



The Surety & Fidelity  
Association of America

**2006 ANNUAL**

**STATE LEGISLATIVE REPORT**

**ON**

**FIDELITY BONDS**

**FINAL EDITION**

**JANUARY 2007**

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## 2006 In Review .....

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 business in the industry, almost half of the fidelity 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.

Much of the existing state legislative activity on fidelity comes from requirements for public official 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.

**Virginia** HB 1275 is one new law of particular interest to SFAA members writing fidelity bonds. Under current Virginia law, when an individual sues his or her insurer to determine what coverage is available under his or her insurance policy or bond, to the extent that the insurer is liable, the individual may recover attorneys' fees and other costs from the insurer. As originally drafted, HB 1275 would have applied this provision only to insurance policies and not to bonds. As amended and signed by the Governor, however, the new law applies to insurance policies and fidelity bonds.

### **I. Some of the Key Issues – Which Could Impact Surety – That SFAA Addressed in 2006 in the States:**

- ***Illinois Power of Attorney Reform is the Victim of a Short Session.*** SFAA drafted legislation and background information and worked with AIA to amend the **Illinois** law to give sureties the option of attaching a power of attorney to each bond or recording the power of attorney in the circuit courts. This legislation is needed to alleviate the current burden of annual filings required in some state circuit courts, most notable in Cook County. The bill was introduced as SB 655, and it passed the Senate unanimously. The bill did not get out of the House Rules Committee in time for it to be heard and passed, as Illinois had a short session this year. SFAA has this on its agenda again for 2007.

- ***Service of Process Surfaces.*** Prior to this session, **Indiana** and **Nebraska** were the only two states that did not have a state official to receive service of process for purposes of 31 USC 9306, so that SFAA members had to file an agent for service of process in the federal district courts of those states if they wrote any bonds required or permitted for the federal government. SFAA has longstanding model amendments, and AIA state counsel successfully had them added to Indiana HB 1359 to solve the service of process issue for sureties in Indiana. The new law requires foreign insurance companies that write surety bonds to appoint the Insurance Commissioner as the agent for

service of process. SFAA has targeted Nebraska for 2007 so that this issue will be solved in all jurisdictions.

The **Iowa** Insurance Department had a provision introduced in SB 2364 to repeal the requirement that the Insurance Commissioner act as agent of service of process for insurers. The Department bill would have caused SFAA members to begin filing an agent for service of process in the Iowa federal district courts. SFAA worked with AIA to craft an amendment that designates the Secretary of State to receive service of process for sureties for purposes of 31 US C 9306 to the extent the surety cannot otherwise be served in Iowa. Insurers otherwise file a resident agent for licensure in Iowa.

●**Bad Faith Was Defeated in the 2006 State Sessions.** Bad faith legislation moved but was defeated in **Louisiana, Rhode Island** and **Wyoming**. Louisiana SB 707 would have given third parties a cause of action against insurers and did not exclude sureties from its provisions. The bill passed the Senate but did not pass out of the House Insurance Committee. Senate Bill 2182 in Rhode Island was aimed directly at contract sureties and would have permitted "any obligee, principal or claimant under any performance or payment bond" to sue the surety on the bond for bad faith failure to pay or settle a claim. It passed the Senate but did not get out of Committee in the House. Late in the session, however, a companion bill to the Senate bill was introduced as HB 8250. The bill did not move but may indicate that a sponsor and support surfaced in the House so that we will see this bill again in 2007. Wyoming HB 68, which would have created a third party bad faith and direct action law, was killed on the House floor this year.

●**Insurance Claims.** **Louisiana** SB 620 changes the Insurance Code provisions concerning the regulation of provisions in insurance contracts, such as cancellations and non-renewals. Insurers now are required to pay an additional 50% of the damages, plus attorneys' fees and costs, if a claim is not paid within 30 days. The penalty was set at an extra 25% and no attorneys' fees were awarded under prior law.

