

THE SURETY & FIDELITY ASSOCIATION OF AMERICA

MEMORANDUM

TO: Government Affairs Advisory Committee
Contract Bonds Advisory Committee

FROM: Lenore S. Marema

DATE: December 18, 2007

Preview of the 2008 Legislative Sessions—Contract Surety

This year, SFAA has published a monthly State Overview Report to give SFAA members a summary of the major surety and fidelity issues being addressed in the states. We are devoting the December report primarily to a preview of the 2008 sessions.

Late Developments in the 2007 State Sessions

It appears that the **Washington** Department of Transportation (DOT) is willing to compromise on the bonding for mega construction projects and that when the legislature reconvenes in 2008, the bonding provisions SB 5208/HB 1957 may be significantly changed. SB 5208 would have permitted the state DOT to set the amount of the bond on projects of \$80 million or greater to cover the State's maximum probable loss, but the bond could not be less than \$80 million. The bill passed the Senate, but did not pass the House by the time the legislature adjourned. The DOT intended to increase the number of contractors that could bid on some upcoming mega projects by decreasing the bond amount to cover the State's maximum exposure to loss rather than the total contract price. Although SFAA and AIA were unable to defeat the concept or raise either the threshold or the bond amount required, we were successful in having the bill amended to require the DOT to develop risk assessment guidelines to show how it will measure the State's exposure to loss and how the bond amount that they set protects 100% of the State's loss, which will increase transparency in the process. Travelers provided excellent testimony when the Senate bill was heard in the House Committee. When the session ended this year, the bill carried over to 2008, and it appeared as though it would be enacted as soon as the legislature reconvened in 2008.

From the reports that SFAA received, the legislation was stopped in the House. HB 1957 was the companion to SB 5208, and it was held in the House Transportation Committee after testimony from the Property Casualty Insurers Association of America (PCI) and written opposition from the AIA. The PCI also presented SFAA's written opposition. After SB 5208 passed and went to the House, it was assigned to the Transportation Committee, where it met the same fate as its House counterpart. Travelers and the AIA state counsel also visited with the sponsor and other members of the Committee immediately prior to the hearing of the Senate bill in the House. Throughout the process,

the DOT was unwilling to compromise, especially on the \$80 million threshold for bonding, despite the fact that the DOT drafted the bill without any surety input.

Over the summer, a new bill was drafted to address the concerns of the sureties. The AIA recently obtained a copy of it and SFAA reviewed it. Under the revised version, for DOT projects in excess of \$250 million, the DOT must set the bond amount to adequately protect 100% of the State's exposure to loss, but in no event can the bond be less than \$250 million. The Secretary of Transportation must approve each bond for less than the full contract price of the project. The DOT must develop risk assessment guidelines and gain approval for the guidelines from the Office of Financial Management. The guidelines must state a clear process for measuring the State's exposure to loss and how the bond amount adequately protects 100% of the State's exposure to loss. These provisions would expire on June 30, 2012. SFAA has no problems with these new provisions. The DOT has changed its position significantly, especially considering the bad precedent that exists in Washington with less than 100% bonding for the Washington State Ferry projects.

Overview of 2008—The Agenda Shifts to the Defense

The 2007 sessions were a year of transition and reorganization in Congress and in the state legislatures with the Democrats taking control of the U.S. House and many state chambers after the November 2006 elections. In 2008, the transition is complete and the insurance industry agenda in general will shift to a defensive position. The industry likely will be on the defensive on many issues, but on two key issues in particular: defending against new taxation in Congress and fighting against repeal of existing tort reforms and expansion of the right to sue in the states.

In Congress, the Democrats are pressing for more spending, which may have to be supported by increased taxation. Earlier this year, the U.S. House adopted the pay-as-you-go (Pay Go) rule, which requires new tax cuts and new mandatory spending to be offset by either increased revenues or cuts in spending elsewhere. The Democrats have plans in 2008 for what they are calling "the mother of all tax reforms," which would be the first major rewrite of the Internal Revenue Code since 1986. The proposal reportedly would eliminate the alternative minimum tax (ATM), cut the corporate tax rate, and provide tax relief for 90 million persons in lower tax brackets. If their 2008 bill contains all these items, such a bill in the House will require around \$1 trillion in offsets over the course of two decades. Next year, the House may well be looking for tax increases from top wage earners and industries for the required offsets in its tax legislation. The insurance industry will be coming from two of the most profitable years in history and would seemingly be a prime target for new taxes. In the past, federal tax legislation has created schisms between life and property-casualty insurers and between stocks and mutuals.

