

**THE SURETY & FIDELITY ASSOCIATION OF AMERICA**

**MEMORANDUM**

**TO: Government Affairs Advisory Committee  
Contract Bond Advisory Committee**

**FROM: Lenore S. Marema, Vice President-Government Affairs**

**DATE: February 21, 2007**

**SUBJECT: 2007 State Legislative Sessions--Contract Surety**

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There are 42 states and the District of Columbia in regular session. Delaware and Pennsylvania are conducting budget hearings. In 2007, many states start a new two-year session; and SFAA has reviewed a large volume of legislation introduced to date. The following summarizes key state legislation affecting contract surety that SFAA has been tracking. SFAA has worked with the AIA and NASBP as noted below to address the bills that have started to move early in the state sessions.

**Service of Process**

Since SFAA and AIA obtained legislation in Indiana in 2006 to fix the agent for service of process issue there, **Nebraska** is the only state that does not designate a state official to receive service of process for a surety that writes a bond required or permitted by federal law for a risk in the state. 31 USC 9306 applies to require sureties to file a resident agent in the federal district court in Nebraska. SFAA and AIA have met with Nebraska Insurance Director Tim Wagner, and he is willing to solve the problem by way of a regulation or insurance department bulletin. The Department requires all insurers to file a resident agent in connection with licensure in the State. Based on that authority, the Department believes it could issue a “clarifying” bulletin to state that the Insurance Department would accept service of process for 31 USC 9306 to the extent that the surety could not otherwise be served in the State. SFAA and AIA will follow up with the Department.

**State Bond Thresholds**

**Indiana** SB 211 would increase the state bond threshold from \$150,000 to \$500,000 for public works projects. The bill was heard on January 31; and SFAA, AIA and the Indiana Surety Association testified in opposition to the bill. NASBP had a local agent (from the Committee Chair’s district) who testified in opposition. SFAA and AIA received significant support from the Indiana Association of Cities and Towns. The state Department of Administration also testified as to the increased risk to the State from increasing the bond threshold. The local AGC did not take a position on the bill.

SFAA just kicked off a contractor education program with the Indianapolis Black Chamber of Commerce, which took a neutral position on the bill and was not present at the hearing. The Indianapolis and Indiana Chambers of Commerce supported the bill, which was a disappointment to us. They switched their position from support to oppose last year on the same bill after SFAA met with them. The Minority Suppliers Development Council remains a strong supporter of the bill.

The sponsor originally told SFAA and AIA that this was not a minority contractor issue. Although the Senate sponsor is the same, this year the sponsor originally characterized this as a constituent issue in terms of immigrants who are small contractors that cannot obtain bonding. The sponsor also told the SFAA that the \$500,000 threshold reflects the current costs of construction. During the hearing, however, both the bill sponsor and the proponents addressed the bill as a minority contractor issue.

No vote was taken on the bill. It was sent to a subcommittee for further discussion of the issues raised at the hearing. While SFAA and AIA have generated supporters for our position on the bill, the Indiana legislature changed significantly. The House has switched to Democratic control; and, if the bill gets out of the Senate and to the House, it likely will pass. SFAA and AIA killed the bill in the House last year, after it passed the Senate. The Committee Chair also is the Senate Majority Leader; so, if the bill gets out of Committee in the Senate, it likely will pass the Senate and go over to the House.

**Georgia** HB 192 would raise the bond threshold from \$50,000 to \$100,000. **North Carolina** HB 73/SB 93 would increase the state bond threshold from \$300,000 to \$500,000.

### **Bond Waivers on Large Projects**

**Washington** HB 1957 would permit the state Department of Transportation (DOT) to require less than 100% bonds on state highway projects. The DOT requested this bill because of some mega construction projects on the horizon in Washington. One is the Alaska Way viaduct and seawall replacement project. The viaduct and Alaska Way surface street carry 12,000 commuter and freight vehicles through Seattle every day. The viaduct and the seawall are old and deteriorating. The replacement is estimated at \$2.4 billion for the structure as is, \$2.8 billion for a new elevated highway and \$3.4 billion for a tunnel. Another pending project is a \$1.5 billion repair and replacement of the SR 520 floating bridge. The DOT wants to increase the number of contractors that could bid on these projects by lowering the bond amount so that the State's maximum exposure to loss is bonded, which the DOT contends is not the total contract price.

