacy Benefit Managers

These are persons or entities that essentially are third party administrators of prescription drug programs. Pharmacy benefit managers (PBMs) can either procure prescription drugs for a client at a negotiated rate and dispense such drugs to covered persons in a state, or administer or manage prescription drug benefits that a covered entity provides for covered persons, which includes claims processing services, as well as prescription drug and medical device services, or both. Because of the large amounts of money that can flow through a pharmacy benefit manager (PBM), states have begun to look at the appropriate regulatory system for PBMs, which includes licensing and bonding.

Louisiana HB 1366 enacted a requirement that PBMs post the same \$100,000 bond required from third party administrators of health and life insurance benefits under existing law.

Bonding requirements for PBMs were considered but were not enacted this year in other states. **Alaska** SB 286 would have required PBMs to obtain a certificate of authority from the Division of Insurance and to provide a fidelity bond. The bond would have to be in an amount equal to or greater than 10% of the amount of the funds that the PBM handled or managed annually.

Georgia HB 798 would have required a PBM to maintain a fidelity bond equal to at least 1% of the amount of the funds handled or managed annually. The bill was amended on the House floor to strip out most of the regulatory requirements except for licensing. **West Virginia** HB 2328 would have authorized the Insurance Commissioner to require a surety bond in an amount and in a form that he or she considers appropriate to ensure the financial solvency of a pharmacy benefit manager. This bill also would have required licensure.

An attempt failed in **Illinois** under SB 2028 to repeal the \$100,000 bond requirement enacted in 2007. SFAA wrote a letter to the sponsor supporting the bond requirement. The bond amount is in line with what has been enacted in other states.

Common Interest and Community Managers

Continuing a trend from last year, legislation has been introduced to require managers of community and homeowners associations to post a fidelity bond. This year, however, some of the 2008 legislation has been more problematic because some of it requires the fidelity bond to be in an amount equal to the funds that are managed for the homeowners associations. For management companies that have multiple associations as clients, the amount of the required bond could be difficult to obtain.

Maryland had the most problematic legislation in 2008. SB 588 would have required the board of directors of a cooperative housing corporation, condominium or homeowners association to “execute” a fidelity bond, but stated that the fidelity bond shall be used to indemnify the officers, directors and employees of the co-op, condominium or homeowners association and to indemnify any management company charged with the operation or maintenance of the co-op, condominium or homeowner’s association. From a surety and fidelity perspective, the bill had the relationships backwards. The fidelity bond should indemnify the co-op, condominium or homeowner’s association against loss resulting from fraud or dishonesty of its officers, directors or employees and against loss resulting from dishonesty or fraud of the management company or its employees. The purpose is to protect the funds of the co-op, condominium or association, not to protect those who may steal those funds. SFAA worked with the AIA and drafted amendments to fix the problems in Maryland SB 588. The bill sponsor agreed that the bill had drafting problems, and accepted SFAA’s recommendations to clarify the type of bond and coverage required. As amended, however, it was reported unfavorably from the committee and did not pass. Committee members were not comfortable with the subject matter and the requirements that they would have been imposing on all property managers to address problems with a few managers in the Maryland and Virginia area.

The other Maryland bills, most of which were problematic, were withdrawn. **Maryland** HB 992 would have required management companies that perform financial, administrative, maintenance or other services for condominiums, cooperative housing corporations or homeowners associations to register and execute a fidelity bond to be used for the benefit of a person who suffers harm caused by a fraudulent or dishonest act of the management company. **Maryland** HB 1053 would have required specified governing or managing bodies of a cooperative housing corporation, condominium, or homeowner’s association to execute a fidelity bond for specified purposes in a specified amount; and prohibits the total liability of the surety to all insured persons under the bond from exceeding the sum of the bond.

Virginia, on the other hand, enacted HB 516/SB 301. The new law requires property managers to obtain a fidelity bond or an employee dishonesty insurance policy as a condition of licensure. The bond or policy must insure against losses resulting from theft or dishonesty committed by the officers, directors, and persons that the manager employs, as well as providing coverage for losses of the manager's clients resulting from such theft or dishonesty. The amount of coverage must be equal to \$2 million or the highest aggregate amount of the operating and reserve balances of all associations under the manager's control during the prior fiscal year, whichever would be less. The minimum coverage required is \$10,000. In the case of the manager's failure to

meet its fiduciary responsibilities to the association it manages, the court is able to appoint a receiver for all or part of the funds or property of the manager. The court, in its discretion, may require the receiver to post a bond with or without surety.