The Senate, however, has no Pay Go rules, and is more inclined to increase the national deficit than to offset every tax cut with a revenue increase. It may be hard to get the 60 votes needed in the Senate to pass any revenue-neutral tax legislation. The Senate may have to agree to some offsets, and the House may have to agree to give up on the Pay Go

rules for any major tax reform to get off the ground. In any case, taxes are sure to be an issue in the 2008 Presidential campaigns, with the Democrats packaging their federal tax reform plan as tax relief and fairness for most Americans and the Republicans characterizing it as a massive increase in taxation and spending. There may be some state tax issues as well with states looking to repair bridges and other infrastructure. Some of that may depend on the federal budget for 2008 and how much additional funding Congress allocates for bridge repairs.

At the state level, the trial lawyers likely will attempt to repeal tort reforms enacted in the last two decades and to expand the right to sue, such as expanding damages under the state wrongful death laws. In the mid 1980s and early 1990s, business and industry groups were successful in obtaining many broad based tort reform packages, some portions of which state courts declared unconstitutional. During the later 1990s, the state tort reform coalitions opted for more limited and incremental tort reform legislation, and most recently, business and industry has had success in changing the rules in specific state courts that are known nationwide as havens for plaintiffs' class action suits.

Based on the 2007 bad faith legislation, the trial lawyers may be back to expand the bad faith laws in the few states in which they had some success in 2007--**Maryland and Washington**--and will be back to try again in states like **Minnesota and New Hampshire**, among others. States in which the industry has achieved significant tort reforms, particularly recently on the asbestos issues, may well be targets in 2008 for the trial lawyers. States that would be natural targets because of the reforms in place and a legislature that is now more friendly to the trial lawyers are: **Colorado, Florida, Georgia, Illinois and West Virginia**, although tort reform issues could pop up anywhere.

The trial lawyers also will try to expand both the right to sue and the damages that can be awarded. We would expect to see a new round of wrongful death bills in the states. Another one of their targets could be elimination of mandatory arbitration clauses in many consumer contracts, including insurance policies. The Center for Constitutional Litigation stated in a recent report that it has 40 cases pending countrywide challenging government limits on tort claims, such as state caps on medical malpractice awards and legal immunity given to car rental agencies and gun manufacturers. The Center is a law firm that is on retainer to the trial lawyers' national and individual state associations. Nationally, it brings litigation, and locally it assists the trial bar to overturn tort reforms.

Tort reform likely will not be a big issue in Congress. Like the issue of state vs. federal regulation, the insurance industry has been somewhat divided on seeking federal tort reform in the first place. Any federal tort reform enacted has been more modest. It took a decade to enact The Class Action Fairness Act and the reforms had a modest impact on the abuses of class action lawsuits. Tort reform is not a voters' issue on the national level. It is much more of a state issue. At best, the trial lawyers will be in Congress trying to scale back on federal pre-emption of state liability lawsuits, such as drugs governed by the federal Food and Drug Administration.

Contract Surety Issues for 2008.

Many of the states have a shorter session in 2008 as it is the second year in a two-year cycle, as well as a presidential election year. Twenty states are now pre-filing bills for the 2008 state legislative sessions. **Arkansas, Montana, North Dakota, Nevada, Oregon** and **Texas** will not meet in 2008. The following are some of the contract surety issues that SFAA expects to see on the state agendas:

● ***Small and Emerging Contractors.*** The downturn in the residential housing market may lead small and emerging contractors to seek public projects. The issue of bonding for small and emerging contractors arises in several ways: increased state bond thresholds, individual sureties, waivers of bonds, and state bond guarantee programs. Legislation was introduced late in the 2007 session in **Rhode Island** to increase the state bond threshold and this may come back again. The AIA has a new state counsel for 2008, and SFAA has discussed meeting with the new counsel to review surety issues, which would be combined with a visit with the 2007 sponsors of the threshold legislation to learn what problem is intended to be solved with such legislation. Bond waiver legislation did not pass in **Illinois**, but the State may well review its entire bonding statute in 2008. It is doubtful that the individual surety bills from 2007 in **New Mexico** and **Virginia** will be back. The issue is in litigation now in New Mexico and there is no indication that the bill was filed before the early December pre-filing deadlines in Virginia, but the individual surety issue is unpredictable. The increasing cost of construction and/or pending mega construction projects also is causing some states to revisit their state bond thresholds apart from any small and emerging contractor issues. On any of these key issues, it is important for SFAA and AIA to get in as early as possible in the process.