## II. Looking Ahead to 2007

2007 is the start of a new legislative session in all the states except **New Jersey** and **Virginia**, which carryover from 2006. **Alabama, Florida** and **Louisiana** still are the "spring session" states with later starting dates in March and April. Look for **Louisiana**, however, to have another special session before its regular session to address the continuing issues of recovery from Katrina. For a majority of states, this is the first of a two-year session, and bills not enacted in 2007 can carryover to 2008.

The November 2006 elections in the states were 'federalized,' in that Democrats gained a total of 274 state House seats and 56 state Senate seats. This mirrored the change in the U.S. Congress. All states except **Nebraska** have two chambers, for a total of 99 state legislative bodies. With the elections shifting control to the Democrats in 10 state chambers, and the Republicans gaining control of only one chamber, which was previously evenly divided, in 2007, the Democrats will control 56 state chambers; and the Republicans will control 41 state chambers. The **Oklahoma** Senate is evenly divided and legislators in **Nebraska's** unicameral legislature run on a nonpartisan basis.

—*States in Which the Democrats Will Have Total Legislative Control (23)*: Alabama, Arkansas, California, Colorado, Connecticut, Hawaii, Illinois, Iowa, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Mississippi, New Hampshire, New Jersey, New Mexico, North Carolina, Oregon, Rhode Island, Vermont, Washington and West Virginia.

—*States in Which the Republicans Will Have Total Legislative Control (15)*: Alaska, Arizona, Florida, Georgia, Idaho, Kansas, Missouri, North Dakota, Ohio, South Carolina, South Dakota, Texas, Virginia, Utah and Wyoming.

—*States in Which Republicans and Democrats Each Control One House (11)*: Delaware, Indiana, Kentucky, Michigan, Montana, Nevada, New York, Oklahoma, Pennsylvania, Tennessee and Wisconsin.

At the start of each year, the National Conference of State Legislators (NCSL) releases its “Top Ten” list of hot political issues for the upcoming state legislative sessions based on surveys of its members. For 2007, the NCSL expects the following to be key issues in most states:

- 1) **Immigration.** To the extent Congress is deadlocked on immigration reform, the Number One issue in the states will be “innovative” solutions to the social and economic issues illegal immigrants present in each state.
- 2) **Real ID.** States need to act to comply with the federal Real ID Act, which aims to standardize the state drivers’ license process so that states authenticate documents that residents provide as identification and as proof that they are legally in this country.
- 3) **Budgets.** Most state budgets are still in pretty good shape, but most states are expecting some budget pressure because of two federal programs that the states are struggling to implement, namely, No Child Left Behind and Real ID.
- 4) **Health Insurance.** All the states want to review the new laws in Massachusetts and Vermont as a possible model for providing coverage to the uninsured.
- 5) **Sex Offenders and Predators.** States have to implement the federal Child Protection and Safety Act of 2006, which requires them to meet standards in sharing information with other states about sex offenders and increasing penalties for failure to register as a sex offender. States will lose related federal funding for failure to comply.
- 6) **Energy and Environment.** Global warming is becoming an issue and states may move to limit emissions and encourage alternative energy sources.
- 7) **Minimum Wage.** This will be an issue in states in which the Democrats are in control as the national political party has this as a key priority—federal and state.
- 8) **Higher Education.** Most states have issues with rising tuition costs causing affordability and access issues, as well as funding for state schools to maintain quality education.
- 9) **Privacy.** The public is increasingly concerned about the loss or theft of personal information on private or government systems and the costs of identity theft.
- 10) **Obesity.** There is significantly more interest than ever before in banning trans fats and requiring disclosure of nutrition information.

### **III. 2006 Annual State Legislative Report On Fidelity**

Because of the diversity of the business of its members, SFAA tracks all state and federal fidelity and surety legislation. In reporting legislative developments, however, SFAA has moved to reports based on the three major lines of business – contract surety, commercial surety and fidelity. The SFAA Annual State Legislative Report on Fidelity Bonds contains all the new bond requirements in 2006 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 2006 new laws affecting fidelity that have been enacted in 2006. SFAA also publishes a monthly summary of new bond enactments on its website 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.