SB 5208, the Senate companion bill, is out of Committee. It had significant sponsors in the Senate Transportation Committee, including the Committee Chair, Vice Chair and Ranking Minority Member. In the Senate Committee report, the reason given for the bill is that many large highway projects are constructed in stages so that the State's exposure to risk at any one time is not equal to the total contract price. In addition, it is stated that bonds in excess of \$250 million are increasingly difficult to obtain and are increasingly expensive. The Committee was told that the proposed cap on bonding is consistent with approaches being used by other states on mega construction projects.

SFAA also learned that the DOT has worked with the local AGC on this bill and has obtained their active support of the bill. Sureties were not included in the discussions that led up to this bill.

SFAA discussed this with the AIA, and AIA local counsel will be opposing the bill. SFAA sent a letter in opposition to all House Transportation Committee members. The SFAA letter stated that the surety industry is willing to discuss any actual or perceived problems in surety bonding in Washington, but that HB 1957 likely will not solve any problems. Rather, the bill reduces the protection of bonding to the State without any corresponding reduction in costs for the State. In addition, the \$80 million cap is inconsistent with what has been proposed and done in other states facing the same issues with mega construction projects.

The bill sponsor in the House recently met with SFAA and AIA by conference call and asked for alternatives to the percentage bonding under HB 1957, and SFAA followed up with approaches that other states have used.

### **Bond Waivers for Small and Emerging Contractors**

**Illinois SB 1511** would permit the Capital Development Board to waive the requirement of a surety bond for a public construction project if the contractor is a small business and the required bond amount for the project, plus all other surety bonds waived, does not exceed \$2 million. **New York AB 3329** would permit payment and performance bonds to be waived for small, minority and women-owned businesses in contracts under \$500,000. **New York S 2431** would permit payment and performance bonds to be waived when a public contract is awarded to a small business concern or to a minority or women-owned business concern for any contract under \$500,000. Existing law provides that, when either a performance or a payment bond is waived, 20% of each progress payment or estimate may be retained until the entire contract work has been completed and accepted. Pending the payment of the final estimate, 75% of the amount of the retained percentage may be paid upon completion of the project.

In related legislation, **New York AB 2909** would authorize the City of Rochester to give preference to certain minority or women-owned business enterprises in city procurement pursuant to a city program. The City can award the contract if the certified minority women-owned business enterprise's bid is within 5% of that of the lowest responsible bidder, and the contract is for the purchase of commodities.

### **Eligibility Requirements for Surety**

**New York AB 870/1718** would require payment and performance bonds written on contracts awarded by the State or a political subdivision to be issued by a surety licensed in New York and on the U.S. Treasury Department list, with a rating of "A-" or better from Best's rating service or an equivalent rating as certified by the Superintendent of Insurance.

### **Penalties for Defaulting Contractors**

**Mississippi HB 373** would require every public contract let for construction, reconstruction or repair to highways, roadways, bridges, drainage structures or other property or infrastructure damaged or destroyed as a result of a natural or man-made disaster to include provisions subjecting the contractor to penalties for failing to complete the contract in accordance with time

schedules contained in the contract. If a contractor were to be 30 days in default of a time schedule, the penalty would be an amount equal to double the penalty ordinarily imposed by the State Highway Commission (Commission) in other contracts. If a contractor were 45 days in default of a time schedule, the penalty would be an amount equal to triple the penalty ordinarily imposed by the Commission in other contracts. Also, in this case, the contract would be terminated and rebid. The bill provides that either the contractor or the surety bond would have to respond to these increased penalties.

### **Individual Surety**

**New Mexico** SB 436 permits individual sureties. SFAA and a number of its members have called New Mexico Insurance Commissioner, who was surprised by the introduction, but told SFAA that “the bill will not do very well.” The New Mexico bill is similar to the Maryland law and the Virginia bill. SB 436 would delete all requirements in the existing law that a corporate surety, licensed in New Mexico and on the U.S. Treasury list, provide all bid, payment and performance bonds on public projects. Unlike the Maryland and Virginia versions, the new provisions regarding “personal surety” require the surety to be a resident and own real property in New Mexico, and exclude attorneys, owners or employees of contractors and subcontractors and anyone related by marriage to the owners or employees of the contractor and subcontractor. The assets that can be pledged, however, are just as problematic as the other versions of the individual surety legislation. Assets do not have to be deposited in a federally-insured financial institution, but rather can be pledged by way of documents that can be issued by persons or entities unregulated and outside of the United States. The bill also would allow “any other form of security that is satisfactory to the obligee.” SFAA is in the process of discussing a strategy to address it with the AIA and NASBP.

