

# THE SURETY & FIDELITY ASSOCIATION OF AMERICA

## MEMORANDUM

**TO:** Government Affairs Advisory Committee

**FROM:** Daniel Wanke  
Associate Analyst, Government and Regulatory Affairs

**RE:** November Federal and State Legislative Report—Recent Legislation  
and Enactments in Contract Surety

**DATE:** November 10, 2006

The following is a list of laws affecting contract surety that were enacted into law in October 2006. As the legislative sessions draw to a close, SFAA also is including new introductions and pre-filed bills in its legislative reports in preparation for 2007.

### FEDERAL

#### **HR 6225: *Optional Federal Charter***

**INTRODUCED**

HR 6225 as introduced would establish an optional federal charter (OFC) for insurers. This is the House version of the OFC that the AIA and ACLI had introduced in the Senate as S 2509. Representative Royce (R-CA) is the sponsor. Unlike its Senate counterpart, there is no Democratic co-sponsor on the House side.

#### **S 2856: *Financial Services Regulatory Relief Act – Effective Immediately***

S 2856 amends existing law, which provided for the use of government obligations instead of surety bonds. The prior law permitted any person required to give a surety bond under U.S. law to give a government obligation in lieu of the bond so long as it was in an amount equal at par value to the amount of the surety bond. As amended, the law now permits an “eligible obligation,” to be given in lieu of a bond, which is defined as “any security designated as acceptable in lieu of a surety bond by the Secretary of the Treasury.”

SFAA worked with the Treasury Department staff on this legislation as SFAA was concerned that this would permit contractors and others to post instruments that are not cash equivalents. After talking with Treasury, however, the purpose of the bill was clearer. The Treasury administers two other collateral programs under Title 31 of the US Code, and the purpose of the amendments to the surety provisions is to make them consistent with the other collateral programs. The Treasury accepts only cash and cash equivalents and sends all collateral posted to the Federal Reserve Bank in St. Louis for inspection and approval so that one trained and experienced source reviews all collateral given to the federal government.

## **CALIFORNIA**

### **SB 1196: *Local Government Omnibus Act of 2006* – Effective January 1, 2007**

SB 1196 amends existing law, which provides procedures that local agencies (formerly known in the prior law as a “public entity”) are required to follow when building public works projects. If a local agency voluntarily follows the Uniform Public Construction Cost Accounting Act, the agency may use its own employees for projects worth \$25,000 or less, and projects worth \$100,000 or less require only informal bids. Projects worth more than \$100,000 require formal bids. With respect to projects worth less than \$100,000, if all the informal bids received are in excess of \$100,000, the agency’s governing board may adopt a resolution by a 4/5 vote to award the contract at \$110,000 to the lowest responsible bidder. The new law increases the above thresholds in the law from \$25,000 to \$30,000, from \$100,000 to \$125,000, and from \$110,000 to \$137,500, respectively.

## **ILLINOIS**

### **HB 5832: *General Building Contractor Licensing Act***

**INTRODUCED**

HB 5832 would provide that no person could operate as a general building contractor or as a specialty contractor without a license or an exemption from licensure from a newly created General Building Contractor Licensing Board (Board). Each applicant or licensee would be required to post a surety bond issued by an insurance company licensed in Illinois. The bond would have to be continuous in form, but the surety could terminate a bond with 60-days notice to the Board and the contractor. A license would be cancelled without a hearing on the termination date of the bond, unless a new bond was filed with the Board that was effective on the termination date of the prior bond. If a license were cancelled without hearing, the license would be reinstated upon showing proof of compliance with these requirements.

## **PENNSYLVANIA**

### **HB 2929: *Tax Bond***

**INTRODUCED**

HB 2929 would create several new bond requirements. Among them, the bill would provide that the Department of Community and Economic Development (Department) would require a surety bond from a building contractor who is a non-resident natural person, corporation, or entity that is not authorized to do business within the Commonwealth or does not have an established place of business within the Commonwealth, and is subject to the new 5% sales and 5% use taxes. The bill would impose these taxes on each separate retail sale of personal property or services. The bond would be for securing the revenues of the new taxes. In lieu of a bond, the building contractor could deposit Department-approved securities or cash in an amount that the Department would prescribe. The Department could file a lien against any building contractor on both the real and personal property of a contractor for failure to file the required bond.