#### **ALASKA**

##### ***HB 392—Public Officials***

HB 392 creates regional solid waste management authorities. The Authority must maintain a fidelity bond for its board of directors and each officer responsible for the accounts and finances of the Authority.

#### **CALIFORNIA**

##### ***HB 2038—Escrow Agents***

HB 2038 would amend an existing law that requires escrow agents to be licensed and regulated by the Commissioner of Corporations (Commissioner). Existing law requires licensees to apply for membership in the Escrow Agents' Fidelity Corporation, which is a nonprofit mutual benefit corporation established to indemnify its members against loss of trust obligations. This may be achieved through a fund established by the Corporation, a fidelity bond or insurance policy approved by the Commissioner or a combination of any of these. The new law requires the Fidelity Corporation provide a copy of the fidelity bond or insurance policy to all of its members and the Commission of Corporations when such bond or policy is acquired or renewed and to provide a copy to any member or successor of interest on request.

##### ***HB 2462—State Teacher Retirement***

HB 2462 sets forth the retirement plans that employers could provide to employees eligible for coverage as a part of the State Teacher's Retirement Plan. An employer, now including community colleges, may enter into a written contract with the State Teacher Retirement System (System) for services regarding an annuity contract, a custodial account or deferred compensation plans. If the System chooses to contract with a third-party administrator for the administrative or compliance services provided to employers, the third-party administrator must provide proof of liability insurance and a fidelity bond in an amount sufficient to protect the assets of participants and beneficiaries in the annuity contract and custodial account, as determined by the system, or the employer, depending on with whom the third-party administrator has entered into a contract.

***HB 3020—Time Share Developments***

HB 3020 amends existing law concerning bonding for timeshare developments. In addition to amending provisions concerning a developer's surety bond, the bill also amends the existing provision for the fidelity bond or insurance required for the managing entity of the timeshare plan or component site. The new law provides that the bond or insurance may not be in an amount less than what is required in existing law, but the new law also allows the Real Estate Commissioner to provide a reduction in the required insurance policy or bond amount, as long as it is not below the existing requirement.

**FLORIDA**

***HB 1207—Public Officials***

HB 1207 creates the Indian River Mosquito Control District, which will be operated by three commissioners. Each commissioner will have to post a \$5,000 bond.

***HB 1245—Public Officials***

HB 1245 requires each of the seven members of the governing board of the North Broward Hospital District to post a \$5,000 bond.

***HB 1361—Public Officials***

HB 1361 allows two or more state non-profit corporations to form a self-insurance fund for purposes of spreading the liabilities of its group members for any property-casualty risk or surety insurance. The fund must have annual premiums in excess of \$5 million, use a qualified actuary to set rates and loss reserves and receive at least 75% of its revenues from the local, state or federal government.

***HB 1413—Public Officials***

The new law creates the Argyle Fire District, which would be operated by five commissioners. Each commissioner would have to post a \$5,000 bond. The treasurer would have to post a \$10,000 bond.

***HB 1483—Public Officials***

HB 1483 creates the Grove Community District. The board of the district could require the treasurer to post a bond. Bidders on contracts let by the board could also be required to post bonds.

***HB 1559—Public Officials***

HB 1559 creates the Brevard County Viera Stewardship District. The treasurer of the district must post a bond in an amount and with terms and conditions acceptable to the board of directors.

***HB 1629—Public Officials***

HB 1629 creates the Gainesville-Alachua County Regional Airport Authority. The secretary-treasurer and other officers and employees of the Authority would have to post surety bonds.

## **GEORGIA**

### ***HB 1321—Public Officials***

HB 1321 incorporates the City of Johns Creek. Officers and employees of the city are required to post surety or fidelity bonds in such amounts and upon such terms and conditions as the city council requires.

