

THE SURETY & FIDELITY ASSOCIATION OF AMERICA

MEMORANDUM

TO: Government Affairs Advisory Committee

FROM: Daniel Wanke
Associate Analyst, Government and Regulatory Affairs

RE: December State Legislative Report—Recent Legislation and Enactments in Contract Surety

DATE: January 10, 2006

There were no new enactments affecting contract surety in December 2006. This report summarizes drafts, pre-filed bills and new introductions for 2007, which SFAA is tracking.

All States Convene in 2007

2007 is the start of a new legislative session for all states but New Jersey and Virginia, that carryover from a new session that started in 2006. Almost every state convenes sometime in January 2007. Nevada and Oklahoma both start on February 5, 2007, and Alabama, Florida and Louisiana still are the “spring session” states with starting dates in March and April. Look for Louisiana, however, to have another special session before its regular session to addressing 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.

MISSOURI

H 88/S 52: <i>Electronic Bidding on Highway Projects</i>		
PRE-FILED:	STATUS:	POSITION:
12/6/2006	Pre-filed	Support
H 88 would provide authorization for the use of electronic filing for bids and bid bonds on contracts for the construction, maintenance, repair, or improvement of any bridge or highway on the state highway system. Bids and bid bonds submitted electronically would have to contain digital signatures and seals, and all other required bid information and certifications, in accordance with the State Highways and Transportation Commission's administrative rules, the Uniform Electronic Transaction Act as adopted in Missouri, and with any applicable federal competitive bidding requirements.		

S 175: <i>Public Works Prevailing Wages</i>		
PRE-FILED: 12/18/2006	STATUS: Pre-filed	POSITION: Oppose
<p>S 175 would significantly increase the penalties in the existing prevailing wage law. For failure to pay the prevailing wage, the contractor would have to pay a penalty to both the contracting public body and the Department of Labor and Industrial Relations (Department) in the amount of \$50 per calendar day, or for any portion of a calendar day, for each worker who is paid less than the prevailing wage rate for any work done under the contract. The current penalty is \$10 per day to the contracting body. The Department must deposit fines collected in a new Prevailing Wage Enforcement and Education Fund, and the funds must be used for enforcement of and education about the law. The bill also contains a provision specifying the conditions under which money from the Fund can be transferred to general revenues.</p> <p>The bill would authorize the Department to notify the Attorney General if it appeared that such a violation has occurred and the Attorney General could bring suit in order to obtain restitution on behalf of workers not properly paid or penalties due to the public body and to the Department. Existing law allows the Attorney General to enjoin the contract. The bill would provide, however, that any person or public body would retain the right to assert any cause of action that it might have against a contractor or subcontractor or surety under contractual or statutory rights.</p> <p>The bill also would expand the definition of workers (laborers, workmen, and mechanics) to include “other individuals who are engaged in actual construction work,” and would include “an individual is a worker when the person or persons for whom the work is performed have the right to control and direct the individual who performs the work...” This bill would create a \$5,000 threshold at which the prevailing wage would be required on all projects or aggregate of projects.</p>		

NORTH DAKOTA

H 1033: <i>Bond Threshold</i>		
PRE-FILED: 12/1/2006	STATUS: Introduced – 12/22/2006	POSITION: Support

H 1033 would enact new law for public improvement projects. Public improvements would include any improvement undertaken by a governing body paid for with public funds and constructed on public land or within a public building, including an improvement on public or nonpublic land if any portion of the construction phase of the project is paid for with public funds. The bill would exclude county road construction and maintenance, state highway, or public service commission projects governed under existing law from “public improvements.” Each bid would have to be accompanied by a separate envelope containing the contractor’s license, and a bid bond in a sum equal to 5% of the full amount of the bid, executed by the bidder as principal and by a surety, conditioned that if the principal's bid is accepted and the contract awarded to the principal, the principal, within ten days after notice of the award, would execute a contract according to the terms of the bid and the bid bond and any condition of the governing body. A countersignature of a bid bond would not be required. If a successful bidder does not execute a contract within the ten days allowed, the bidder's bond would have to be forfeited to the governing body and the project would be awarded to the next lowest responsible bidder.

A performance and payment bond would be required for at least the amount of the contract price on all contracts exceeding \$100,000 for public improvements, which is the existing North Dakota bond threshold. A governing body could not require any person required to provide a surety bond to obtain the surety bond from a specified insurance or surety company or insurance producer or to submit financial data to the company or producer.

The bill would provide for new project delivery methods of agency construction management, construction management at-risk, design-bid-build. An agency construction manager, before starting any work, would be required to provide the governing body with a bond that is equal to the cost of the agency construction manager's services with the governing body. A construction manager at-risk, before starting any construction, would have to provide the governing body with a bond in an amount at least equal to the amount of the guaranteed maximum price. Also, each mechanical contractor and electrical contractor providing work on a public improvement project that utilizes the construction management at-risk delivery method would have to provide the governing body with a separate bond for his or her portion of the public improvement.

WYOMING

H 47: *Prevailing Wage Amendments*

PREFILED: 12/18/2006	STATUS: Pre-filed	POSITION: Oppose
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H 47 would amend the existing prevailing wage law to provide that the contracting public body must award a bid preference of 1% to any prospective contractor who participated, as certified by the Department of Employment (Department), in the Department's wage survey for the period applicable to the contract being awarded. The bill also would designate the entire state of Wyoming as the "locality" for establishing the prevailing wage for state heavy and highway and public building projects. For federal highway projects, the entire state also would be the locality, except metropolitan statistical areas, or the metropolitan statistical area would be the locality. The bill also would authorize the Director of the Department to investigate and institute actions for penalties when proven violations are considered by him or her to be intentional and willful in nature "upon his own volition." Existing law requires a complaint of a violation of the prevailing wage law to be filed before he or she may investigate or institute such actions.

The following report contains the new laws affecting commercial surety that were enacted in December 2006. This report also summarizes drafts, pre-filed bills and introductions for 2007, which SFAA is tracking.

All States Convene in 2007

2007 is the start of a new legislative session in all the states except New Jersey and Virginia, which carryover from a new session started in 2006. Almost every state convenes sometime in January 2007. Nevada and Oklahoma both start on February 5, 2007, and Alabama, Florida and Louisiana still are the "spring session" states with starting dates in March and April. Look for Louisiana, however, to have another special session before its regular session to addressing 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.