**Defeated in 2007.** **Virginia** HB 3065 would have allowed individual sureties in a bill similar to the 2006 Maryland law. The bill was heard in a Subcommittee on January 30, 2007, and was defeated for all practical purposes. SFAA and AIA worked together to generate substantial opposition to the bill. The Office of the Virginia Attorney General, the local AGC and the Independent Insurance Agents of Virginia (IIAV) testified in opposition to the bill. The IIAV got the Richmond chapter of the association of state purchasing agents to express opposition to the bill. NASBP got the local roofing contractors to testify in opposition to the bill. Karen Barbour was the lone supporter. The state agencies took a neutral position. When the minority contractor issue surfaced, the state agencies did not want to oppose the bill. Since the bill was defeated, SFAA sent a letter to the bill sponsor to rebutt the oral testimony of the proponents that individual sureties are permitted in several states. SFAA sent the sponsor the laws from the states cited in the proponent’s testimony, which require a licensed surety to issue the bid, payment and performance bonds.

### **Subcontractor Bonds**

**New Mexico** S 227 would have repealed the bonding requirement for subcontractors that was enacted in 2005 and allowed an unlicensed contractor to bid on a state public works project if the contractor is licensed by another state to perform the type of work to be undertaken and the contractor certifies that, if the bid is accepted, the contractor will obtain a license in New Mexico. The bill was substituted in committee and now would raise the threshold at which subcontractors must be bonded from \$50,000 to \$125,000.

### **Bonding on Private Construction Projects**

**Washington** SB 5890 would create a committee on residential construction and would require the committee to evaluate whether the current surety bond requirements are sufficient or if increased or additional bonding requirements are necessary to protect both construction professionals and homebuyers.

### **Retainage**

**Arizona** HB 2406 would reduce retainage from 10% to 5% on a contracted commercial project. The retainage would be held in an interest-bearing, escrow account. The bill is moving in the House. **Colorado** HB 1115 would enact a prompt pay measure, but it also would prohibit retainage on construction contracts. An owner could not withhold retainage from a contractor, and a contractor could not withhold retainage from a subcontractor. Subcontractors also would be prohibited from withholding retainage from a second-tier subcontractor or a supplier. **Kansas** SB 33 would require a minimum 5% retainage on public construction contracts and would authorize retainage up to 10%. **Maryland** HB 343 would limit retainage on private construction contracts to no more than 5%. **New Jersey** AB 3649 would extend the new retainage law for the Department of Transportation, enacted in 2005, to the New Jersey Turnpike Authority. The bill would require that 2% retainage be held until substantial completion, upon which 1% would be held. **New Mexico** SB 604 would repeal the state retainage law. **New York** AB 2854/SB 2137 provides that, upon 50% completion of a public works project, retainage withheld would be reduced by 50% and released to the prime for the payment of the subcontractors. Existing law allows for the withholding of 5% to 10% of each progress payment. **New York** SB 1660/AB 3147 would require retainage to be held in an interest-bearing, escrow account. **Utah** SB 180 would reduce the required retainage in school construction contracts from 10% to an amount specified by the school district that cannot exceed 5%.

### **Immigration Bills**

**Arkansas** HB 101024 would prohibit a state agency from entering into or renewing a construction contract in excess of \$25,000 with a contractor who knows that the contractor or a subcontractor employs or contracts with an illegal immigrant to perform work under the contract. The contractor must certify that the contractor does not employ or contract with illegal immigrants and that the contractor participates, or has made substantial efforts toward participation, in the pilot program of the U.S. Department of Homeland Security (DHS). If the contractor violates the law, the contractor will be given 60 days to remedy the violation or the state shall terminate the contract for breach of contract. The contractor will be liable to the state for actual damages as a result of breach of the contract. *This bill passed the House.* In the Senate, the bill was further amended to require that subcontractors certify to the contractor that they do not employ or contract with illegal immigrants. The contractor may terminate a subcontractor for a violation of the agreement, but this will not be considered a breach of contract. *The amended bill passed the Senate.* SFAA talked with NASBP and AGC on this bill. The local AGC took the lead and strongly opposed this bill in Arkansas, but the measure is politically charged; and it appears that it will continue to move this session.

**Texas** HB 908 would provide that no governmental entity of the state may enter into a contract for “goods and services” unless the contractor registers and participates in the DHS pilot project

to verify information on all new employees. A contractor under contract with a governmental entity may not enter into a contract with a subcontractor unless the subcontractor registers and participated in the DHS pilot project. The Texas Workforce Commission and DOT are mandated to develop regulations to implement the law. This bill impacts the surety only indirectly on its face, but could have greater impact depending on the regulations to implement it.