● ***Bridge Repairs.*** After the **Minnesota** bridge collapse, many states may be reviewing their infrastructure and may authorize repairs. Many of these projects could be large and raise the issues of 100% bonding and long-term warranties. For states with budgetary restraints, public-private projects (PPP) may be considered as a method to achieve needed repairs. As has been the case in the past, when legislation is introduced to create special procurement rules for a mega construction project or to authorize PPPs, there is an opportunity to change the bonding requirements. It is important for sureties to get involved at the earliest possible stage in order to be most effective in addressing this legislation. If partial bonds are a result, it is important to limit the bills to specific projects or PPPs, rather than all future department of transportation (DOT) or state projects. State DOTs increasingly want more flexibility in bonding because of the size of many road construction projects, and it is a slippery slope for surety once they are given authority to set the amount of bonding. In addition, it is becoming increasingly important to get in early to question the need for these mega projects. The **Missouri** DOT plans to let one contract for the repair of 802 bridges. Small and local contractors cannot bid on such large projects; and, if the contractors are left out, their sureties are as well. The sureties locally need to work with the obligees and local contractors to address project size.

● **Retainage.** This is a perennial issue for the subcontractors. A new twist that SFAA has seen recently is state legislation to repeal existing retainage laws as an alternative response to pressure from the subcontractors to reduce or prohibit retainage. The subcontractors' proposals are objectionable to sureties and public owners, and the suggested "compromise" is no retainage law so that state contracting officers could specify any amount of retainage in public construction contracts. SFAA opposes elimination of retainage laws. In the absence of a specified retainage amount, the surety industry will have to be vigilant in pursuing retainage on a contract-by-contract basis. Public owners could misread the repeal of the retainage law and conclude that they no longer have the authority to require retainage.

● **Immigration.** With Congress failing to enact comprehensive immigration reform in 2007, the issue is left to the states. As it was put at the summer meeting of the National Conference of State Legislators (NCSL), "the federal immigration boat sank and 50 state life rafts are now adrift at sea." SFAA believes that the contractors need to take the lead on these in the states, but SFAA reviews the bills for their impact on surety in terms of penalties—such as mandated default—on contractors who violate the immigration laws and general contractors being held responsible for the compliance of subcontractors. **Arizona, Colorado, Georgia and Oklahoma** have enacted immigration laws in the past two years, some of which expose employers to significant new penalties for employing undocumented workers. This legislation is now being tested in the courts, and to the extent it is upheld, it may serve as a model to other states interested in the issue. Of particular concern to sureties is the 2006 Colorado law. It prohibits a state agency or political subdivision from entering into or renewing a public contract with a contractor who knowingly employs or contracts with subcontractors that employ illegal aliens. The law requires contractors to participate in a specified federal pilot project administered by the Department of Homeland Security for purposes of checking the status of employees. If a contractor violates the law, the public owner may terminate the contract for breach of contract, and the contractor shall be liable for the actual and consequential damages.

● **Bid Preferences.** SFAA has seen a new generation of legislation granting bid preferences on construction projects based on some public policy goal, such as use of bio-based products, retrofitting diesel equipment, providing health insurance for workers and performing work in low income/high unemployment areas. The bills to date are brief and do not address issues, such as who is responsible for assuring that the contractor obtaining the bid based on a preference complies with the required criteria and what is the penalty for failure to comply. Questions also have been raised regarding a contractor who qualified and received the contract based on a bid preference but falls out of compliance while the job is in progress. SFAA believes that such legislation should specify that the contractor has to qualify for the preference at the time the bond is issued and that the preference should not be made part of the construction contract.

The Unpredictable

Traditional wisdom is that Congress takes little action in a Presidential election year. That is because the state primaries traditionally were spread throughout the year, and Members of Congress were either campaigning for their party's nomination or going home with

some frequency to stump for one of their party's candidates in their home state. This year, however, the Presidential candidates will be known by February 5, 2008, according to all predictions. Many state primaries have been moved up, and most of the states with the large number of electoral votes will have their primaries on or before February 5. **Florida's** primary is January 29, and **California, Illinois, Massachusetts, New Jersey** and **New York**, among many other states, have primaries on February 5. This Congress will have from February until it adjourns in August, for the summer recess and the Republican and Democratic National Party Conventions, to take action. It may be all posturing on issues for the Presidential elections in November and no action. The Democratic majority on the House Ways and Means Committee may well have its tax reform package in play for debate. Health care reform may surface as that is an issue in the Presidential campaigns. As the election gets close, however, and if votes in states like Florida look pivotal to winning the White House, politics may take over. Each party may be championing bills in Congress that would benefit voters in those states. Congress in a presidential election year with the candidates known upfront is unprecedented.