FEDERAL

HR 6111: Omnibus Provisions		
INTRODUCED: 9/19/2006	STATUS: Enacted – 12/20/2006 Effective Immediately	POSITION: NEW LAW
H 6111 enacts new provisions related to energy resources and coal mining operations. The Gulf of Mexico Energy Security Act of 2006 provides that "qualified outer Continental Shelf revenues" does not include revenues from the forfeiture of a bond or other surety securing obligations other than royalties, civil penalties, or royalties taken by the Secretary of the Interior (Secretary) in-kind and not sold.		

The bill also enacted the Surface Mining Control and Reclamation Act Amendments of 2006 (Act). This new law authorizes the Secretary to promulgate regulations describing the conditions under which amounts in the Abandoned Mine Reclamation Fund (Fund) may be used to provide incentives to promote re-mining initiatives in a manner that leverages the use of amounts from the Fund to achieve more reclamation for eligible land. Among the incentives that may be considered for inclusion in the regulations, amounts in the Fund could be used to provide financial assurance for re-mining operations in lieu of all or a portion of the performance bonds required under existing law.

The bill enacted the Coal Industry Retiree Health Benefit Act as well. This Act provides that the liability of a retiree’s employer to provide certain health benefits under existing law may be limited if security in the form of either a bond, letter of credit, or cash escrow is provided according to the provisions of the new law.

DISTRICT OF COLUMBIA

B 515: High Performance Building Standard

INTRODUCED: 11/15/2005	STATUS: Enacted – 12/28/2006 To Congress for 30-day review period – 12/28/2006	POSITION: Oppose
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B 515 would establish high-performance building standards that would require the planning, design, construction, operation and maintenance of building projects to meet green building standards. Among other provisions, this bill would establish an incentive program that includes expedited construction documents review and priority leasing of buildings that meet certain green building standards.

Of note, this bill would create incentives for applicants for building construction permits for private residential and commercial buildings that implement green building practices. The bill would require a performance bond, in amounts based a percentage of the costs of the building, when an applicant is seeking incentives given as a result of following the green building practices that this bill would establish. The performance bond would have to be in the following amounts:

- 1) For a project not exceeding 150,000 square feet of gross floor area, 2% of the total cost of the building;
- 2) For a project from 150,001 to 250,000 square feet of gross floor area, 3% of the total cost of the building; and
- 3) For a project exceeding 250,000 square feet building of gross floor area, 4% of the total cost of the building.

The maximum amount of a performance bond would be \$3 million. In lieu of the bond, the Mayor could accept an irrevocable letter of credit from a financial institution

authorized to do business in the District, or evidence of cash deposited in an escrow account in a financial institution in the District in the name of the licensee and the District.

FLORIDA

H 83: Capital Formation Act		
PRE-FILED: 12/12/2006	STATUS: Pre-filed	POSITION: Support – New Opportunity
<p>H 83 would enact new law to establish the Florida Capital Investment Trust (Trust), which would be a state beneficiary public trust to be used for holding certain tax credits. The Board of Trustees (Board) could sell or transfer these tax credits. The bill would provide that the Board of the Trust could bond or insure against losses, among other authorized activities related to the Trust.</p>		

S 126: Direct Wine Shipments		
PRE-FILED: 12/14/2006	STATUS: Pre-filed	POSITION: Support – New Opportunity
<p>S 126 would authorize direct wine shipments and provide that winery shippers would have to be licensed and file a surety bond with the Division of Alcoholic Beverages and Tobacco (Division) of the Department of Business and Professional Regulation. The bill’s provisions apply to direct shipments from wineries that produce no more than 250,000 gallons of wine per year. The surety bond would have to be filed with the Division in an amount of \$5,000 as surety for the payment of all taxes. If the volume of business done by the licensee were such that a bond of less than \$5,000 would be adequate, the Division could accept a bond in a lesser sum, but not less than \$1,000. However, while the bill provides that the bond could be in a sum of less than \$5,000 when the winery’s production is less than 250,000 gallons annually, specifications are not given for how a lower amount would be determined.</p> <p>Any surety bond currently on file with the Division for a winery as required under existing law would be deemed to comply with this requirement. Any applicant that has a surety bond for another license on file with the Division, which is in excess of \$5,000, also would be deemed to be in compliance with this requirement. Of note, the Division would be prohibited from issuing a license if the applicant is owned by a winery that produces more than 250,000 gallons of wine annually.</p>		

S 396: Community Associations		
PRE-FILED: 12/15/2006	STATUS: Pre-filed	POSITION: Neutral
<p>S 396 would require a developer to disclose in the contract of sale whether the developer has established reserve accounts, provided a warranty of fitness and merchantability, or posted a surety bond in compliance with existing law when he or she sells a condominium parcel. Existing law requires one of these for capital expenditures and deferred maintenance when existing improvements are converted to ownership as a residential condominium.</p>		

ILLINOIS

S 821: <i>Riverdale Development Authority Act</i>		
INTRODUCED:	STATUS:	POSITION:
2/18/2005	To Governor – 12/29/2006	Support – New Opportunity
<p>S 821 would establish the Riverdale Development Authority (Authority) for facilitating and promoting property redevelopment. The Authority would be required to designate a state or national bank within the State as its depository. The depository would be required to post a surety bond that is at least equal to the maximum sum expected to be on deposit at any time, conditioned for the safekeeping and prompt repayment of the deposits. Also, the Authority's treasurer and the sureties on his or her official bond would be exempted from liability for the loss of any of the deposited funds due to the depository's bankruptcy, default, failure, or any other act. Collateral also could be assigned to the Authority so long as it would be conditioned in the same manner as existing law permits assignments of collateral to secure the deposits of any city.</p>		

S 3088: <i>Sales and Income Tax Revisions</i>		
INTRODUCED:	STATUS:	POSITION:
1/20/2006	Enacted – 12/26/2006 Effective Immediately	NEW LAW
<p>S 3088 re-enacts existing law regarding the surety bonds that may have to be posted for motor fuel carriers to secure tax liabilities related to the sale or use of motor fuel by the licensee. The existing law prohibits motor carriers from operating in the State without obtaining a license and decals from the Department of Revenue (Department), or a motor fuel use tax license and decals issued under the International Fuel Tax Agreement by any member jurisdiction. The Department, for cause, may require an applicant to post a surety bond on a form approved by the Department. The bond, if required, would be conditioned on the applicant's payment of all taxes due from the applicant's sale or use of motor fuel, with all penalties and interest that may be due as well. The amount must be equal to at least twice the estimated average tax liability of the applicant's quarterly return. The Department fixes the penalty of the bond in each case, based on the amount of motor fuel that the applicant is expected to use. The penalty must be in an amount that will protect the State against the failure to pay the required taxes.</p>		