**Oklahoma** SB 31 would require documentation that substantiates that all employees of a state contractor are lawful residents of the United States according to the U.S. Citizenship and Immigration Services. Such documentation would be submitted with the surety bonds for the contract.

### **Anti-Directed Surety**

**Hawaii** HB 1833 would enact an anti-directed surety provision applicable to any public or private project in which bid, payment and performance bonds are required. **North Dakota** HB 1033 would revise the State's procurement code. The bill would not change the existing \$100,000 bond threshold but would add an anti-directed surety provision.

### **Bad Faith**

**Rhode Island** HB 5210 contains the bad faith legislation that was killed in 2005. The bill would permit any obligee, principal or claimant under a payment or performance bond to bring an action against the surety when it is alleged that the surety wrongfully and in bad faith refused to pay or settle a claim or refused to perform its obligations under the bond. Compensatory and punitive damages are permitted as well as reasonable attorneys' fees.

### **State Bond Guarantee Programs**

**Connecticut** HB 5569 would provide \$1 million of payment bonds that would be provided for minority contractors working on projects in Bridgeport.

**Colorado** HB 1209 would require the Director of the Minority Business Office (Director) to establish a surety technical assistance program for historically underutilized businesses (HUBs). The Director would be authorized to contract with insurance companies, surety companies, agents or brokers for the purpose of implementing the program. The Director also would be required to compile a centralized directory of all historically underutilized businesses that have obtained the contract, performance and payment bonds required for the award of a government procurement contract. Ensuring that the directory is accessible to governmental entities that enter into procurement contracts also would be the Director's responsibility.

Under **Mississippi** HB 1101 letters of credit could be used to back bid, payment and performance bonds issued minority businesses by the Mississippi Development Authority.

**Washington** HB 2221 would create a new bond guarantee program for disadvantaged contractors. The program could guarantee bonds for \$500,000 or less. The bill would appropriate \$2 million for the program for the period ending June 30, 2009. The program has a July 1, 2009 expiration date.

### **Prevailing Wage**

**Missouri** SB 175 increases the penalties under the existing prevailing wage law. Existing law contains a penalty of \$10/worker/day to be paid to the contracting unit. This bill would increase that to \$50/day and would require an additional \$50/day to be paid to the Department of Labor, which would be deposited in a newly-created Education and Enforcement Fund to be used for the Department's education about and enforcement of the prevailing wage law. The bill also contains provisions under which monies in the Fund could revert to the state general fund.

**Montana** Draft 1737 has been filed and would amend existing law to require that any contract let for a project contain a provision that requires the contractor to pay the standard prevailing wage rate in effect and applicable to the district in which the work is being performed. However, this would not be applicable if the contractor performing the work has entered into a collective bargaining agreement covering the work to be performed, provided that the project costs more than \$25,000 and is financed from a loan made by the Board of Investments on or after July 1, 2007.

**New York** AB 3630 would increase the penalties for failure to pay the prevailing wage. The court must award a sum equal to three times the full amount of wages owed to each employee. In addition, all court costs and reasonable attorneys' fees and costs must be paid, including the fees of expert witnesses. In addition, the Court must award the Commissioner of Labor a civil penalty in an amount equal to 25% of the total of all wages found to have been improperly held. This sum shall be paid into a special account for the sole purpose of funding the Commissioner's enforcement of the law. The bill also provides that, when a state or local government official has waived the payment bond or when such a bond is not required, aggrieved employees may bring an action against the contractor or subcontractor. Employee organizations can bring any suit permitted under this bill on behalf of their members.

**New York** AB 2125 expands prevailing wage legislation to charter schools and requires them to abide by laws pertaining to advertising for bids, letting of contracts and criminal conspiracies in municipal contracting; expands scope of prevailing wage provisions to leases, grants, bonds, covenants, debt agreements or permits; requires representation in negotiating units for all employees if criteria for representation are met.

**Wyoming** HB 47 would create a single statewide wage district for certain state-funded highway contracts; authorize the Department of Employment to investigate prevailing wage violations on its own volition and permit a 1% bid preference for contractors participating in the Department's prevailing wage survey.

### **Electronic Bidding**

**Missouri** S 52 would provide for electronic filing of bids and bid bonds for 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.