Preview of the 2008 Sessions--Commercial Surety

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Late Developments from the 2007 State Sessions

● **New Laws. Maryland** conducted a special session to resolve the state's budget problems. In addition to some new taxes, the State authorized video slot machines. SB 3a requires gaming facility operators, gaming employees and video slot machine manufacturers to be licensed and bonded. The new State Gaming Commission will promulgate the bond amounts.

● **Bills on the Move. Michigan** SB 368 would require county treasurers to be covered under a blanket bond in an amount not less than \$1 million or to post an individual bond in the same amount. The bill has now passed both chambers in Michigan.

New Jersey AB 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 surety bond in connection with licensure in the amount of \$3,000, executed by a surety company authorized to transact business in the State and approved by the Department of Banking and Insurance. The contractor would have to post this bond in addition to any other bonds that could be required by a contract. If the contractor is licensed under this act, however, no municipality could require any similar bond.

Both the Senate and the Assembly have adopted the Governor Corzine's recommended changes and the amended bill has been sent back to him for signature. The Governor's changes through an amendatory veto were related to the license and education requirements and did not impact the new bond requirement.

● ***Other Developments-Workers Compensation Self-Insurance Bonds.*** Pursuant to a requirement in the workers compensation reform legislation enacted in New York this year, the New York State Workers Compensation Board (WCB) recently released a report on alternate funding models for workers compensation self-insurance. Currently, New York requires employers approved for self-insurance to provide security for their workers compensation liabilities, which can be met with a surety bond. The WCB report recommends moving from individual security deposits to a self-insurance guarantee fund. This would eliminate the bonds that many SFAA members now write. The WCB report contends that the pool approach has worked in California. North Carolina enacted a self insurance guarantee fund in 2006 and recently implemented it. SFAA doubts that sufficient experience exists in either state to conclude that the pool mechanism works or to compare it to the current system of individual security. Neither existing state pool has had any significant claims experience. SFAA will work with AIA to meet with the Bureau early in 2008 to present the surety perspective. Legislation would have to be developed and passed in order to implement the report. We have a report from the AIA that while the WCB plans to pursue legislation, this is not an issue that the legislature will consider in very early in the 2008 session so that we have some time to prepare and address this situation.

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In Congress, the Democrats are pressing for more spending, which may have to be supported by increased taxation. Earlier this year, the U.S. House adopted the pay-as-you-go (Pay Go) rule, which requires new tax cuts and new mandatory spending to be offset by either increased revenues or cuts in spending elsewhere. The Democrats have plans in 2008 for what they are calling “the mother of all tax reforms,” which would be the first major rewrite of the Internal Revenue Code since 1986. The proposal reportedly would eliminate the alternative minimum tax (ATM), cut the corporate tax rate, and provide tax relief for 90 million persons in lower tax brackets. If their 2008 bill contains all these items, such a bill in the House will require around \$1 trillion in offsets over the course of two decades. Next year, the House may well be looking for tax increases from top wage earners and industries for the required offsets in its tax legislation. The insurance industry will be coming from two of the most profitable years in history and would seemingly be a prime target for new taxes. In the past, federal tax legislation has created schisms between life and property-casualty insurers and between stocks and mutuals.

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Based on the 2007 bad faith legislation, the trial lawyers may be back to expand the bad faith laws in the few states in which they had some success in 2007--**Maryland** and **Washington**--and will be back to try again in states like **Minnesota** and **New Hampshire**, among others. States in which the industry has achieved significant tort reforms, particularly recently on the asbestos issues, may well be targets in 2008 for the trial lawyers. States that would be natural targets because of the reforms in place and a legislature that is now more friendly to the trial lawyers are: **Colorado, Florida, Georgia, Illinois** and **West Virginia**, although tort reform issues could pop up anywhere.

The trial lawyers also will try to expand both the right to sue and the damages that can be awarded. We would expect to see a new round of wrongful death bills in the states. Another one of their targets could be elimination of mandatory arbitration clauses in many consumer contracts, including insurance policies. The Center for Constitutional Litigation stated in a recent report that it has 40 cases pending countrywide challenging government limits on tort claims, such as state caps on medical malpractice awards and legal immunity given to car rental agencies and gun manufacturers. The Center is a law firm that is on retainer to the trial lawyers' national and individual state associations. Nationally, it brings litigation, and locally it assists the trial bar to overturn tort reforms.