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SFAA worked with the Treasury Department staff on this legislation as SFAA was concerned that this would permit contractors and others to post instruments that are not cash equivalents. After talking with Treasury, however, the purpose of the bill was clearer. The Treasury administers two other collateral programs under Title 31 of the US Code, and the purpose of the amendments to the surety provisions is to make them consistent with the other collateral programs. The Treasury accepts only cash and cash equivalents and sends all collateral posted to the Federal Reserve Bank in St. Louis for inspection and approval so that one trained and experienced source reviews all collateral given to the federal government.

**INTRODUCED**

### **S 3985: *Outer Continental Shelf Royalty Reform and Enhancement Act of 2006***

S 3985 would amend existing law concerning the royalties collected on oil and gas drilled from the outer Continental Shelf in the Gulf of Mexico. The bill would exclude revenues from the forfeiture of a bond or other surety that has been used to secure obligations other than royalties, civil penalties, or royalties taken by the Secretary of the Interior (Secretary) in-kind and not sold from qualified outer Continental Shelf revenues. Such qualified revenues would include all rentals, royalties, bonus bids, and other sums due and payable to the United States as would be required under this bill.

## **DISTRICT OF COLUMBIA**

### **LB 710: *Digital Inclusion Act of 2006 – Effective Immediately***

The new law authorizes the Mayor of Washington, D.C. to enter into franchise agreements to allow telecommunications carriers to attach antennae to District-owned buildings and poles and to use any other internet-related telecommunications assets in exchange for providing internet service to low income, “digitally disadvantaged” areas of the District. The Mayor must require each franchisee to furnish a performance bond in a sufficient amount to guarantee the provision of the package of services for digitally disadvantaged residents. LB 710 is similar to LB 857, which was summarized in the August Commercial Surety report. LB 853 was a temporary emergency act, while LB 710 makes the law permanent.

**LB 953: *Viatical Settlements Licensing Act***

**INTRODUCED**

LB 953 would require viatical settlement providers to be licensed and to demonstrate financial accountability with a surety bond, a deposit of cash, certificates of deposit or securities, a policy of errors and omissions insurance, or any combination of these. The bill would limit the amount of any form or combination of methods of security to \$100,000. The Insurance Commissioner would be required to accept proof that financial instruments have been filed with one or more states where the applicant is licensed as a viatical settlement provider as evidence of financial responsibility, so long as the instruments would be compliant with the provisions of this bill. Also, the bill would subject the provider to an investigation by the Commissioner upon application to determine several factors relating to the provider’s business practices and character before the license could be issued.

**NEW JERSEY**

**SB 2276: *Tobacco Wholesalers and Distributors***

**INTRODUCED**

SB 2276, the Tobacco Products Wholesale Sales and Use Tax Act, would amend existing law which requires wholesalers and distributors opening a new business to obtain a certificate of registration from the Director of the Division of Taxation (Director), and to pay the tax on each original certificate and the duplicate certificate for each additional place of business of the registrant. The bill would require wholesalers and distributors to be licensed in addition to obtaining a certificate of authority and would apply the law additionally to retailers. Distributors selling tobacco products at two or more places would be required to obtain a separate license for each place of business and to file a bond in the amount of at least \$6,000, to run concurrently with the license period. The bond would have to guarantee the proper performance of duties and discharge of liabilities, and be executed by a corporate surety that the Director has approved and is licensed to do business in New Jersey.

**PENNSYLVANIA**

**HB 2929: *Tax Bonds***

**INTRODUCED**

HB 2929 would create several new bond requirements. Among them, the bill would provide that the Department of Community and Economic Development (Department) would have the discretion to require a surety bond from any non-resident person, corporation, or entity that is not authorized to do business or does not have an established place of business in the Commonwealth, and is subject to the new 5% sales and 5% use taxes. A non-resident person, corporation, or entity that is a supplier delivering building materials for work in the Commonwealth who is not authorized to do business or does

not have an established place of business in the Commonwealth, and is subject to the new 5% sales and 5% use taxes would be required to file a surety bond with the Department. The bill would impose these taxes on each separate retail sale of personal property or services. The bond would be for securing the payment of any tax or penalties due from any of these non-resident persons, corporations, or entities.