The new law also makes changes to other bond requirements for similar associations. Existing law requires a unit owners' association and any property owners' association collecting assessments for common expenses to obtain a fidelity bond or employee dishonesty insurance policy. Currently the law requires the bond or policy for both kinds of associations to provide a minimum of \$10,000 in coverage. The new law maintains this minimum, but requires that the bond or policy be equal to \$1 million or three times the monthly assessments of the association, whichever is less.

New Jersey SB 759 carries over to 2009. It would create a board to certify real estate property managers, which are individuals and firms performing property management of rental properties and of common interest communities, such as condominiums and planned developments. The bill would require such individuals or firms to post a surety bond in the amount of \$3,000. The bond would have to be issued by a state-licensed surety and would have to be approved by the Department of Banking and Insurance. The bond would be conditioned on faithful performance under the proposed law. The bill would authorize the board to promulgate rules and regulations concerning who would be eligible to receive the financial protection afforded by the bond.

Legislation to create new bonding requirements failed this year in **California, Hawaii, Illinois** and **North Carolina**. **California AB 1921** would have required the managing agent of a common interest development to be bonded. **Hawaii HB 2789** would have regulated association property managers. Such associations included condominium associations and planned community associations. The bill would have required the manager to obtain a performance bond, maintain financial reserves or furnish another form of financial assurance. The Real Estate Department would have determined the specific requirements through regulations. **Illinois HB 4516/SB 2128** would have required managers of community associations to be licensed and obtain a fidelity bond. The bond would have to be in an amount not less than all of the community association's funds and would have to provide coverage for the manager and all of his or her partners, officers, and employees of the firm for whom the license holder is employed, as well as the association's officers, directors and employees of each community association serviced. **North Carolina HB 1535/SB 1315** would have required community association managers to be licensed and obtain a fidelity bond or an insurance policy. The fidelity bond would have been in the amount of \$20,000.

Exchange Facilitators

These are persons or entities engaged in the facilitation of like-kind exchanges of property pursuant to federal tax law. Section 1031 of the Internal Revenue Code permits the deferral of the capital gains tax on the sale of property if the proceeds of the sale are invested in like-kind property. Facilitators are essentially intermediaries that assist taxpayers in making such exchanges. There have been issues in some states regarding the qualifications and honesty of the facilitator in handling the assets of clients and some states have just begun to look at regulation of this practice.

California SB 1007 requires exchange facilitators, which are those who are engaged in the facilitation of like-kind exchanges of property pursuant to federal tax law, to be licensed and to

post one of the following: a fidelity bond or bonds in an amount not less than \$1 million from an insurer licensed in the State, or cash, securities, or an irrevocable letter of credit for the same amount. SFAA believes that while the new law states that a fidelity bond is required, it suggests that a surety bond is intended. The new law allows third parties to make a claim on the fidelity bond, which as a matter of practice does not work for fidelity bonds. During the legislative session, we wrote to the sponsor inquiring about the language and explaining the differences between surety and fidelity bonds, but the bill sponsor did not address our concerns. SFAA is addressing the problem by working with the Commissioner of Corporations and the Commissioner of Financial Institutions in the implementation of the bond requirement. Similar legislation failed to pass this year in **Colorado** and **Washington**.

Professional Employer Organizations

Connecticut, Utah and West Virginia enacted legislation in 2008 that requires Professional Employer Organizations (PEOs) to maintain a minimum working capital of \$150,000, and submit a financial statement with the license application and each annual renewal. A PEO also could post a bond with a minimum value of \$100,000. The bond would serve to secure the payment of any tax, wage, benefit, or other entitlement due to or with respect to a covered employee if the PEO does not make the payment when due. The bill also would provide that a "covered employee is not, solely as the result of being a covered employee of a professional employer organization, an employee of the professional employer organization for purposes of general liability insurance, fidelity bond, surety bond, employer's liability not covered by workers' compensation, or liquor liability insurance carried by the professional employer organization unless the covered employee is included by specific reference in the professional employer agreement and applicable prearranged employment contract, insurance contract, or bond."

North Carolina HB 738 increased the amount of the bond that PEOs are required to post for licensure in the State. Under prior law, the bond amount was \$100,000. Under the new law, the bond amount is 5% of the licensee's prior year's North Carolina wages, benefits, workers compensation premiums and unemployment compensation contributions, but not to exceed \$500,000. The new law specifies that the bond runs to the Insurance Commissioner.