## **Reverse Auctions**

**Texas** HB 447 would prohibit reverse auctions to obtain services in any public works contract in which a bond is required.

## **New Issues for 2007**

**--Green Construction.** Every major construction-related group is lining up to support safer and more energy efficient buildings—residential, commercial and public. It all makes sense as the cost of green buildings now is about the same as conventional buildings, but green buildings significantly cut energy and water usage, reducing both the cost of operating the building over time and the emissions that are cited as the cause of global warming. Federal, state and local governments also are offering tax credits and other incentives for the construction of green buildings. The major standard in the industry at this point is the LEED certification, which signifies compliance with the Leadership in Energy and Environmental Design (LEED standards) of the U.S. Green Building Council. There are LEED standards for new and existing construction. In much of the state legislation, once a building project is LEED certified, it is eligible for a variety of credits and incentives.

Most of the legislation that the SFAA has seen has no surety implications. Recently, however, bills have been introduced that would require an “environmental performance bond.” **South Carolina** SB 377 would permit any state taxpayer to receive continuing state income tax credits for any commercial project that meets the LEED standards upon construction and after recertification at five years and ten years after the original certification. To get the permit to build such a green commercial building, the applicant may provide an “environmental performance bond” in an amount of 3% of the total cost of the project, with a maximum of \$3 million. If the bond is posted, the permitting agency must approve or reject the project as a LEED certified project within 21 days. Under the bill, the permitting agency must retain the environmental performance bond until it is determined that the project meets the LEED certification requirements. If the building meets the LEED standards, the permitting agency returns the bond. If the project fails to meet the standards, 20% of the penal sum of the bond is forfeited to the state agency. If the performance bond earns interest, the permit holder and the state agency shall divide the interest. It is likely that this latter provision on interest applies to cash or other security that may be provided in lieu of a bond.

A new DC law is similar. Under the DC law, the amount of the green building performance bond is 2% of the total contract price for buildings under 150,000 square feet, 3% for buildings between 150,001 and 250,000 square feet and 4% for buildings over 250,000 square feet. The maximum bond amount is \$3 million.

SFAA is working with the Government Affairs and Commercial Surety Advisory Committees on a response to this new type of “environmental performance bond. To the extent that state tax credits are granted for green construction, SFAA sees that as an opportunity to suggest a tax recapture bond.

**--State Contracts with Veterans.** **Indiana** HB would require the Department of Administration to collect information on price preferences for certain contracts; provide a price preference for

disabled veteran businesses in certain contracts and public works projects and set a goal for contracts with disabled veteran businesses equal to 3% of total expenditures. **Maryland** HB 742 and **Pennsylvania** HB 62 would establish goals for certified disabled veteran business in state contracts. **Washington** SB 5289 would increase state contracts with veteran-owned businesses; declare that the purpose of this act is to mitigate economic damage to veteran-owned businesses as a result of military service and provide opportunities to them in recognition of the outstanding service they have given to their country; and require a report to the legislature outlining the progress made in implementing this agreement.

**--Public/Private Projects.** Likely as a result of the National Conference of State Legislators (NCSL) 2006 report on state transportation alternatives, a number of states have introduced bills this session to permit public/private partnerships on various highway projects. SFAA reviews these bills for any impact on surety bonding requirements. Bills to date are: **Arizona** SB 1587; **California** SB 61; **Hawaii** HB 1424 and SB 1510 are identical and are the governor's legislative package; Hawaii SB 899 is identical to HB 721 and SB 828; **Illinois** SB 378; **Mississippi** SB 2375; **Oklahoma** HB 1648; **Tennessee** HB 1205 and SB 347 and **West Virginia** HB 3044.

To date, none of the bills attempt to alter bonding requirements. SFAA is working, however, with AIA to amend **West Virginia** SB 3044 as the bill requires "bid, payment or performance bonds," which could be misread to authorize less than all three bonds on a project. In addition, **Hawaii** SB 170 was just introduced. It would permit the DOT to permit less than 100% bonding on any public/private project.

## **2007 State Legislative Session—Commercial Surety**

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There are 42 states and the District of Columbia in regular session. Delaware and Pennsylvania are conducting budget hearings. In 2007, many states start a new two-year session, and SFAA has reviewed a large volume of legislation introduced to date. The following summarizes the key state legislation affecting commercial surety that SFAA has been tracking. SFAA has worked with AIA and NASBP as noted below to address the bills that have started to move early in the state sessions.