INDIANA

H 1045: <i>Service Contracts</i>		
PRE-FILED:	STATUS:	POSITION:
12/22/2006	Pre-filed	Support—New Opportunity
<p>H 1045 would enact new law concerning contract solicitations that would require the contractor to perform any of a governmental body's functions that its employees perform at the time of the solicitation, resulting in the layoff or dismissal of any of these employees. A solicitation would have to include a statement providing that the contract could provide for the deposit of surety bonds, good faith deposits, liquidated damages, the right of reversion or repurchase, or other rights and remedies if the offeror fails to comply with the contract.</p>		

KENTUCKY

BR 3: <i>Gaming</i>		
PRE-FILED: 12/6/2006	STATUS: Pre-filed	POSITION: Support – New Opportunity
BR 3 would enact new law that requires owners of casinos and racing associations to post a bond in the form of cash or securities, a surety bond, or an irrevocable letter of credit. The bond would have to be in an amount determined by the Kentucky Gaming Commission to reflect the amount that a jurisdiction would spend for infrastructure improvements and other facilities associated with a casino, or with a track conducting casino gaming.		

MICHIGAN

S 1266: <i>Notaries Public</i>		
INTRODUCED: 5/16/2006	STATUS: Enacted – 12/28/2006 Effective Immediately	POSITION: NEW LAW
S 1266 exempts state licensed attorneys from the surety bond requirement for notaries. Existing law requires a \$10,000 surety bond in connection with licensure by a surety licensed in the State. The bond is conditioned upon indemnifying or reimbursing a person, financing agency, or governmental agency for monetary loss caused through the official misconduct of the notary public in the performance of his or her duties.		

MISSOURI

S 122: <i>Public Official</i>		
PRE-FILED: 12/1/2006	STATUS: Pre-filed	POSITION: Support – New Opportunity
S 122 would establish the Missouri Health Care Trust Fund (Fund), which would consist of all federal payments received from health care programs established under the Social Security Act, and all money appropriated by the General Assembly to the Missouri Universal Health Assurance Program (Program). The Executive Director of the Program's Board of Governors (Board) would be responsible for all funds, securities and property belonging to the Program and would have to give a corporate surety bond for the faithful handling of the Program's money as the Board would require.		

S 193: <i>County Planning Act</i>		
PRE-FILED: 12/20/2006	STATUS: Pre-filed	POSITION: Support – New Opportunity
S 193 would provide for the adoption of regulations that would permit the County Planning Commission to accept a bond in lieu of the immediate completion or installation of the work. The bond would have to be in an amount and with surety and conditions satisfactory to the County Commission. The bond would have to provide for and secure to the County Commission the actual construction of the improvements and utilities within a period that the County Planning Commission would specify. The County Commission would be granted the power to enforce the bond by all proper remedies.		

S 197: <i>Service Contracts</i>		
PRE-FILED: 12/21/2006	STATUS: Pre-filed	POSITION: Support
<p>S 197 would subject motor carrier extended service contracts to the same requirements as all other service contracts sold in the State. The bill would provide that performance of the contractual obligations could be secured by maintaining a funded reserve account for obligations under contracts issued and outstanding in the State. The reserves could not be less than 40% of gross consideration received, less claims paid, on the sale of the motor vehicle extended service contract for all in-force contracts. The provider also would have to place in trust either a surety bond issued by a licensed surety, securities, cash, a letter of credit or another form of security prescribed in regulations by the Director of the Department of Insurance, Financial and Professional Regulation. The value of any of these forms of security would have to be no less than 5% of the gross consideration received, less claims paid, on the sale of the motor vehicle extended service contract for all motor vehicle extended service contracts issued and in force, but not less than \$25,000. The provider also could insure all motor vehicle extended service contracts under a reimbursement insurance policy issued by an insurer authorized to transact insurance in the State, or maintain a net worth of \$100 million and upon request submit the required financial statements or forms to secure his or her performance.</p>		

MISSISSIPPI

H 209: <i>Covenant Marriages</i>		
PRE-FILED: 12/22/2006	STATUS: Pre-filed	POSITION: Neutral
<p>H 209 would permit the courts to enter an order for alimony consistent with the bill's provisions establishing an optional covenant marriage system. Existing law provides that the court may require a surety bond to be posted in a divorce case to guarantee the payment of alimony. Divorce for a covenant marriage only would be granted according to the covenant's terms, and the amount of any bond posted for alimony would be determined according to the covenant's alimony provisions.</p>		

MONTANA

D 182: <i>Process Servers</i>		
PRE-FILED: 6/22/2006	STATUS: Pre-filed	POSITION: Neutral
<p>D 182 would transfer the registration and oversight of process servers from the clerks of the district courts to the Board of Private Security Patrol Officers and Investigators (Board). Existing law requires a surety bond in the amount of \$10,000 per individual and \$100,000 for a firm to be filed with the clerk of the district court in order for a certificate of registration to be accepted. The bill would provide that the bond be filed with the Board instead, in addition to completing the registration requirements of existing law.</p>		

D 1277: Mining Reclamation Bond		
PRE-FILED:	STATUS:	POSITION:
12/1/2006	Pre-filed	Support
<p>D1277 would amend existing law concerning the conditions of release on a mining reclamation bond. Existing law provides that when an operator has completed all of the requirements for affected land, the operator must notify the Department of Environmental Quality (Department). If the Department releases the operator from further obligation regarding any affected land, the penalty of the bond must be reduced proportionately. This bill would provide that if some of the requirements have been fulfilled, the operator could notify the Department as well. The bill then would provide that if an operator included this notification with a request for either a full or a partial release of bond in a progress report, the Department would have to grant or deny the request within eight months of the filing of the progress report. Such denial would have to cite the specific obligation that has not been met by the operator. The bill would specify that upon completion of all reclamation obligations, the Department would release the remaining bond.</p>		