Such legislation failed this year in **Michigan**. HB 6601 would have required PEOs to maintain \$150,000 in working capital or post a bond or letter of credit or post securities in an amount of \$100,000. Michigan HB 6599 would have required PEOs to make quarterly reports and payments of contributions, penalties, and interest on wages for covered employees under its own employer number and rate. If a PEO filing such reports was a member of a licensed PEO group that reports payroll for client companies on multiple unemployment insurance account numbers, then the PEO would have been required to post a surety bond to secure the unemployment insurance tax contributions or the payments that can be made in lieu of contributions. The bond would have had to be in an amount that the Unemployment Agency will determine, not to exceed 1/12 of the contributions or payments for which the PEO is liable in the previous calendar year. Bonds would have had to be issued by corporate surety entities that are licensed in the State. In lieu of a bond, securities with an equivalent market value, a certificate of deposit, an irrevocable letter of credit, or evidence of accreditation from a bonded, independent, and qualified assurance organization that will assure compliance would have been accepted.

Other Issues of General Interest to SFAA Members

The bad faith legislation in **Rhode Island** died when the legislature adjourned. SB 2323 and SB 2229 would have allowed any obligee, principal or claimant that is under any fiduciary, performance or payment bond to file a claim against the surety on the bond for wrongfully, and in bad faith, refusing to pay or settle a claim. The bills would have allowed claimants to seek both compensatory and punitive damages, as well as reasonable attorneys' fees and costs of suit. SB 2229 also would have applied to fiduciary bonds. The bills were heard in committee in both chambers, but did not get out of committee. In the past two sessions, the same legislation passed one house of the legislature.

Iowa HB 2555 subjects surety and guaranty bond filings to the 30 day deemer provisions in the Iowa rating law. Under prior law, rate filings for inland marine, and for surety and guaranty bonds not covered by a previous filing, were exempt from the 30 day deemer period applicable to all other rate filings. Inland marine and surety filings became effective when filed under prior law. The new law removes this exemption so that surety and guaranty bond filings now are subject to the 30 day waiting period/deemer before they become effective. However, even though prior law provided that a surety filing was effective upon filing, the Commissioner also had the authority to disapprove the filing within 30 days of its submission. The new law eliminated the disapproval period when it subjected surety and guaranty bond filings to the deemer period. The new law also creates a consumer advocate in the Insurance Department. HB 2555 became effective upon enactment.

New Hampshire SB 378 authorizes the State Supreme Court to establish a business and commercial dispute docket in the superior court. Civil claims related to surety bonds will be assigned to this docket. The new law became effective upon enactment.

LOOKING AHEAD TO 2009

All the states will be in session in 2009. Virtually every state will convene sometime in January. Alabama, Nevada and Oklahoma will start in February, and Florida and Louisiana have the late spring starts in March and April, respectively. For many states, this will be the start of a new two-year session. For New Jersey and Virginia, this is the second year of a two-year session that began in 2008.

Key Changes in the State Political Landscape for 2009

Voters in the November 2008 elections changed the landscape in the states, where the big story was party control of state houses. The Democrats gained control of both chambers in four states: Delaware, Nevada, New York and Wisconsin. The Republicans gained control of both chambers in two states: Oklahoma and Tennessee. The Democrats now control both houses in 27 states, while the Republicans control both houses in 15 states. This represents the fewest number of states with politically divided legislatures in over 20 years. In 7 states, the two chambers are dominated by opposing political parties: Alaska, Indiana, Kentucky, Ohio, Michigan, Pennsylvania and Virginia. In Montana, the Republicans gained a 3 vote majority in the Senate, and the House is tied 50-50. Nebraska is a unicameral and non-partisan legislature.

There were 11 gubernatorial elections this year. The Democrats gained one office in Missouri so that they now control the governor's mansion in 29 states to 21 for the Republicans. Factoring in

the governorships, the Democrats control the legislature and the governor's mansion in 17 states, the Republicans control 8, and 24 states have a divided government.

Of note, the New Hampshire Senate became the first state legislative chamber in history in which the majority of members are women. As a result of the recent elections, women hold 13 of the 24 seats.

Party control of the state chambers and the governor's office are particularly important this year because the state legislative and congressional districts are redrawn every ten years according to the U.S. census and redistricting will be done in 2010. In addition, the party in control can appoint new legislative leaders so that the insurance industry may be looking at several new insurance committee chairs in the states in 2009.