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Since SFAA and AIA obtained legislation in Indiana in 2006 to fix the agent for service of process issue there, **Nebraska** is the only state that does not designate a state official to receive service of process for a surety that writes a bond required or permitted by federal law for a risk in the state. 31 USC 9306 applies to require sureties to file a resident agent in the federal district court in Nebraska. SFAA and AIA have met with Nebraska Insurance Director Tim Wagner, and he is willing to solve the problem by way of a regulation or insurance department bulletin. The Department requires all insurers to file a resident agent in connection with licensure in the State. Based on that authority, the Department believes it could issue a "clarifying" bulletin to state that the Insurance Department would accept service of process for 31 USC 9306 to the extent that the surety could not otherwise be served in the State. SFAA and AIA will follow up with the Department.

### **Illinois Power of Attorney Legislation**

SFAA drafted legislation and background information and worked with AIA in 2006 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. It passed the Senate last year but did not get out of the House. AIA had the bill reintroduced this year, and recently, it was heard in the House Judiciary Committee. SFAA took the lead in testimony and the bill passed out of Committee 9-0. SFAA and AIA will work to get the bill on the House consent calendar when it comes to the Floor, which may not be for two months.

### **Contractor License Bonds**

There is legislation in a number of states to require various types of contractors to be licensed and bonded. Particularly in the area of home service contractors, SFAA has noted that the legislation being introduced is more of a hybrid of a license bond and either a performance bond or an insurance policy. State legislators increasingly want the bond to protect the injured consumer, allowing the consumer a direct claim on the bond. In addition, some proposals would require the bond to respond to some extent to actual damages resulting from the contractor's failure to comply with the terms of licensure, possibly even completion of the contract. At the last Government Affairs Advisory Committee meeting, the Committee cited the California contractors' license bond law as a model that SFAA should use in analyzing this legislation. While a pure license bond always will be the desired result of such legislation, the California laws provides an example of some consumer protections with a clear aggregate limit to make it possible for sureties to underwrite and price the license bond.

**Arizona** HB 2463 would require handymen to be registered and bonded. No bond amount is specified.

**Illinois** HB 359 would create the Painting, Drywall, Finishing and Glazing Contractor Licensing Board (Board) under the Department of Financial and Professional Regulation (Department). Such contractors would be required to file and maintain in force a surety bond in the amount of \$10,000 in connection with licensure. The bond would have to be issued by an insurance company licensed in the state and be continuous in form unless terminated by the insurance company. Termination requires 60-day notice to the Department and the contractor. **Illinois** HB 373 would create the General Contractor Licensing Board (Board) under the Department of Financial and Professional Regulation (Department). Such contractors would be required to file and maintain in force a surety bond in the amount that the Board would determine by rule, in connection with licensure. The bond would have to be issued by an insurance company licensed in the State and be continuous in form unless terminated by the insurance company. Termination would require a 60-day notice to the Department and the contractor.

**Maine** LD 121 would require a \$10,000 license bond for home construction contractors.

**Mississippi** HB 101 would allow the State Board of Contractors to issue restricted certificates of responsibility to those contractors with a contract price of less than \$50,000 for a public project and \$100,000 for a private project. This adds to the licenses that the Board may issue after

testing and payment of fees. Under the existing law, contractors under these thresholds are exempt. The new law also would provide, however, that no county or municipality may impose any additional licensing requirements on contractors holding a valid certificate of responsibility or a license as a residential builder or remodeler or discriminate against them as a nonresident of the county or municipality.

**New Mexico SB 13** would completely revise the contractor's license bond in the State. The bill would require contractors to show proof of responsibility with a bond from a corporate surety in an amount that is not specified in the law. The bond would be liable for payment of damages caused by the licensee to a member of the public who is able to provide evidence of such damages sufficient to satisfy the corporate surety. The surety can cancel the bond with 30-days written notice; and the surety's aggregate liability for all claims would be the penal sum of the bond, regardless of how many years the bond has been in place. The contractor would not be able to do jobs for which the value is greater than 95% the bond amount. Under the existing law, there is a tiered system for the amount of the license bond. For a contractor that does single jobs of \$25,000 or less, the bond is \$500; for contractors with jobs between \$25,000 and \$200,000, the bond is \$1,000; for contractors with jobs between \$200,000 and \$1 million, the bond is \$2,500; and for contractors with jobs in excess of \$1 million, the bond is \$5,000.