Tort reform likely will not be a big issue in Congress. Like the issue of state vs. federal regulation, the insurance industry has been somewhat divided on seeking federal tort reform in the first place. Any federal tort reform enacted has been more modest. It took a decade to enact The Class Action Fairness Act and the reforms had a modest impact on the abuses of class action lawsuits. Tort reform is not a voters' issue on the national level. It is much more of a state issue. At best, the trial lawyers will be in Congress trying to

scale back on federal pre-emption of state liability lawsuits, such as drugs governed by the federal Food and Drug Administration.

Commercial Surety Issues in 2008

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● ***Mortgage Broker License Bonds.*** States are looking to increase bond amounts, change bond terms or otherwise increase the regulation of mortgage brokers and mortgage bankers in order to protect consumers due to concerns about the subprime loan market. Some states may consider legislation that imposes new duties and liabilities on mortgage brokers and mortgage bankers, which does not directly change the state bonding requirements, but which could change the nature of the risk under the license bond.

● ***Contractor License Bonds.*** Several state attorneys general are looking at consumer problems with home service contractors, particularly in the northeastern states. There were many bills in 2007 that would have required a license bond. Some were enacted, and we more bills in 2008. Increasingly, this type of license bond legislation contains a hybrid of a license bond and either a performance bond or an insurance policy. In addition, some proposals 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.

● ***Motor Vehicle Bonds.*** The trend in the states is to raise existing bond amounts and extend the bond requirements to new types of sports vehicles. It may well be that in the upcoming years, we will need to consider a tiered bond amount based on the size and sales of the motor vehicle dealer as the smaller principals may find it increasing hard to obtain the higher bond amounts.

● ***Hybrid License Bonds.*** A trend with license bonds in general is that states want these bonds to provide some consumer protection and, specifically, to permit the consumer to make a claim against the bond. While this trend has been seen the most in contractors license bond legislation, as noted above, as states move to change other existing bond requirements and enact new license bond requirements, SFAA expects that some of this legislation also will contain something other than the traditional license bond. To address this type of legislation, SFAA has been using the California contractors' license bond law as a model. 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. In some situations, unless the industry is willing to support legislation permitting consumers to recover against the bond, new license bond legislation may be difficult to enact. If the industry is willing to support some form of a hybrid license bond, some large new markets may open up for the surety industry.

● ***Caps on Appeal Bonds.*** Seen as tort reform in the business community, the trend in the legislatures is to cap appeal bonds at \$25 to \$50 million. The cap on the amount of the appeal bond is seen as encouraging corporate defendants to appeal awards of damages and punitive damages. Often, the caps on appeal bonds are included in a broader tort reform package. In the current environment, supporters of tort reform tend to see caps on appeal bonds as a tort reform that can be achieved as opposed to other more substantive reforms would be much more controversial.

● ***Green Building Legislation.*** There was a lot of legislation in 2007 regarding green construction, most of which did not impact surety bonds. A limited number of bills had surety implications. Some of the legislation would require an “environmental performance bond.” In some bill drafts, this appeared to guarantee compliance with green building standards, either to obtain a permit to construct a green building or assure that the building remained in compliance with the standards for a specified time period. The few bills that impacted surety needed considerable work to clarify the bond coverage. In states that seek to grant tax credits over a period of time for green construction, SFAA has investigated the possibility of a new tax recapture bond. In one case, the bill in South Carolina was amended, but the number of years in which a tax credit would be permitted was considerably reduced, and discussion of a tax recapture bond was dropped. SFAA also has seen a number of bills requiring bonding of guaranteed energy savings contracts. Most of the bills to date have required bonding of 100% of the contract amount.

● ***New NAIC Model Legislation.*** Within the last year, the National Association of Insurance Commissioners enacted two new model laws that have bonding requirements. The Discount Medical Plan Model Act requires a \$35,000 license bond or a deposit with the Insurance Commissioner. SFAA recently worked with the **Texas** Department of Licensing and Regulation for a \$50,000 bond amount as the new Texas law delegated the authority to set the bond amount to the Department. The Viatical Settlements Model Act requires providers and brokers of such services to demonstrate \$250,000 in financial responsibility with a surety bond or a deposit of cash or securities. SFAA addressed and supported these models at the NAIC and they are now being introduced in the states. **Ohio** introduced the viatical settlements model late in the 2007 and **Nebraska** has it on its agenda for 2008. We expect more bills in 2008.