Additional Insurance and Surety Issues Expected in the State Legislatures in 2009

The changes in the composition of some of the state legislatures in the November 2008 Presidential elections and the economy both will have an impact on the state legislative agendas. Like the opposition of some in Congress to the industry's use of information from credit reports, bans or restrictions on the use of credit scores are expected in many states in which the Democrats have gained control of both chambers of the legislature. This legislation has been limited primarily to personal lines insurance to date.

The following are some additional issues that we anticipate in the state legislatures in 2009, which have either been generated or gotten new life from the current political and economic situation:

Antitrust—The Florida Senate Banking and Insurance Committee is studying the repeal of the insurance industry's immunity under the Florida antitrust statute. The new incoming Senate President initiated this issue late last year. Application of the state antitrust laws to the insurance industry and to advisory and statistical organizations, such as SFAA, is largely uncharted waters. There is little case law or enforcement of state antitrust laws against the industry, largely due to state exemptions that mirror the federal McCarran Act.

Bad Faith—The trial bar is expected to push bad faith legislation in Florida, Idaho, Louisiana, Michigan, Minnesota, Oregon and Washington. SFAA will review all bills for application to surety and fidelity. The other states in which there are ongoing issues with the trial bar that could produce bad faith or other anti-tort reform measures are: California, Colorado, Illinois, Nevada, New York, New Jersey and Pennsylvania.

Regulation of Credit Default Swaps (CDS)—Given the role that credit default swaps played in the meltdown on Wall Street, some state insurance regulators may attempt to regulate CDSs as insurance, or specifically as surety or financial guarantee, depending on the definitions and other licensing, capital and financial regulations in their insurance code. A CDS is a contract under which the seller promises the buyer to pay upon the occurrence of a credit event, usually a failure to pay, at a specific entity.

The Missouri Insurance Department recently issued a bulletin stating that it will regulate certain CDSs as surety as of January 1, 2009, although the Department will use discretion in its enforcement authority to the extent any comprehensive federal regulatory scheme is developed

for CDSs. Sellers of such CDSs must be licensed in Missouri, comply with the capitalization requirements and submit to financial and market conduct regulation as insurers.

The key will be New York because New York law generally has governed regarding the regulation of surety and financial guarantees, due to the extraterritorial statute, the Appleton Law. While New York originally stated that it would seek to regulate CDSs as insurance in some manner, in more recent testimony in Congress, the Department said that it would wait to see what progress federal regulators make on addressing these unregulated products. The New York legislature will conduct a hearing on CDSs in early December. There was legislation introduced in Congress late this year to require every swap and derivative to be traded on a regulated exchange. Some of the federal banking and securities regulators have said that they are working on a clearinghouse for these transactions so that all the appropriate regulators will have information needed to monitor and decrease the risk in these transactions.

Other Key Issues on the State Legislative Agendas

The National Conference of State Legislators (NCSL) recently released the top nine issues that state legislators expect to dominate the 2009 state legislative agendas. All are related in some way to the current recession in the U.S. economy:

--State Budgets. The number one issue that most states will face in 2009 is budget deficits. Nearly 40 states will be looking at a shortfall in revenues in 2009 that will have to be addressed. The NCSL estimates that the states collectively will face a \$97 billion budget gap in the next 18 to 24 months.

--Transportation and Infrastructure. Infrastructure is in need of repairs and modernization at a time when revenues for this are disappearing. States may once again look to PPPs, despite the increased cost of capital for these private investors, as well as increased taxes and federal aid. Many states are bringing shovel-ready projects to Congress in the hope that Congress will provide funding in an economic stimulus package in early 2009 or through the agency appropriations process later in the year.

--The Costs of Higher Education. At the same time, with the availability of student loans and other financial aid decreasing, state colleges and universities are raising tuition. States are looking to help students for whom college is increasingly unaffordable.

--Health Care Costs. States are looking for federal aid to fund the increasing costs of Medicaid and other programs designed to help the uninsured. As unemployment increases, the Medicaid rolls will increase.

--Clean Energy and Alternatives. Some state legislators see renewable energy as encouraging local job growth and economic development.

--Sentencing and Corrections. The growth of the state prison populations also is straining state budgets. States are looking at cost-effective correction options.

--Home Mortgages. States want to help residents avoid foreclosures and obtain home loans. In this context, states are moving toward regulation of foreclosure consultants to protect consumers. Some of this legislation involves licensure and bonding.

--**Working Families.** States want to give families incentives to save and invest so that they will have the needed assets in the future for college tuition, home ownership and retirement. Families are increasingly in debt and have little or shrinking net worth.