### ***HB 1470—Public Officials***

HB 1470 creates the charter for the City of Milton. The officers and employees of the city must post surety or fidelity bonds in such amounts and upon such terms and conditions as the city council requires. HB 1477 is similar to HB 1470, except it is for the City of Darien. HB 1478 is identical to HB 1470, except it is for the City of Demorest. HB 1559 is identical to HB 1470, except it is for the City of Guyton. HB 1620 is identical to HB 1470, except it is for the City of Lithonia.

### ***HB 1481—Public Officials***

HB 1481 creates the Board of Commissioners for Bartow County. The chairman and each commissioner must post a \$10,000 bond.

### ***SB 380—Public Officials***

SB 380 creates the Agricultural Commodities Commission for Equines. Anyone handling funds of the Commission has to post a bond in an amount to be determined by the Commissioner.

### ***SB 609—Public Officials***

SB 609 is similar to HB 1470, but for the City of Hampton.

### ***SB 659—Public Officials***

SB 659 is similar to HB 1470, but for the City of Madison.

## **HAWAII**

### ***HB 2315/SB 2278—Financial Institutions***

HB 2315 amends the existing law regarding the preliminary application to become a financial institution in Hawaii. Three or more people who are residents of the State and any company that applies for a license as a financial holding institution in Hawaii must submit evidence of an application for a fidelity bond and other forms of insurance from U.S. licensed insurance companies. The existing law also has been amended to require evidence that federal deposit insurance, a fidelity bond and other forms of insurance, as now required in the preliminary application, have been or will be obtained and will be in effect before opening for business.

## **IDAHO**

### ***HB 822—Self-Funded Health Plans***

HB 822 slightly modifies the bonding requirement for self-funded health care plans. Previously, a fidelity bond of at least \$25,000 is required, with the specific amount to be determined by the director. This new law requires the bond to be “the greater of ten percent (10%) of the contributions received by the plan or ten percent (10%) of the benefits paid during the preceding calendar year,” but not less than \$25,000 nor more than \$500,000.

## **ILLINOIS**

### ***HB 4147—Depository Institutions***

HB 4147 creates the Central Illinois Economic Development Authority. Banks serving as the depository for the Authority's money are required to post a surety bond equal to the maximum amount expected to be on deposit at any one time.

### ***SB 17—Depository Institutions***

SB 17 creates the Southern Illinois Economic Development Authority. The depositories designated by the Authority shall be bonded in an amount equal to the maximum sum expected to be on deposit at any one time.

## **INDIANA**

### ***SB 229—Self-Insurance Trust***

SB 229 allows two or more educational institutions to enter into an agreement to self-insure and purchase excess insurance, including property and casualty. The trust has to maintain a fidelity bond to cover those responsible for the trust.

## **KANSAS**

### ***SB 442—Public Officials***

Existing law concerning surety bonds required for county auditors has been amended, deleting the words "at least two sufficient sureties" that were required for the bond and replacing the phrase with "a sufficient surety," such that multiple sureties are permitted but no longer required.

### ***SB 575—Public Officials***

SB 575 requires the treasurer of the Topeka/Shawnee County Riverfront Authority to post a bond.

## **LOUISIANA**

### ***HB 436—Commercial Carriers***

HB 436 enacts a new section in the law regarding commercial carriers of public funds. A fidelity bond in the amount of \$100,000 is required for any carrier that transports public funds. The bond is to cover each officer, director, manager, managing participant, agent and employee, paid or unpaid, before they start employment. The commercial carrier may have an individual bond on each person, a schedule fidelity bond or a blanket bond to cover everyone. The bond is to protect against theft, misappropriation, dishonesty, fraud, defalcation, forgery or any other similar insurable losses caused by the commercial carrier.