H 55 and D 919: Carbon Sequestration		
PRE-FILED:	STATUS:	POSITION:
12/8/2006	Pre-filed	Support – New Opportunity
<p>H 55, filed in November as D 229, would establish procedures for “carbon sequestration,” in which carbon dioxide is removed from the atmosphere and converted into solid substances. The bill would establish a leasing and a licensing system for performing this process and provisions for providing “ecosystem services,” which are services that natural ecosystems provide, such as carbon sequestration, open space, air and water filtration, biodiversity, wildlife habitat, soil stabilization, and aesthetics. The bill would allow the Board of Land Commissioners (Board) to issue licenses and leases on state lands for a term of up to 99 years for the purposes of carbon sequestration or ecosystem services. The Board could require an application fee, a bid bond, or a payment bond, or any combination of the three from an applicant for a license or lease. Also, at any time prior to the execution and delivery of a carbon sequestration or other ecosystem services license or lease, or at any time during the life of the lease, the Board could require a lessee to file a bond to protect the rights of the State. The Board also would have the authority to prescribe the amount and form of the bond, and could require new or additional bonds at any time, if the previously filed bond would not protect the interests of the State adequately.</p> <p>Also, D 919 would permit the Board of Environmental Review to adopt rules to address the furnishing and updating of a reasonable bond, with good and sufficient surety, conditioned for performance of the duty to comply with the proposed law and rules adopted by the Board. This bill also would provide that the bond would have to be sufficient to guarantee the permanent effectiveness of the carbon dioxide sequestration well and cover costs to offset carbon dioxide emissions because of any failure of a carbon dioxide sequestration well to contain carbon dioxide. The well would inject the carbon dioxide into geologic formations for permanent storage.</p>		

SFAA supports these new bonding requirements, but will approach the sponsor of this bill when introduced to discuss the terms of this proposed bond as the bill draft requires the surety to guarantee the permanent effectiveness of carbon sequestration, over a potentially long period of time, rather than that the principal will comply with the terms of the license or lease. It would be difficult for a surety to guarantee the process, which may not be effective for reasons beyond the control of the principal.

H 69: Residential Mortgage Lenders

PRE-FILED:	STATUS:	POSITION:
12/12/2006	Pre-filed	Support – New Opportunity

H 69, filed in November as D 264, would require certain residential mortgage lenders to post a bond in connection with licensure. The bond would have to be maintained continuously, and would be used for the recovery of expenses, fines, and fees levied by the Department of Administration (Department) for losses or damages incurred by borrowers or consumers as the result of a licensee's noncompliance with the law. The surety bond, in an amount that would be determined by regulations, would have to be payable to the Department and issued by an insurance company licensed in the State. If either the surety or the licensee were to cancel the bond, the licensee would be responsible for informing the Department in writing by certified mail, and would have to provide a new surety bond. The surety bond only could be cancelled if 30 days notice is provided. The license would be suspended automatically if the licensee does not supply a new surety bond acceptable to the Department by the date of the cancellation.

H 111: State Unemployment Insurance Funding

PRE-FILED:	STATUS:	POSITION:
12/21/2006	Pre-filed	Oppose

H 111 would repeal existing law, which requires the State Treasurer to give a separate and additional bond conditioned upon the faithful performance of his or her duties in connection with the unemployment insurance administration account in an amount to be fixed by the Department Labor and Industry and in a form prescribed by law or approved by the Attorney General. The separate bond required under existing law is in addition to the State's comprehensive insurance plan for all state employees, which may include property, casualty, liability, crime, fidelity, and other policies of insurance as the Department may deem reasonable. The law provides that the Department of Administration (Department) is to consult with the other departments, agencies, commissions, and other instrumentalities of the State in order to provide a comprehensive insurance plan for the State in amounts determined and set by the Department.

As noted above, the State Treasurer's bond is required in connection with the handling of certain funds. The bill also would repeal the provision of state funds to this account, allowing only for the deposit of federal funds, which would be handled as provided under existing law.

H 128: Textbook Dealers

PRE-FILED: 12/21/2006	STATUS: Pre-filed	POSITION: Neutral
<p>H 128, filed in November as D 402, would amend existing law that requires textbook dealers to obtain a license and post a bond in the amount of at least \$2,000, and no more than \$10,000 in order to sell textbooks to the Superintendent of Public Instruction. The bill would delete the requirement that the Attorney General must approve the bond. Existing law does not have requirement as to the bond's issuer. SFAA will suggest that the bond should have to be issued by a corporate surety authorized to do business in the state in lieu of the Attorney General's approval of the bond.</p>		

H 147: Resort Taxes		
PRE-FILED: 12/22/2006	STATUS: Pre-filed	POSITION: Support – New Opportunity
<p>H 147 would provide that an intermediary is subject to the existing requirements applicable to owners or operators of resort facilities, or retailers that collect accommodation charges and the 4% tax on that charge. The bill also would subject the intermediary to the requirement of a security deposit applicable to retailers for ensuring the payment of tax liabilities. In lieu of this deposit, a surety bond issued by a surety company licensed in the State may be filed to guarantee solvency and responsibility under existing law. The deposit may not be more than twice the estimated average liability for the period for which the return is required to be filed. The bill would provide that the liability also includes the average tax liability for the tax on the accommodation charge.</p>		

H 158: Seismic Exploration Activities		
PRE-FILED: 12/22/2006	STATUS: Pre-filed	POSITION: Neutral
<p>H 158 would permit other financial instruments, including cash, certificate of deposit, or other instruments acceptable to the Secretary of State to provide indemnification for property owners when seismic activity is performed. Existing law only allows for the use of a surety bond, which must be filed with the Secretary of State, in the amount of \$10,000 for a single seismic crew, or a blanket surety bond in the amount of \$25,000 for all seismic crews operating in the State. Existing law also provides that the surety bond must remain on file with the Secretary of State so long as the exploration is carried on or engaged in, plus an additional 5 years afterwards. Existing law limits the aggregate liability of the surety in any event to the amount of the surety bond. The bond indemnifies the owners of property within the State against physical property damages resulting from seismic exploration.</p>		

S 92: Mortgage Brokers		
PRE-FILED: 12/15/2006	STATUS: Pre-filed	POSITION: Neutral

S 92, filed in November as D 267, would amend existing law, which requires mortgage brokers to obtain a license and to post either an irrevocable letter of credit or a surety bond in the amount of \$25,000, providing coverage for each location identified in the license application. The law would be amended to clarify that the bond would cover the mortgage broker's principal business location and each branch office. The existing law states that each licensee maintain the bond or letter of credit at all times. As drafted, the existing law also would be amended to provide a clarification that exempts all of the mortgage broker's employees from the bond requirement instead of only loan originators.