--**Unemployment.** With unemployment rates on the rise, state programs face shortfalls from increasing claims for unemployment and other benefits, as well as demands to extend the time periods for receiving aid from the state.

2008 ANNUAL STATE LEGISLATIVE REPORT ON FIDELITY BONDS

Because of the diversity of the business of its members, SFAA tracks all state and federal surety and fidelity bond legislation. In reporting legislative developments, however, SFAA's reports are based on the three major lines of business – contract surety, commercial surety and fidelity bonds. The SFAA Annual State Legislative Report on Fidelity Bonds contains all the new bond requirements in 2008 and reductions or eliminations of existing bond requirements. Interested SFAA members can access the reports on contract surety and commercial surety on the SFAA website.

This final section of the SFAA Annual Report contains a comprehensive state-by-state listing of new laws affecting fidelity that were enacted in 2008. SFAA also publishes a monthly state legislative overview so that members will have prompt notice of these enactments and the effective dates. All the new bond enactments are compiled in the report below, along with other state legislation that could impact fidelity bonding. SFAA members can obtain copies of these new laws on the websites of the state legislatures. SFAA staff will be happy to assist members in obtaining copies of new laws.

2008 STATE ENACTMENTS ON FIDELITY BONDS

As usual in the state legislative sessions, several states enacted new requirements for public official bonds for newly formed local governments or authorities. **Florida** and **Georgia** had the most new laws in this area in 2006. Often, this type of state legislation deals with newly formed local governments, boards, commissions or other entities. While requiring some or all public officials to be bonded, these bills do not specify the type of bond. For some of the officials and functions now required to be bonded, a fidelity bond may be intended, even if the new law refers to a surety bond. Therefore, SFAA included these types of enactments in its reports on both commercial surety and fidelity.

ALABAMA

No Fidelity Bond Enactments in 2008

ALASKA

No Fidelity Bond Enactments in 2008

ARIZONA

No Fidelity Bond Enactments in 2008

ARKANSAS

Not in session for 2008

CALIFORNIA

SB 1007: Miscellaneous Bond—Exchange Facilitators

INTRODUCED: 02/23/2007

ENACTED: 09/30/2008

SB 1007, as introduced, had no relation to fidelity bonds. The bill was amended and as enacted it regulates exchange facilitators which are those who are engaged in the facilitation of like-kind

exchanges of property pursuant to federal tax law. The new law requires such persons to be licensed, and to obtain one of the following: a fidelity bond or bonds in an amount not less than \$1 million from an insurer licensed in the State; or post cash, securities, or an irrevocable letter of credit for the same amount. The bill would have allowed the Commissioner of Corporations (Commissioner) to determine the amount of the bond, so long as it was in the amount of at least \$1 million, but that provision was eliminated during the session. Another provision that would have required the Commissioner to approve the insurance company issuing the fidelity bond also was eliminated. While the bill would exempt financial institutions and title insurers, controlled escrow companies and underwritten title companies from the licensing requirement, it does require them to comply with bonding and insurance requirements applicable under the new law to licensed exchange facilitators. The new law became effective on January 1, 2009.

SB 1623: Public Officials

INTRODUCED: 02/22/2008

ENACTED: 09/27/2008

SB 1623 eliminated the fidelity bond required for the California Rice Commission's (Commission) designated agents handling assessment funds. Prior law required a bond in an amount not less than \$25,000. As introduced the bill did not impact bonding and at first the bill would have altered the requirement, but instead it was amended to remove it. The new law became effective on January 1, 2009.

COLORADO

No Fidelity Bond Enactments in 2008

CONNECTICUT

No Fidelity Bond Enactments in 2008

DELAWARE

No Fidelity Bond Enactments in 2008

DISTRICT OF COLUMBIA

No Fidelity Bond Enactments in 2008

FLORIDA

HB 935: Public Official

INTRODUCED: 03/04/2008

ENACTED: 06/17/2008

HB 935 creates the Marion County Hospital District (District), which will be governed by a board of trustees (Board). The new law requires that if the secretary/treasurer is someone other than a member of the Board, then a bond in an amount of not less than \$10,000 will be required. The Board will set the actual amount required. The new law became effective upon enactment.

GEORGIA

HB 1033: Public Officials

INTRODUCED: 01/29/2008

ENACTED: 03/10/2008

HB 1033 creates a new charter for the City of Edgehill. The charter requires both elected and appointed officers and employees of the City to post surety or fidelity bonds in the amounts and with the terms and conditions that the City Council requires by ordinance or law. The new law became effective on July 1, 2008.