### ***SB 647/HB 656—Public Officials***

SB 647 amends the law for parish assessors to consolidate the board of assessors for the Orleans parish into a single official and subject him or her to the existing requirements of the laws governing this official in the other Louisiana parishes. The surety bond required for a parish assessor under existing law is \$3,000 per representative in the state legislature from the parish, limited to a total amount of \$10,000. The new law now requires the new assessor for Orleans parish to post this bond. Multiple sureties may be used, at a minimum amount of \$200 each, but must total the required amount. Additionally, under the prior law, each member of the board of assessors in

Orleans parish was required to post a surety bond of \$5,000 to the State. This bond also is required of the single assessor for Orleans parish under the new law, but he or she is only required to post one bond for \$5,000. Multiple sureties also may be used, at a minimum amount of \$500, so long as the total meets the required \$5,000.

## **MARYLAND**

### ***HB 1391—Employment of Ex-Felons***

HB 1391 institutes a program to help employ ex-felons. As part of the program, the State buys fidelity bonds to bond up to 150 felons for a full year of employment.

### ***HB 1460—Title Insurance Producers***

HB 1460 requires a sole proprietor, a limited liability company, a partnership or a corporate applicant for a license as a title insurance producer to cover employees with a blanket fidelity bond. The bill became law without the governor's signature as provided in the Maryland Constitution.

### ***SB 463—VETOED***

SB 463 also would have required a sole proprietor, a limited liability company, a partnership or a corporate applicant for a license as a title insurance producer to cover employees with a blanket fidelity bond. The Governor vetoed this bill, as its purposes were duplicative of HB 1460, the enacted bill with which SB 463 was cross-filed.

## **MISSISSIPPI**

### ***HB 1663—Public Officials***

HB 1663 creates the Panola County Utility District. Contracts entered into by the District exceeding \$20,000 have to be bonded.

### ***SB 2943—Public Officials***

SB 2943 requires each director on the Board of Directors of the Mississippi Gulf Coast region Utility Board to post surety bonds in the sum of not less than \$50,000. The bill also requires each director on the Board of Directors for Hancock County Utility Authority to post surety bonds in the sum of not less than \$25,000. The treasurer of the aforementioned is required to post a surety bond in the sum of not less than \$100,000.

## **NEBRASKA**

### ***LB 860—Public Officials***

LB 860 provides that the treasurer of an educational service unit may give equivalent insurance coverage as an alternative to the corporate surety bond required under existing law. The surety bond is payable to the Educational Service Unit Board (Board) and is conditioned on the treasurer's faithful performance of the treasurer's duties, as well as the safekeeping and proper disbursement of all Board funds. The Board also has the authority to increase the amount of the surety bond at any time as deemed necessary. The amended law subjects the equivalent insurance coverage to these same requirements.

## **NEW JERSEY**

### ***SB 1071/HB 2514—Public Officials***

SB 1071/HB 2514 allows treasurers, tax collectors and municipal court judges and administrators to obtain blanket bonds only from a state joint insurance fund (JIF). Under prior law, public officers and directors could be covered under individual or blanket bonds; and either sureties or the JIF could write blanket bonds for them. Under the new law, a surety may provide blanket bonds in lieu of an individual bond for any officer or employee required to be bonded but not for treasurers, tax collectors and municipal court judges and administrators required to be bonded. The JIF however, is permitted to write blanket bonds for officers and employees, as well as treasurers, tax collectors and municipal court judges and administrators.

## **NEW MEXICO**

### ***HB 33—Public Officials***

HB 33 removes a requirement for the treasurer of the chiropractic board to post a \$5,000 bond.

## **OHIO**

### ***HB 530—Public Officials***

HB 530 requires each executive director appointed by the Superintendent of Professional Regulation to serve on a board or commission to give bond in the amount the governor prescribes. Furthermore, the bill allows the Director of Development to support one fiscal year of bond guarantees for surety companies bonding minority businesses. The bill, however, removes a \$10,000 bond requirement from each voting member of the Ohio Athletic Commission. Furthermore, a requirement that the executive secretary of the veterinary medical licensing board give a bond was removed.