S 108: *Worker's Compensation*

PRE-FILED:	STATUS:	POSITION:
12/18/2006	Pre-filed	Oppose

S 108, filed in November as D 499, would amend existing law concerning the security deposit required from employers that self-insure for worker's compensation and participate in the self-insurers guaranty fund. Existing law provides that the security deposit may be a surety bond, government bond, certificate of deposit, or a letter of credit approved by the Department of Labor and Industry (Department) and the Montana self-insurers guaranty fund. Also, under existing law, for the first three years of operating as a self-insured employer, the employer's security deposit must be in the amount of \$250,000; or an average of the workers' compensation liabilities incurred by the employer in Montana for the first three of the last four completed calendar years, whichever is greater. The bill would require that payment would have to be made from any security deposit within 30 days of a demand by the Department. If payment were not made within 30 days by the obligor on the security deposit, the obligor would be liable to the Department for interest at the annual rate of 10 percent on the amount unpaid.

S 129: *Truancy*

PRE-FILED:	STATUS:	POSITION:
6/8/2006	Introduced – 12/20/2006	Neutral

S 129, filed as D 145, would eliminate an existing bonding provision for the parents of truant children. Existing law provides that if a child has not been enrolled in a school or excused from attending, the parent or other person responsible for the child must enroll the child within two days of receiving the notice. A fine of \$5 to \$20 is imposed, or a \$100 a surety bond may be posted, conditioned on enrollment of the child within two days after posting the bond. The bill would eliminate the bond and increase fines or jail time for multiple convictions.

NEW HAMPSHIRE

LSR 1206: *Bond Requirement*

PRE-FILED:	STATUS:	POSITION:
12/15/2006	Introduced – 12/15/2006	Oppose

LSR 1206 would repeal the bond requirement for the fund raising counsel of a charitable trust.

NEW JERSEY

A 7/S 43: <i>Public Officials</i>		
PRE-FILED: 12/4/2006	STATUS: Introduced – 12/4/2006	POSITION: Support
<p>A 7/S 43 would require the secretary of a regional school district to post a surety bond in an amount, as the State Board of Education would direct. Determination of the amount of the bond would be guided by a schedule of minimum limits that the State Board of Education promulgates. Existing law already requires the secretary of a board of education to post a surety bond in the amount of at least \$2,000, conditioned on the faithful performance of duties of the office. That provision would be amended to provide that the Board would determine the amount of the bond in the same manner as for regional school district boards. The existing law also would be amended such that any secretary would not have to post an additional surety bond if he or she also is an officer of the municipality, which constitutes the district, if the bond he or she has given guaranteeing the faithful performance of his or her municipal duties also covers and secures the faithful performance of his or her duties as secretary. A certificate of coverage with sufficient amounts for both the municipal and the board position would have to be certified to the board of education for the district.</p>		

A 1016/S 2393: <i>Heating, Ventilating, Air Conditioning, and Refrigeration Contractors</i>		
INTRODUCED: 1/10/2006	STATUS: From Assembly Committee on Regulated Professions and Independent Authorities as amended – 12/7/2006	POSITION: Support – New Opportunity
<p>A 1016 would establish the State Board of Examiners of Heating, Ventilating, Air Conditioning and Refrigeration Contractors (Board). The bill would require master heating, ventilating, air conditioning, and refrigeration (HVACR) contractors to post a \$3,000 surety bond in connection with licensure from a surety licensed in the State. The bond would have to be in favor of the State of New Jersey, conditioned on the faithful performance of the provisions of this bill. The contractor would have to post this in addition to any other bonds that could be required by a contract. The bond required under this bill would have to be for the term of 12 months and would be able to be renewed for a similar period. If a contractor were to be licensed under this act, however, no municipality could require any similar license bond. The Board would promulgate rules to determine who would be covered under the bond.</p>		

A 2954: <i>Athlete Agents Registration</i>		
INTRODUCED: 5/11/2006	STATUS: From Assembly Committee on Regulated Professions and Independent Authorities as amended – 12/7/2006	POSITION: Neutral – The bill needs to distinguish the license bond from liability insurance and limit the surety’s liability to the penal sum of the bond.
<p>A 2954 would establish the New Jersey Athlete Agent Regulatory Board (Board). The bill would require athlete agents to deposit a \$100,000 license bond with the Board. The</p>		

bill also would provide that a certificate from an insurance carrier stating that malpractice coverage in the minimum amount of \$500,000 is in place would be considered equivalent to a surety bond. A certificate of deposit payable to the Board or a savings account assigned to the Board in the amount of \$100,000 also could be accepted in lieu of a surety bond.

Surety bonds would have to be payable to the State, conditioned that the person applying for the registration would comply with the bill's provisions, and pay all sums due any athlete or group of athletes when the applicant or the applicant's representative or employee has received such sums and will pay all damages occasioned to any athlete by reason of intentional or unintentional misstatement, misrepresentation, fraud, deceit, or any unlawful or negligent acts or omissions of the registered athlete agent or the agent's representatives or employees while acting within the scope of their employment. Nothing in the bill's provisions could be construed to limit the recovery of damages to the amount of the surety bond, malpractice coverage, certificate of deposit, or savings account.

A 3746: <i>Public Officials</i>		
INTRODUCED: 12/4/2006	STATUS: Introduced	POSITION: Neutral
A 3746 would abolish the Department of Personnel and the New Jersey Commerce, Economic Growth and Tourism Commission (Commission). The chief executive officer and secretary of the Commission currently are required to post a surety bond in an amount as prescribed by the Department of the Treasury.		

NORTH DAKOTA

H 1034: <i>Uniform Trust Code</i>		
PRE-FILED: 12/1/2006	STATUS: Introduced	POSITION: Oppose
H 1034 would enact the Uniform Trust Code. The bill would provide that a trustee would have to give a bond only when the court deems it necessary to protect the interests of the trust, and the court has not dispensed with the requirement. The bill also would grant the court the authority to set the amount of the bond, its liabilities, and whether sureties are necessary. The court also would be able to modify or terminate the bond at any time. A regulated financial service institution qualified to do trust business in the State would not be required to give a bond, even if the terms of the trust required one. The terms of the trust could not prevail over the court's powers as described above.		