HB 1182: Public Official

INTRODUCED: 02/13/2008

ENACTED: 03/25/2008

HB 1182 created a county manager for Toombs County, who is required to post a surety bond from a surety company licensed to do business in Toombs County. The bond has to be in an amount that the Toombs County Board of Commissioners (Board) determines, but not less than \$100,000. The bond is for the faithful performance of the manager's duties and would serve to secure against corruption, malfeasance, misappropriation, or unlawful expenditure. The new law became effective on July 1, 2008.

SB 467: Public Official

INTRODUCED: 02/12/2008

ENACTED: 05/14/2008

SB 467, effective on July 1, 2008, provides for a county manager in Upson County. The manager is required to post a surety bond for the faithful performance of his or her duties in an amount not less than \$50,000. The County Board of Commissioners (Board) will determine the amount required. The bond serves to secure against corruption, malfeasance, misappropriation, or unlawful expenditure and would have to be issued by a surety company licensed to do business in Upson County.

--Purchasing Agents: The manager will serve as the purchasing agent for the county, but also is permitted to appoint a person to perform such duties. The person that the manager appoints also will be required to post a surety bond in an amount not less than \$50,000 from a surety company licensed to do business in Upson County. The Board will determine the amount required. The bond is conditioned for the faithful performance of the agent's duties and would serve to secure against corruption, malfeasance, misappropriation, or unlawful expenditure.

HAWAII

No Fidelity Bond Enactments in 2008

IDAHO

No Fidelity Bond Enactments in 2008

ILLINOIS

No Fidelity Bond Enactments in 2008

INDIANA

No Fidelity Bond Enactments in 2008

IOWA

No Fidelity Bond Enactments in 2008

KANSAS

No Fidelity Bond Enactments in 2008

KENTUCKY

HB 83: Public Officials

INTRODUCED: 01/08/2008

ENACTED: 04/07/2008

HB 83 specifies that the bond required under existing law from the treasurer of the Public Service Commission must be a bond with surety. Prior law contained no such specification. The new law became effective on July 15, 2008, 90 days after adjournment.

LOUISIANA

HB 1067: Public Officials

INTRODUCED: 03/31/2008

ENACTED: 07/01/2008

HB 1067 permits an affidavit from the obligee of record to stand in place of a promissory note for identification with a mortgage or act creating a vendor's privilege on immovable property if the note was lost or destroyed. The new law provides that neither the clerk of the court and ex officio recorder of mortgages, nor the surety on his or her bond, have any liability for any damages that resulted to any person or entity as a consequence of canceling the inscription of a mortgage or vendor's privilege pursuant to such an affidavit. The legislation is identical to legislation that former Governor Blanco vetoed in 2007. The new law became effective on August 15, 2008.

MAINE

No Fidelity Bond Enactments in 2008

MARYLAND

HB 1139: Public Officials

INTRODUCED: 02/07/2008

ENACTED: 04/24/2008

HB 1139 eliminated the office of dog warden in Calvert County, for which a surety bond was required conditioned on the faithful performance of his or her duties. The law also required a bond from all deputy dog wardens. With the elimination of these offices, the bond requirement also was eliminated. SFAA did not oppose this bill because it repealed the law for reasons unrelated to the bond requirement. The new law became effective on October 1, 2008.

MASSACHUSETTS

HB 5018: Public Officials

INTRODUCED: 07/29/2008

ENACTED: 08/12/2008

HB 5018 creates the Massachusetts Clean Energy Technology Center (Center) for the promotion of clean energy technologies and the development of jobs in this sector. The new law requires the officers and employees of the Center to post a bond if such persons have access to the Center's cash or securities. The bond has to be in the amount and "with such surety" as the

Center's board prescribed. Blanket or schedule bonds will be accepted. The bill was declared an emergency measure, which allowed it to become effective upon enactment.

SB 53: Public Officials

INTRODUCED: 01/10/2007

ENACTED: 12/22/2008

SB 53 establishes a regional education, training and skills center in the city of Taunton. The new law requires the treasurer of the Board of Directors (Board) for the new education center to post a bond for his or her faithful performance, in the form and at least in the amount that the Department of Revenue (Department) would require. The Board has the authority to fix the amount of the bond so long as it is at least in the amount that the Department requires. The new law became effective 90 days after enactment on March 24, 2009.