**New Jersey AB 3048** carried over from 2006. It would require a \$50,000 license bond for contractors.

**New Mexico SB 227** would allow an unlicensed contractor to bid on a state public works project, if the contractor is licensed by another state to perform the type of work to be undertaken and the contractor certifies that, if the bid is accepted, the contractor will obtain a license in New Mexico.

**Oregon HB 2077** would require landscape contractors to be licensed and bonded. The amount of the bond could not be less than \$15,000. **Oregon SB 90** would increase the license bond amount from \$15,000 to \$20,000 for a general contractor and from \$10,000 to \$15,000 for specialty contractors and inspectors.

**Washington SB 5047** would revise the amount of the existing contractor's license bond on a graduated scale based on the contractor's gross revenues for the previous four quarters. The bill would significantly increase the current bond amounts, which are \$12,000 for a general contractor and \$6,000 for a specialty contractor. Under the bill, if gross revenues are more than \$7.5 million, the bond amount is \$75,000; if gross revenue are between \$2 and \$7.5 million, the bond amount is \$50,000, and if gross revenues are less than \$2 million, the bond amount is \$25,000.

**Dead for 2007. Idaho HB 45** would have required all electrical, plumbing, heating and ventilating (HVAC), gas and general contractors to be bonded in connection with licensure. The bill would require a surety bond in the amount of \$10,000, payable to a consumer in the event the contractor failed to meet the requirements of applicable codes or rules. The aggregate liability of a surety company, regardless of the number of claims made against the bond or the number of years the bond remains in force, could not exceed the amount of the bond in any event. The

contractor would be able to terminate the bond at any time. A surety company would be able to terminate the bond on the anniversary date of the bond, so long as it provides 30-days written notice to the Board and to the contractor.

### **Other License Bonds**

—*Mortgage Lenders and Brokers.* **Hawaii** HB 1315/SB 1401 would require mortgage brokers to post a \$50,000 bond. **Mississippi** HB 69 would require that residential mortgage lenders be licensed and bonded. The amount of the bond would be determined by regulation. **Montana** HB 69 would require residential mortgage lenders to be licensed and bonded. The amount of the bond would be determined by regulations. **South Dakota** SB 165 would require mortgage brokers and lenders to be licensed and bonded. The bond amount is \$25,000.

—*Debt Management Services.* **Colorado** HB 1215 would enact the NCCUSL Uniform Debt Management Services Act. Debt service providers would have to be licensed and bonded. The amount of the bond is \$50,000. The bill contains the surety eligibility requirements that the surety be “A” rated from a nationally recognized rating service.

—*Debt Collectors.* **Rhode Island** SB 34 would require debt collectors to be licensed and bonded. The bond amount would be \$15,000.0

—*Payday Lenders.* **Georgia** would enact the NCCUSL Mode Deferred Presentment Act. Payday lenders would have to be licensed and post a bond of \$25,000 per location, not to exceed \$250,000.

—*Money Transmitters.* **Ohio** HB 454 would require money transmitters to be licensed and bonded. The amount of the bond cannot be less than \$300,000 and not greater than \$2 million.

—*Motor Vehicle Lenders.* **Iowa** HB 50 would require motor vehicle lenders to be licensed and bonded. The bond amount would be \$25,000 per office.

—*Motor Vehicle Dealers.* **Nebraska** LD 681 would increase the existing bond from \$25,000 to \$50,000. **Oregon** HB 2438 would reduce the exiting license bond for motor vehicle dealers from \$40,000 to \$35,000. **Tennessee** HN 1199 increases the motor vehicle dealer bond from \$25,000 to \$50,000. **West Virginia** HB 2028 would increase the motor vehicle dealer bond from \$10,000 to \$50,000. **Wyoming** SB 11 would require out-of-state recreational vehicle dealers to post a \$50,000 bond from a surety licensed in the State.

—*Vehicle Sales Personnel.* **Oregon** HB 2394 would establish a new certification system for vehicle sales people. A \$5,000 bond would be required.

—*Motor Vehicle Service Contracts.* **Missouri** SB 197 would permit a surety bond as one means to show proof of financial responsibility to engage in this business.

### **Appeal Bonds**

Caps on appeal bonds are often presented by business groups as part of an overall tort reform package. As a result of the November elections, many states have a majority that is much more

sympathetic to the trial bar; and, overall, the political environment in 2007 is far less open to tort reform and has shifted to a defensive issue in some states as the trial bar attempts to repeal previously-enacted reforms. Legislation to cap appeal bonds has been introduced in the only states this year in which some tort reform may be possible, but it remains to be seen if the following bills will move.