H 1131: <i>Board of Water Well Contractors and Geothermal Systems</i>		
PRE-FILED: 12/29/2006	STATUS: Pre-filed	POSITION: Support – New Opportunity
H 1131 would require applicants seeking to become a certified geothermal system installer to pass an exam and meet certain education requirements. Qualified applicants then would be subjected to the existing bond requirement for water well, monitoring well, or pump and pitless installation contracts. Existing law requires the applicant to execute and deposit a surety bond in the amount of \$2,000 with the State Board of Water Well Contractors, conditioned for the faithful performance of the installation contract.		

S 2036: Professional Employer Organizations		
PRE-FILED: 12/1/2006	STATUS: Introduced – 12/22/2006	POSITION: Support
<p>S 2036 would enact new law concerning Professional Employer Organizations (PEO). The bill would require a PEO to maintain a minimum working capital of \$100,000, and submit a financial statement to the Secretary of State (Secretary) 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 be held by the Secretary for securing 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.” These provisions are based on model legislation that has been introduced and enacted in other states in the past few sessions.</p>		

OHIO

H 443: Department of Natural Resources		
INTRODUCED: 12/8/2005	STATUS: Substituted – 12/7/2006 To Governor – 12/26/2006	POSITION: Neutral
<p>H 443, as introduced in 2005, was not related to performance bonds, and in December 2006, the bill was substituted for a bill concerning amendments to existing law on coal mining and reclamation permits and bonds. Existing law provides that before a coal mining and reclamation permit may be issued the permit applicant must file a performance bond with the Chief of the Division of Mineral Resources Management (Chief). The bill instead would require the applicant to file a form of “performance security,” which would include a surety bond issued by a surety licensed to do business in the State; an annuity; cash; a negotiable certificate of deposit; an irrevocable letter of credit that automatically renews; a negotiable bond of the United States, the State, or a municipal corporation in the State; a trust fund of which the State is named a conditional beneficiary; or other form of financial guarantee or financial assurance acceptable to the Chief.</p> <p>Existing law provides that the performance bond must be in the amount of \$2,500, multiplied by the number of acres of land on which coal mining and reclamation activities are conducted, at a minimum of \$10,000. The bill would amend this provision</p>		

such that the performance security required would be in a sum equal to the amount of the estimated cost of reclamation for the initial term of the permit, if the reclamation were to be performed by the Division of Mineral Resources Management (Division). That cost estimate would be based on information required from the applicant, certain environmental factors, and the difficulty of performing reclamation. The bill also would allow the applicant to provide the performance security in connection with the State's reclamation forfeiture fund. This existing fund consists of payments of an additional tax on the severance of coal. Performance security in this case could be in the amount of \$2,500 per acre of land as described above. However, the applicant would have to have held a permit for any coal mining and reclamation operation for at least five years to be eligible for this proposed amendment.

The Chief would be authorized to adjust the amount of the estimated cost and the performance security if the amount of affected land increases or decrease, or if the cost of reclamation increases or decreases. The applicant could request and obtain an informal conference with the Chief on such an adjustment. An operator also could request a reduction in the amount of the performance security if it exceeds the estimated cost of reclamation.

Additionally, this bill would amend the existing performance bond requirements for all surface and in-stream mining operations. Existing law requires the surface mining permit applicant to file a performance bond, which may be a surety bond, cash, an irrevocable letter of credit, or certificates of deposit, in the amount of \$10,000 plus \$1,000 per acre of land to be affected. Instead, the bill would provide that the bond would be in the amount of \$10,000 for 20 acres of land, plus \$500 for each additional acre of land that would be affected.

H 454: Money Transmitters

INTRODUCED: 12/20/2005	STATUS: To Governor – 12/26/2006	POSITION: Support – New Opportunity
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H 454 would require money transmitters to post security with licensure, which could be a surety bond. The security would have to be in a form satisfactory to the Superintendent of Financial Institutions, of not less than \$300,000, or a greater amount as the Superintendent finds appropriate, not exceeding \$2 million dollars unless a supervisory action is necessary. If a surety bond were used the bond would have to remain in effect until canceled, which could occur only after 30 days written notice to the Superintendent. Cancellation of a surety bond would not affect any liability incurred or accrued during the bond's effective period.

H 699: Lottery Sales Agent Bond

INTRODUCED: 12/5/2006	STATUS: Enacted – 12/28/2006 Effective Immediately	POSITION: NEW LAW
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H 699 amends the current surety bond requirements for lottery sales agents by requiring a dedicated account in addition to the bond. The new law requires the sales agent to deposit into the account the same amount that the Director of the State Lottery Commission (Director) determines is necessary for the bond. The Director already has authority to determine the amount of the bond by adopting rules under existing law. The new law provides that the agent, with the Director's approval, may deposit the same amount into a dedicated account for the benefit of the state lottery. The Director also now may approve obtaining a surety bond to cover part of the amount required, together with a dedicated account deposit to cover the remainder of that amount. The new law also allows a surety bond, dedicated account, or both, to pay for the lottery sales agent's failure to make prompt and accurate payments for lottery ticket sales, for missing or stolen lottery tickets, or for damage to equipment or materials issued to the lottery sales agent, or to pay for expenses the Commission incurs in connection with the lottery sales agent's license.

OKLAHOMA

S 23: Security Guards and Private Investigators

PRE-FILED: 12/15/2006	STATUS: Pre-filed	POSITION: Support – New Opportunity It needs clarification, however, on bonding vs. insurance.
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S 23 amends existing law concerning the requirement of “liability coverage,” which may be in the form of either general liability coverage or a surety bond. Liability coverage under existing law must be in the minimum amounts of \$5,000 for unarmed security guards, and self-employed unarmed private investigators that employ no other investigators. The bill would subject bouncers to the licensing and liability coverage requirements under existing law, with liability coverage to be in the amount of at least \$5,000.