### ***SB 185—Title Insurance Agents***

SB 185 deletes the requirement of a “fidelity bond” for title insurance agents and replaces it with two separate requirements. The first, for all title insurance agents or agencies that handle escrow in real property not involving the issuance of title insurance, requires “coverage that protects the parties...against theft, misappropriation, fraud, or any other failure to properly disburse settlement, closing, or escrow funds.” (Sec. 2953.23(C)) The second, for every title insurance agent or agency and any subcontractors, requires an errors and omissions policy.

## **RHODE ISLAND**

### ***SB 3101/HB 8152—Public Officials***

SB 3101/HB 8152 reorganizes the Ponaganset Regional School District to include the towns of Glocester and Foster. The requirement in existing law for the bonding of the treasurer has been included in the new provisions regarding the Regional District Committee.

## **TENNESSEE**

### ***HB 3028—Public Officials***

HB 3028 allows city employees to get an insurance policy instead of posting surety or fidelity bonds.

***HB 3859—Public Officials***

HB 3859 requires officers and employees of the Town of Gibson to post fidelity and surety bonds. Bid bonds of 5% and 100% performance bonds are required on all public works contracts.

***HB 4027/SB 3926—Cemetery Company Fidelity Bond***

HB 4027/SB 3926 requires cemetery companies to have a fidelity bond in the amount of \$100,000, or for any higher amount the Commissioner of Insurance and Commerce determines, for officers and employees who handle money and securities. The amount of fidelity bond coverage must be included with the required annual report filed with the Commissioner. If a cemetery has combined funds of less than \$40,000, it may apply for an exemption from the bond requirement, so long as it files a report of all financial transactions with the Commissioner. This report must include all withdrawals from the pre-need merchandise and services trust fund or operating funds and requires the signatures of two or more cemetery officials. If an exempted cemetery obtains combined funds exceeding \$40,000, it has 60 days to file the required fidelity bond. In order to engage in the business of owning and operating a cemetery company, the owner or operator must deposit either cash or a surety bond with the Commissioner for the Improvement Care Trust Fund. The estimated census population of the county determines the amount of the bond, at a minimum of \$40,000 for a county with 10,000 people or fewer; \$60,000 for over 10,000 and up to 15,000 people; \$80,000 for over 15,000 and up to 20,000 people; \$100,000 for over 20,000 and up to 100,000 people. For populations over 100,000 people, a bond in the amount of \$200,000 is required. These requirements also apply to any existing cemetery that establishes or opens a new cemetery on or after January 1, 2007.

***HB 4090/SB 4024—Public Officials***

HB 4090/SB 4024 rewrites the existing charter for the city of Cowan. A fidelity bond or faithful performance bond in the form of a blanket bond is required for the mayor and every officer, agent and employee of the city who is responsible for the receipt, disbursement, custody or handling of money. The amount is determined by the city council, which also may require any official, agent or employee to furnish a bond. Individual bonds may be used when blanket bonds are not available. Any city officer or employee who knowingly engages in or authorizes a contract or expenditure in violation of the law, or receives a payment from either, is liable to the city for the amount paid or received. The sureties on the official's or employee's bonds also are liable for these amounts.

**UTAH**

***HB 145—Public Officials***

HB 145 repeals a requirement that the treasurer of the Grazing Advisory Board post a bond.

**VIRGINIA**

***HB 525—Fidelity Bonds***

HB 525 requires a qualified organization composed of or for deaf or blind persons that employs someone who is not a member of the organization to provide clerical assistance in the management and operation to post a fidelity bond. Currently, fidelity bonds are required in such a situation only if the person assists in the conduct of charitable games.

***HB 1275—Claims Practices***

Under current law, when one sues his/her insurer to determine what coverage is available under their insurance policy or bond, to the extent the insurer is liable, the individual may recover attorneys' fees and other costs from the insurer. As originally drafted, HB 1275 would have applied this provision only to insurance policies but not to bonds. This part of the bill was amended, however, and the bill as enacted applies to insurance policies and fidelity bonds.