SB 2344: Public Officials

INTRODUCED: 09/26/2007

ENACTED: 05/13/2008

SB 2344 creates the Whittin Reservoir Watershed District within the Town of Douglas. The new law requires the District's treasurer to post a surety bond in the amount that the District's Management Committee determines to be sufficient. The Commissioner of Revenue has to approve the form. Failure to post the bond within ten days after election or appointment to this office or failure to renew the bond within ten days of its expiration precludes the treasurer from taking office or result in his or her removal from office. The new law became effective upon enactment.

SB 2786: Public Officials

INTRODUCED: 07/07/2008

ENACTED: 10/15/2008

SB 2786 creates the Walpole Economic Development and Industrial Corporation (Corporation) for the Town of Walpole and provides for a board of directors. The new law requires each of the board members to post a surety bond from a surety company licensed in the Commonwealth. The bond has to be in the amount of \$50,000 and is conditioned on the faithful performance of the duties of the office. Each surety bond has to be approved by the town counsel and filed in the office of the state secretary. The new law also requires the treasurer of the board to post a bond in an amount that the Corporation's board will determine. The surety issuing the bond has to be licensed in the Commonwealth. The new law became effective upon enactment.

MICHIGAN

No Fidelity Bond Enactments in 2008

MINNESOTA

No Fidelity Bond Enactments in 2008

MISSISSIPPI

No Fidelity Bond Enactments in 2008

MISSOURI

No Fidelity Bond Enactments in 2008

MONTANA

Not in Session for 2008

NEBRASKA

No Fidelity Bond Enactments in 2008

NEVADA

Not in Session for 2008

NEW HAMPSHIRE

No Fidelity Bond Enactments in 2008

NEW JERSEY

No Fidelity Bond Enactments in 2008

NEW MEXICO

No Fidelity Bond Enactments in 2008

NEW YORK

No Fidelity Bond Enactments in 2008

NORTH CAROLINA

No Fidelity Bond Enactments in 2008

NORTH DAKOTA

Not in Session for 2008

OHIO

HB 562: Fiduciary Bonds—University Treasurers

INTRODUCED: 05/19/2008

LINE ITEM VETO: 06/24/2008

HB 562 allows the treasurer of the Board of Trustees (Board) for a number of universities to be insured in lieu of obtaining a bond. The law requires such treasurers to obtain a bond in an amount not less than the estimated amount of funds that may be in his or her control at any given time. The Board ultimately determines the amount required. For insurance policies, the new law requires the policy to be in the same amount of the bond, except that it allows for a reduction of the required amount by the amount of the deductible. The universities are Bowling Green State, Central State, Cleveland State, Wright State, Youngstown State, and the universities of Akron, Cincinnati, and Toledo. The Governor's line item veto did not impact the provisions described above and so they will become law. The new law became effective 91 days after it was filed with the Secretary of State.

OKLAHOMA

HB 3187: Public Officials

INTRODUCED: 02/04/2008

ENACTED: 05/12/2008

HB 3187 creates the Oklahoma Oilseed Commission (Commission). The new law requires the Commission to provide surety bonds for each of its members handling funds for the Commission. The Department of Central Services will determine the amount of the bond

required. The new law became effective on November 1, 2008.

SB 1766: Public Officials

INTRODUCED: 02/04/2008

ENACTED: 05/02/2008

SB 1766 eliminated the office of “secretary-treasurer” from the board of directors (Board) of the Oklahoma Conservation Commission (Commission). The secretary-treasurer was required to post a surety bond. The Board still will have a “treasurer,” but there is no bond requirement. The new law became effective upon enactment.

OREGON

Not in Session for 2008

PENNSYLVANIA

SB 1020: Public Officials

INTRODUCED: 07/03/2007

ENACTED: 07/09/2008

SB 1020 repeals existing law, which provides that the State Conservation Commission (Commission) shall provide for the execution of surety bonds for all employees and officers that are entrusted with the Commission's funds or property. The new law became effective 60 days from enactment on September 9, 2008.

SB 1063: Public Officials

INTRODUCED: 09/10/2007

ENACTED: 07/02/2008

SB 1063 allows local governments to jointly collect taxes. Under prior law, the tax officers of each governmental unit collected its own taxes and the local tax officers had to be bonded. The bond had to be equal to the maximum amount of taxes that may be in the officer's possession at any given time. Under the new joint tax collection procedures, a tax committee will be formed and the bond requirements for the tax officers collecting taxes for the group of public entities are almost identical to the prior bond requirements for tax officers of a local governmental unit, except for the amount required. The bond may be in an amount equal to the maximum amount of taxes that may be in the officer's possession at any given time as provided under prior law. Alternatively, the new law allows the tax committee to set the bond amount so that it will be sufficient to secure the officer's financial responsibility in combination with fiscal controls, insurance and other risk management and loss prevention measures that tax collection district uses. The new law became effective upon enactment.