SOUTH CAROLINA

H 3101: Special Needs Scholarship Program

PRE-FILED: 12/13/2006	STATUS: To House Committee on Ways and Means – 12/13/2006	POSITION: Support – New Opportunity
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H 3101 would enact new law creating the Special Needs Scholarship. In order to ensure that public funds are spent appropriately, all participating schools would have to demonstrate financial accountability by submitting a financial information report, conducted by a certified public accountant, which an auditor certifies to be free of material misstatements. The participating schools also would have to demonstrate that they can pay any funds owed the State, if they are to receive \$50,000 or more during the school year, by posting a surety bond payable to the State in an amount equal to the aggregate amount of the special needs scholarships expected to be paid during the school year or by filing financial information that demonstrates the school has the ability to pay an aggregate amount equal to the special needs scholarships expected to be paid during the school year. Either would have to be filed with the Department before the start of the school year.

H 3073: Behavioral Health Services Act of 2007		
PRE-FILED: 12/13/2006	STATUS: To House Committee on Ways and Means – 12/13/2006	POSITION: Oppose
<p>H 3073 would permit the Department of Behavioral Health Services (Department) to enter into contracts with public agencies, institutions of higher education, and private organizations or individuals for the purpose of conducting research, demonstrations, or special projects which bear directly on behavioral health services and the needs, problems, and services for clients of the Department. The Department also would be allowed to enter into contracts for educational and research activities without performance bonds.</p>		

UTAH

H 17: Child Support Bond		
PRE-FILED: 12/15/2006	STATUS: Pre-filed	POSITION: Neutral/Oppose
<p>H 17 would authorize the courts to require a parent who has not paid child support to post a surety bond for an amount equal to the total for 36 months of child support payments. The court also could require such a bond in a final decree of divorce, upon a showing of a history of nonpayment or sporadic payment during the separation period. Existing law only specifies that the court may, in addition to any other available sanctions, withhold, suspend, or restrict the use of driver's licenses, professional and occupational licenses, and recreational licenses and impose conditions for reinstatement upon finding that the obligor of the child support payments has failed to pay the amounts owed.</p> <p>The Commercial Surety Advisory Committee (Committee) discussed this legislation and noted that this bond would be a case of classic adverse selection against the surety. A bond would not be required in all cases of divorce in which there is an order of child support, but only in those cases in which there is a parent already in contempt of court and the court is imposing a sanction. The obligation could be expensive and burdensome for a surety to administer, as the surety is in the position of managing the payment delinquency. Holding collateral, tracking down the obligor, giving notices, paying bond claims, and seeking reimbursement would be prohibitive to most sureties.</p>		

H 29: Professional Employer Organization		
PRE-FILED: 12/15/2006	STATUS: Pre-filed	POSITION: Neutral

H 29 would amend existing law, which regulates professional employer organizations (PEOs). Existing law provides that a “covered employee is not, solely as the result of being a covered employee of a PEO an employee of the PEO for purposes of general liability insurance, employment practices liability insurance, fidelity bonds, surety bonds, employer’s liability which is not covered by workers’ compensation, or liquor liability insurance carried by the professional employer organization unless the covered employees are included by specific reference in the PEO agreement and applicable prearranged employment contract, insurance contract, or bond.” The bill would amend this provision to clarify that it is subject to the provisions of existing law. The existing law provides that unless a professional employer agreement expressly provides otherwise, a client of the PEO is solely responsible for directing, supervising, training, and controlling the work of the covered employees with respect to the business activities of the client, and the solely responsible for the acts, errors, or omissions of the covered employees with regard to those activities.

H 37: Cigarette and Tobacco Tax and Licensing		
PRE-FILED:	STATUS:	POSITION:
12/18/2006	Pre-filed	Neutral
<p>Existing law provides that when any taxable articles are allowed to remain unstamped in the hands of the wholesaler or distributor, the State Tax Commission may require the wholesaler or distributor to provide a surety bond from a surety company licensed in Utah. The bond is conditioned to secure the payment of all taxes and penalties.</p> <p>H 37 would apply this law specifically to cigarettes, and would delete the requirement that the taxable articles would have to be in the hands of the wholesaler or distributor. The bill also would replace the words manufacturer, wholesaler or distributor with “person,” in order to require any person holding the unstamped cigarettes to secure the surety bond.</p>		

H 40: Fuel Tax Bonds		
PRE-FILED:	STATUS:	POSITION:
12/19/2006	Pre-filed	Oppose
<p>H 40 would amend existing law concerning the requirement of a surety bond to secure motor fuel tax liabilities. Existing law provides that an applicant must post a bond with the State Tax Commission (Commission) before the applicant may be issued a license to collect a motor fuel tax or a special fuel tax. The Commission is authorized to require a licensee to increase the amount of the bond. The bill would require the State Tax Commission to determine whether an applicant for a license to collect these taxes is required to post a bond with the Commission before the issuance of a license. An applicant would have to post the bond if the license was revoked in the case of a delinquency in collecting and paying over the tax for the applicant, a fiduciary of the applicant, or a person for whom the applicant or the fiduciary of the applicant is required to collect and pay over the tax.</p>		

VIRGINIA

S 759: Tuition Assistance Grant Program		
PRE-FILED: 12/11/2006	STATUS: Introduced – 12/11/2006	POSITION: Support – New Opportunity
S 759 would create the Students with Disabilities Tuition Assistance Grant Program. In order for a private school to be eligible for the grant, among other things, the school would have to demonstrate fiscal soundness by being in operation for one year, providing a statement by a certified public accountant that confirms that the school is insured and has sufficient capital or credit to operate the school for the upcoming year, or posting a surety bond or letter of credit for the amount equal to the grant funds for any quarter.		

There were no new laws affecting fidelity bonds enacted into law in December 2006. This report contains drafts, pre-filed bills and new introductions for 2007 during December 2006, which SFAA is tracking.

All States Convene in 2007

2007 is the start of a new legislative session in all the states except New Jersey and Virginia which carryover from a session that started in 2006. Almost every state convenes sometime in January 2007. Nevada and Oklahoma both start on February 5, 2007, and Alabama, Florida and Louisiana still are the “spring session” states with starting dates in March and April. Look for Louisiana, however, to have another special session before its regular session to addressing 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.