**Alaska** SB 48/HB 103 would limit an appeal bond to the lesser of \$5 million or 10% of the defendant's net worth. If the appellee can prove that the appellant is dissipating assets, the court can order a bond up to the full amount of the judgment. The cap on the bond would not apply in lawsuits arising from environmental disasters. **Maryland** HB 807 would limit appeal bonds to \$100 million in certified class actions. **Oklahoma** HB 1620 would cap appeal bonds to \$25 million or 10% of the defendant's net worth. The bill is part of an overall tort reform package. **Wyoming** HB 196 would cap the appeal bond at \$2 million in any case in which all the appellants are either individuals or have fewer than 25 employees and \$25 million in any other case. If the appellee can prove that the appellant is dissipating assets, the court may order a bond up to the full amount of the judgment. The bill passed the House and is now out of committee in the Senate.

### **Uniform Trust Act**

The Uniform Trust Act has been introduced in **North Dakota** (HB 1034) and **New Mexico** (HB 182). The bills generally follow the Uniform Act consistently. They would provide that trustees must provide bonds only when the court deems them necessary to protect the interests of the trust and when the court has not dispensed with the bond. The bills would give the courts greater discretion in setting the amount of the bond and determining whether sureties are necessary. Both bills provide that a regulated financial services institution, licensed in the state, would not be required to provide a bond even if the terms of the trust required one.

### **New Issues This Year**

—**Tax Preparers.** **New York** AB 1795 would require tax preparers to be registered and bonded. The amount of the bond would be \$5,000 for each person preparing tax returns for another and would be for the benefit of any person harmed by the fraud, dishonesty, misstatement, misrepresentation, deceit or unlawful acts or omissions of a tax preparer.

—**Motor Vehicle Booting.** **New York** AB 2103 would require persons placing booting on the wheels or tires of parked vehicles to be licensed and bonded. The bond amount would be \$5,000 and would be conditioned on compliance with local laws and ordinances.

### **2007 State Legislative Sessions—Fidelity**

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There are 42 states and the District of Columbia in regular session. Delaware and Pennsylvania are conducting budget hearings. In 2007, many states start a new two-year session, and SFAA has reviewed a large volume of legislation introduced to date. The following summarizes the key state legislation affecting fidelity bonds that SFAA has been tracking. SFAA has worked with AIA and NASBP as noted below to address the bills that have started to move early in the state sessions.

As usual, there are fewer bills for fidelity than for contract or commercial surety; but it is early in the 2007 sessions. The following are the bills tracked to date that would present new bond opportunities for fidelity or affect an existing bond. There is other state legislation that would create “surety bonding” requirements for various public officials. When enacted, we always include that legislation on the SFAA fidelity report, as such legislation often requires coverage that can be provided by a fidelity bond, despite the terminology used in the law.

**Connecticut** HB 5334 would require every licensed attorney who acts in a fiduciary capacity for a client to secure a \$1 million fidelity bond.

**Illinois** SB 490 would create a new special programs fund within the state Unemployment Trust Fund and would provide that the Director of Employment Security is liable on his or her existing bond for moneys in this new fund.

**Indiana** SB 95 would require fidelity bonds from contractors of the Bureau of Motor Vehicles that operate a license branch for the Bureau.

**Indiana** SB 127 would require a fidelity bond from title insurance agencies.

**Missouri** HB 426 would create the Propane Safety Commission and permit the Chairman of the Commission to obtain a blanket bond covering all members of the Commission and the employees in lieu of individual bonds.

**Missouri** HB 440 would require any employee of a labor union who handles funds or other property of the organization to post a surety bond for protection against loss by acts of fraud or dishonesty or through connivance with others.

**Mississippi** HB 1510 would authorize the new Community Corrections Commission to obtain fidelity bonds for the faithful performance of the duties of the Commission’s personnel.

**Nebraska** LD 347 would permit public officials in any city, town and village to give a blanket bond or evidence of equivalent insurance. The blanket bond or insurance would have to be at least the aggregate of the amount required by existing law or by the persons authorized by law to set the amounts of the individual bonds.

**New Hampshire** HB 256 would require officials and employees to whom the town treasurer delegates to certain treasury functions to be covered under the town’s blanket bond.

**New Jersey** AB 7/SB 43 would require the secretary of a regional school district to post a bond. Existing law requires the secretary of a board of education to be bonded. The bill would add bonding for regional school districts but would eliminate the need for two bonds if such secretary is bonded as an officer of the municipality which also constitutes the school district.