● ***Other New Bond Opportunities.*** With the credit crunch in the economy, states are looking to regulate debt management services and credit counseling services, as well as debt collection or recovery services. Some of this new activity stems from the recent model legislation of the National Commissioners on Uniform State Law (NCCUSL). The NCCUSL Uniform Debt Management Services Act contains a \$50,000 license bond requirement for credit counseling and debt management services. Toward the end of the session this year, the first license bond requirement for foreclosure consultants was introduced in **New Jersey**. We expect to see other new opportunities for license bonds in this area.

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Traditional wisdom is that Congress takes little action in a Presidential election year. That is because the state primaries traditionally were spread throughout the year, and Members of Congress were either campaigning for their party's nomination or going home with some frequency to stump for one of their party's candidates in their home state. This year, however, the Presidential candidates will be known by February 5, 2008, according to all predictions. Many state primaries have been moved up, and most of the states with the large number of electoral votes will have their primaries on or before February 5. **Florida's** primary is January 29, and **California, Illinois, Massachusetts, New Jersey** and **New York**, among many other states, have primaries on February 5. This Congress will have from February until it adjourns in August, for the summer recess and the Republican and Democratic National Party Conventions, to take action. It may be all posturing on issues for the Presidential elections in November and no action. The Democratic majority on the House Ways and Means Committee may well have its tax reform package in play for debate. Health care reform may surface as that is an issue in the Presidential campaigns. As the election gets close, however, and if votes in states like Florida look pivotal to winning the White House, politics may take over. Each party may be championing bills in Congress that would benefit voters in those states. Congress in a presidential election year with the candidates known upfront is unprecedented.

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Tort reform likely will not be a big issue in Congress. Like the issue of state vs. federal regulation, the insurance industry has been somewhat divided on seeking federal tort reform in the first place. Any federal tort reform enacted has been more modest. It took a decade to enact The Class Action Fairness Act and the reforms had a modest impact on the abuses of class action lawsuits. Tort reform is not a voters' issue on the national level. It is much more of a state issue. At best, the trial lawyers will be in Congress trying to scale back on federal pre-emption of state liability lawsuits, such as drugs governed by the federal Food and Drug Administration.

The Unpredictable

Traditional wisdom is that Congress takes little action in a Presidential election year. That is because the state primaries traditionally were spread throughout the year, and Members of Congress were either campaigning for their party's nomination or going home with some frequency to stump for one of their party's candidates in their home state. This year, however, the Presidential candidates will be known by February 5, 2008, according to all predictions. Many state primaries have been moved up, and most of the states with the large number of electoral votes will have their primaries on or before February 5. **Florida's** primary is January 29, and **California, Illinois, Massachusetts, New Jersey** and **New York**, among many other states, have primaries on February 5. This Congress will have from February until it adjourns in August, for the summer recess and the Republican and Democratic National Party Conventions, to take action. It may be all posturing on issues for the Presidential elections in November and no action. The Democratic majority on the House Ways and Means Committee may well have its tax reform package in play for debate. Health care reform may surface as that is an issue in the Presidential campaigns. As the election gets close, however, and if votes in states like Florida look pivotal to winning the White House, politics may take over. Each party may be championing bills in Congress that would benefit voters in those states. Congress in a presidential election year with the candidates known upfront is unprecedented.

Fidelity Issues for 2008

Many of the states have a shorter session in 2008 as it is the second year in a two-year cycle, as well as a presidential election year. Twenty states are now pre-filing bills for the 2008 state legislative sessions. **Arkansas, Montana, North Dakota, Nevada, Oregon** and **Texas** will not meet in 2008.

While there is a significant premium volume of fidelity business in the industry, almost half of the fidelity premium comes from policies written for financial institutions, all of which are federally regulated and have existing bond requirements. Because the fidelity bond issues usually stem from federal laws or regulations, there is far less state legislation on fidelity bonds. Because fidelity bonds normally protect the insured instead of third parties, whether to obtain a fidelity bond is usually an internal management decision rather than a statutory mandate.

In 2007, SFAA saw an increased interest in fidelity bonding for condominium association managers. In addition, fidelity bonding was used a part of a regulatory response in connection with changes in the delivery systems for prescription drugs. SFAA saw

attempts in 2007 to regulate pharmacy benefit managers (PBM), defined as persons or entities that procure prescription drugs at a negotiated rate for dispensation within a state to covered individuals. This type of legislation required a fidelity bond for licensure or registration. SFAA believes that both of these trends will continue in 2008.