The Department could require a surety bond from any person petitioning for a reassessment, or for any assessment over \$500 of the sales and use tax described above. A surety bond also could be required if the Department believes that the ultimate collection of this tax would be in jeopardy. For a period of three years, the Department could require a bond of any person who either filed a return or made a payment more than 30 days late on three or more occasions within a 12-month period. Upon such a determination, the Department would have to send the taxpayer notice, specifying the bond amount required. The bond would have to be filed within five days after receiving the notice. However, the taxpayer could make a written request for a hearing before the Secretary of Revenue or his or her representative within that 5-day period. The hearing would be the final determination of the necessity and the amount of the bond. If a bond were required, then the taxpayer would have to file it within 15 days after notice of the final decision is mailed.

In lieu of a bond, any of these taxpayers described above also could deposit Department-approved securities or cash in an amount that the Department would prescribe. The Department would be able to file a lien against both the real and the personal property of any of these taxpayers who fails to file a bond when required to do so.

**HB 2929: *Public Officials***

**INTRODUCED**

HB 2929 also provides that every elected receiver of taxes, city treasurer, or other authority authorized to collect or receive the school taxes in a first-class school district would be required to furnish a surety bond to the school district before taking office. The bond would have to be in an amount and with such surety or sureties as the Board of Public Education (Board) would approve, conditioned upon the faithful performance of the duties in the office of the collector or receiver. The bill provides that the school district would pay for the cost of the bond. In lieu of furnishing a surety bond, each receiver or collector would be able file his or her own collateral bond, in the amount the Board has required. The Board could permit the receiver or collector of taxes to substitute other bonds or obligations that meet the requirements of the Public School Code. If any receiver or collector refused or neglected to furnish a surety bond or securities after his or her election, the Board would be able to elect another person as receiver of school taxes or school treasurer.

In certain districts, if a tax collector is not elected, there is a vacancy, or an elected tax collector refuses to furnish a bond, the bill provides that the Board of School Directors (Directors) in second, third, or fourth-class school districts would have to appoint a tax collector(s). Every appointee of these districts would have to furnish the required surety bond, or a collateral bond, or other bonds or obligations, described above. In second-class school districts, the Directors would be able to accept a fidelity bond in lieu of a surety

bond from an appointee. The fidelity bond would be conditioned upon the accounting for and payment over of all moneys received by him or her as taxes and the accounting for all tax items contained in his or her tax duplicate that remain uncollected.

For any bond furnished in any of these cases, the tax collector and his or her sureties would be discharged from further liability as soon as all tax items contained in the tax duplicate are either collected and paid over, certified to the Directors for entry as liens in the Office of the Prothonotary, returned to the county commissioners for sale, or if the tax collector is exonerated from collecting the taxes.

**HB 2929: *Vendor Bond***

**INTRODUCED**

HB 2929 also would require transient vendors to register annually with the Department of Community and Economic Development (Department) before conducting business or commencing any operations in the Commonwealth, and post a surety bond in the amount of \$500, conditioned on compliance with the provisions of the bill. A transient vendor also would be required to comply with the same requirements that the bill would establish for a vendor who maintains a place of business within Pennsylvania. The Department could reduce the amount of bond or eliminate the requirement entirely after a period of demonstrated compliance, or if the transient vendor provides the license number of a promoter who has notified the Department of a show in accordance with the provisions of the bill concerning promoters.

**The following is a list of laws affecting fidelity bonds that were enacted into law in October 2006. As the legislative sessions draw to a close, SFAA also is including new introductions and pre-filed bills in its legislative reports in preparation for 2007.**

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to furnish a surety bond or securities after his or her election, the Board would be able to elect another person as receiver of school taxes or school treasurer.

In certain districts, if a tax collector is not elected, there is a vacancy, or an elected tax collector refuses to furnish a bond, the bill provides that the Board of School Directors (Directors) in second, third, or fourth-class school districts would have to appoint a tax collector(s). Every appointee of these districts would have to furnish the required surety bond, or a collateral bond, or other bonds or obligations, described above. In second-class school districts, the Directors would be able to accept a fidelity bond in lieu of a surety bond from an appointee. The fidelity bond would be conditioned upon the accounting for and payment over of all moneys received by him or her as taxes and the accounting for all tax items contained in his or her tax duplicate that remain uncollected.

For any bond furnished in any of these cases, the tax collector and his or her sureties would be discharged from further liability as soon as all tax items contained in the tax duplicate are either collected and paid over, certified to the Directors for entry as liens in the Office of the Prothonotary, returned to the county commissioners for sale, or if the tax collector is exonerated from collecting the taxes.