RHODE ISLAND

No Fidelity Bond Enactments in 2008

SOUTH CAROLINA

No Fidelity Bond Enactments in 2008

SOUTH DAKOTA

SB 85: Trust Companies

INTRODUCED: 01/15/2008

ENACTED: 03/11/2008

SB 85 revises the law concerning trust companies which requires that either a surety bond, fidelity bond, or directors and officers insurance policy be purchased for the protection of its fiduciary clients. The new law changes this so that the option of a surety bond has been eliminated and also that both a fidelity bond and a D&O insurance policy would be required. The new law became effective on July 1, 2008.

TENNESSEE

No Fidelity Bond Enactments in 2008

TEXAS

Not in Session for 2008

UTAH

HB 125: Public Officials

INTRODUCED: 01/21/2008

ENACTED: 03/17/2008

HB 125 permits a regional grazing board to hire a treasurer and requires the treasurer to post a surety bond. If a corporate surety bond were posted, then it would have to be in the amount of \$5,000. If a personal bond were posted, then it would have to be in the amount of \$10,000. The new law becomes effective on May 5, 2008.

VERMONT

No Fidelity Bond Enactments in 2008

VIRGINIA

HB 516/SB 301: Common Interest Community Managers

INTRODUCED: 01/09/2008

ENACTED: 04/23/2008

HB 516/SB 301 regulates common interest community managers. The new law requires such managers to obtain a fidelity bond or an employee dishonesty insurance policy as a condition of licensure. The bond or policy must insure against losses resulting from theft or dishonesty committed by the officers, directors, and persons that the manager employs, as well as providing coverage for losses of the manager's clients resulting from such theft or dishonesty. The amount of coverage must be equal to \$2 million or the highest aggregate amount of the operating and reserve balances of all associations under the manager's control during the prior fiscal year, whichever would be less. The minimum coverage required is \$10,000. In the case of the manager's failure to meet its fiduciary responsibilities to the association it manages, the court is able to appoint a receiver for all or part of the funds or property of the manager. The court, in its discretion, may require the receiver to post a bond with or without surety.

The new law also makes changes to other bond requirements for similar associations. Existing law requires a unit owners' association and any property owners' association collecting assessments for common expenses to obtain a fidelity bond or employee dishonesty insurance policy. Currently the law requires the bond or policy for both kinds of associations to provide a

minimum of \$10,000 in coverage. The new law maintains this minimum, but requires that the bond or policy be equal to \$1 million or three times the monthly assessments of the association, whichever is less. The new law became effective on July 1, 2008.

SB 505: Public Officials

INTRODUCED: 01/09/2008

ENACTED: 03/04/2008

SB 505 revises the town charter for Bowling Green. The new law authorizes the town council to take a surety bond from any officer, whether elected or appointed. The council must approve the bond and determine its amount. The bond is conditioned on the faithful performance of the duties of the office for which it was posted. The new law became effective upon enactment under emergency declarations.

WASHINGTON

No Fidelity Bond Enactments in 2008

WEST VIRGINIA

HB 4079: Professional Employee Organizations

INTRODUCED: 01/17/2008

ENACTED: 03/27/2008

HB 4079 requires Professional Employer Organizations (PEOs) to maintain a minimum working capital of \$100,000 or post a bond with a minimum value of \$100,000. The bond would serve to secure the payment of any tax, wage, benefit, or other entitlement due to or with respect to a covered employee if the PEO does not make the payment when due. The new law also provides that a "covered employee is not, solely as the result of being a covered employee of a professional employer organization, an employee of the professional employer organization for purposes of general liability insurance, fidelity bond, surety bond, employer's liability not covered by workers' compensation, or liquor liability insurance carried by the professional employer organization unless the covered employee is included by specific reference in the professional employer agreement and applicable prearranged employment contract, insurance contract, or bond." These provisions are based on model legislation that has been introduced and enacted in other states in the past few sessions. The new law became effective on June 6, 2008.

WISCONSIN

No Fidelity Bond Enactments in 2008

WYOMING

No Fidelity Bond Enactments in 2008