INDIANA

S 95: Operation of License Branches by Contractors		
PRE-FILED: 12/22/2006	STATUS: Pre-filed	POSITION: Neutral
S 95 concerns fidelity bonds required from certain contractors. Existing law provides that the Bureau of Motor Vehicles Commission (Commission) may contract with a qualified person for the operation of full service license branches that provides vehicle titles, vehicle registration, driver’s licenses, and voter registration. The Commission also may enter into contracts for the operation of partial service branches that provide electronic titling and title application services and self-serve terminal access. Such contractors must collect and transmit all Bureau of Motor Vehicle (Bureau) fees and taxes and deposit them with the county treasurer. Existing law requires the contractor for both full and partial service branch locations to obtain fidelity bond coverage as the Commission prescribes.		
This bill would amend the law such that the Commission would be required to enter into a contract with any qualified person who demonstrates the ability to meet the requirements in the law. The bill also would provide, however, that the Commission would not be required to replace any licensed branch with a qualified person as described above, and that an insurance producer could now be a qualified person for the purposes of		

these contracts.

The requirement for fidelity bond coverage would be amended so that it would have to be in an amount that has been reasonably calculated to secure the contractor's performance. Also, this bill would provide that the Commission could not require the contractor to post a cash bond as fidelity bond coverage.

MISSOURI

S 122: *Public Official*

PRE-FILED:	STATUS:	POSITION:
12/1/2006	Pre-filed	Support – New Opportunity

S 122 would establish the Missouri Health Care Trust Fund (Fund), which would consist of all federal payments received from health care programs established under the Social Security Act, and all money appropriated by the General Assembly to the Missouri Universal Health Assurance Program (Program). The Executive Director of the Program's Board of Governors (Board) would be responsible for all funds, securities and property belonging to the Program and would have to give a corporate surety bond for the faithful handling of the Program's money as the Board would require.

MONTANA

H 111: *Unemployment Insurance Laws*

PRE-FILED:	STATUS:	POSITION:
12/21/2006	Pre-filed	Neutral

H 111 would repeal existing law, which requires the State Treasurer to give a separate and additional bond conditioned upon the faithful performance of his or her duties in connection with the unemployment insurance administration account in an amount to be fixed by the Department Labor and Industry and in a form prescribed by law or approved by the Attorney General. The separate bond required under existing law is in addition to the State's comprehensive insurance plan, which may include property, casualty, liability, crime, fidelity, and other policies of insurance as the Department may deem reasonable. The law provides that the Department of Administration (Department) is to consult with the other departments, agencies, commissions, and other instrumentalities of the State in order to provide a comprehensive insurance plan for the State in amounts determined and set by the Department.

As noted above, the State Treasurer's bond is required in connection with the handling of certain funds. The bill also would repeal the provision of state funds to this account, allowing only for the deposit of federal funds, which would be handled as provided under existing law.

NEW JERSEY

A 7/S 43: Public Official		
PRE-FILED: 12/4/2006	STATUS: Filed - 12/4/2006 Introduced - 12/4/2006	POSITION: Support
<p>A 7/S 43 would require the secretary of a regional school district to post a surety bond in an amount as the State Board of Education would direct. Determination of the amount of the bond would be guided by a schedule of minimum limits that the State Board of Education promulgates. Existing law already requires the secretary of a board of education to post a surety bond in the amount of at least \$2,000, conditioned on the faithful performance of duties of the office. That provision would be amended to provide that the Board would determine the amount of the bond in the same manner as for regional school district boards. The existing law also would be amended such that any secretary would not have to post an additional surety bond if he or she also is an officer of the municipality that also constitutes the school district, if the bond he or she has given guaranteeing the faithful performance of his or her municipal duties also covers and secures the faithful performance of his or her duties as secretary. A certificate of coverage with sufficient amounts for both the municipal and the board position would have to be certified to the board of education for the district.</p>		

A 3746: Public Officials		
INTRODUCED: 12/4/2006	STATUS: Introduced	POSITION: Neutral
<p>A 3746 would abolish the Department of Personnel and the New Jersey Commerce, Economic Growth and Tourism Commission (Commission) and make certain transfers of duties and powers. The chief executive officer and secretary of the Commission currently are required to post a surety bond in an amount as prescribed by the Department of the Treasury.</p>		

NORTH DAKOTA

S 2036: Professional Employer Organization Registration		
PRE-FILED: 12/1/2006	STATUS: To Senate Committee on Industry, Business, and Labor - 12/22/2006	POSITION: Neutral

S 2036 would enact new law concerning Professional Employer Organizations (PEO). The bill would require a PEO to maintain a minimum working capital of \$100,000, and submit a financial statement to the Secretary of State (Secretary) 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 be held by the Secretary for securing 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.” These provisions are based on model legislation that has been introduced and enacted in other states in the past few sessions.

SOUTH CAROLINA

S 206: <i>Pharmacy Benefit Managers</i>		
PRE-FILED: 12/13/2006	STATUS: To Senate Committee on Banking and Insurance	POSITION: Support – New Opportunity

S 206 would establish standards and criteria for the regulation, solvency, and licensing of pharmacy benefit managers (PBM), which are persons or entities that procure prescription drugs at a negotiated rate for dispensation within the State to covered individuals. A PBM includes the administration or management of prescription drug benefits and other services including mail order pharmacy; claims processing; retail network management and payment of claims to pharmacies for prescription drugs dispensed; clinical formulary development and management services; rebate contracting and administration; certain patient compliance, therapeutic intervention, and generic substitution programs; and disease management programs involving prescription drug utilization. In order to obtain a certificate of authority as a PBM, the applicant would be required to maintain a fidelity bond equal to at least 10% of the amount of the funds handled or managed annually by the PBM. The Insurance Department may require an amount in excess of \$500,000, but not more than 10% of the amount of the funds handled or managed annually by the PBM.

UTAH

H 29: <i>Professional Employer Organizations</i>		
PRE-FILED: 12/15/2006	STATUS: Pre-filed	POSITION: Neutral

H 29 would amend existing law, which regulates professional employer organizations (PEOs). Existing law provides that a “covered employee is not, solely as the result of being a covered employee of a PEO an employee of the PEO for purposes of general liability insurance, employment practices liability insurance, fidelity bonds, surety bonds, employer’s liability which is not covered by workers’ compensation, or liquor liability insurance carried by the professional employer organization unless the covered employees are included by specific reference in the PEO agreement and applicable prearranged employment contract, insurance contract, or bond.” The bill would amend this provision to clarify that it is subject to the provisions of existing law. The existing law provides that unless a professional employer agreement expressly provides otherwise, a client of the PEO is solely responsible for directing, supervising, training, and controlling the work of the covered employees with respect to the business activities of the client, and the solely responsible for the acts, errors, or omissions of the covered employees with regard to those activities.