



2018

Contract Surety State Legislative Report





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Status of the States

Most of the states have adjourned their 2018 sessions. Sessions that go on until year's end are Massachusetts, Michigan, New Jersey, Ohio, Pennsylvania, and the District of Columbia.

Forty-six states began Fiscal Year 2019 on July 1, 2018. Alabama, Michigan, New York, and Texas have fiscal years that begin in September or October. All 50 states have enacted budgets for FY 2019 with 16 of these states having enacted a biennial budget during their 2017 legislative session. Several states had heated battles over the budget and some also needed one or more special sessions to finish the budget. Massachusetts was the only state to complete its budget after the fiscal year began.

Colorado, Delaware, Georgia, Iowa, Kentucky, Massachusetts, Mississippi, and Missouri enacted spending packages for infrastructure this year.

The Surety & Fidelity Association of America (SFAA) has a legislative affiliation with the American Insurance Association (AIA). Together, we address surety and fidelity legislation in the states. SFAA sets a limited number of priority issues each year for which we affirmatively seek to have legislation introduced to amend existing state law. Much of the work together, however, is addressing bills that others have introduced that impact surety and fidelity bonds. The following is a summary of the contract surety bills that were introduced in 2018 that SFAA and AIA addressed.

Key Issues Addressed in Contract Surety in 2018

PUBLIC-PRIVATE PARTNERSHIPS

Legislation authorizing new or expanding existing authority to use P3s remains of interest on the state agendas. With state budgets being tight, private investment is attractive. Even though procurement methods have evolved, construction remains a risky business, making the protections that surety bonds provide for taxpayers' investments and the payment guarantees for subcontractors and suppliers just as relevant and important in P3s. SFAA seeks bonding requirements for the design and construction portion of P3s.

--Enactments. **New Jersey** granted broad authority to the State, local governments, and school districts to enter into P3 agreements for public works projects. The new law includes a provision reflecting SFAA and AIA's work in prior sessions that requires the general contractor, construction manager, or design-build team to post a performance bond and a payment bond that complies with the State's Little Miller Act. The new law also revises the existing P3 law for state and county colleges to include our bonding provisions. Under prior law, the private partner had to furnish the bonds if no public fund has been established for state and county college P3 projects.

Delaware authorized the Department of Transportation (DOT) to enter into a P3 for the construction of the Wilmington Transit Center and an associated parking facility. The existing P3 law for the DOT requires that projects must comply with all existing, applicable statutes and rules. **Delaware** also authorized county and municipal governments to enter into P3s for public lands through a lease, concession agreement, easement, or license agreement, but did not specify the projects that may be undertaken as a P3 or any procurement requirements. **Maryland** now will allow a P3 for county school projects to include an operations and maintenance component. A county also now may enter into P3s with county revenue authorities for school projects. The new Interagency Commission for School Construction (Commission) is charged with adopting regulations for school construction requirements instead of the Board of Public Works (Board). **Missouri** expanded the existing P3 law for the Highways and Transportation Commission (Commission) to allow political subdivisions to use P3s. Existing law provides that the Commission may require bonding. **Vermont** created a pilot program to enable the Agency of Transportation (AOT) to enter into P3s for transportation infrastructure projects. The law sets forth the process for AOT to review proposals, but it contains no other procurement requirements. The program expires on July 1, 2023.

Florida authorized the new Water Street Tampa Improvement District (District) in the City of Tampa to use P3s for communications systems and related infrastructure projects and for providing electrical, sustainable, or green infrastructure improvements, facilities, chillers, and services. Bonding may be required for the District's contracts for construction, goods, supplies, or materials. **Washington** revised the existing law for rural port authorities to enter into P3s for wholesale telecommunications services and infrastructure so that all port authorities may enter into P3s for such projects.

A new law created the **Michigan** Infrastructure Council (Council) within the State Department of Treasury to develop a multi-year plan for asset management in the State, which will be updated annually. The Council has a broad charge for its study, including reviewing funding and financing models, best practices, and impediments to delivery. **Nebraska** created the Rural Broadband Task Force to study issues concerning the deployment of rural broadband technology and infrastructure, including an examination of P3s, funding for competitive deployment, reverse auction programs and other measures. **Utah** created the Planning and Investment Division under the Department of Transportation to oversee and coordinate P3s. The existing P3 law is contained in the procurement code as is the Little Miller Act.

--Still Pending. **Pennsylvania** has several P3 bills pending, but none have moved to date. One bill would allow the State and its political subdivisions to use P3s for social infrastructure projects. The bill is modeled after the existing transportation P3 law and Little Miller Act and provides discretion to use bonding or other security for the project. The bill would create the P3 Infrastructure Board to approve P3 projects and develop best practices for P3s. Another bill in **Pennsylvania** would revise the existing County Code to allow development authorities for second class counties to use an "alternative contracting procedure" for public facility projects under which the proposer's responsibilities would include financing. The most recent bill introduced would establish a P3 pilot program for state and local government agencies to conduct sixteen P3 projects. Bonding or other security would be required.

Broad authority to use P3s for public projects still is pending in **Michigan** for state and local governments to use this project delivery method for transportation projects and for health care facilities or laboratory facilities. **Michigan** also considering a bill that would allow port authorities to use P3s for their projects. There are no specific bonding requirements in the existing port authority law, but port authorities are subject to the Little Miller Act. As noted above, Michigan enacted a new council and no further action is anticipated on P3s. P3s were a key issue for the current Administration, but Governor is term limited. P3s are being used under existing law.

An **Ohio** bill would authorize state agencies, state institutions of higher education, local governments, and schools to use P3s for public facility projects. Performance and payment bonds would be required in an amount the contracting authority will determine.

--Dead for 2018. **Minnesota** legislation that SFAA assisted in drafting would have allowed the State and local governments to use P3s for any kind of public infrastructure project. Bonding in compliance with the Little Miller Act would have been required. **Massachusetts** would have allowed the Department of Transportation (DOT) to use P3s for transportation facility projects. Performance and payment security would have been required in the form and amount the DOT determined. SFAA and AIA sought bonding amendments, but the bill ultimately failed to move.

SFAA also supported legislation this year from the American Subcontractors Association that targeted the laws in **Alabama** and **Colorado** to be amended to require bonding for P3s. The bill failed to pass in Alabama when the public owners opposed it. In Colorado, local surety association played a big role and was successful in getting the legislation passed in the House. The bill narrowly failed to pass out of committee in the Senate.

Connecticut, Mississippi, Washington, and Vermont considered broad P3 authorization bills this year. Bonding in compliance with the Little Miller Act would have been required in the bill in Washington. The bills in Connecticut and Vermont provided for furnishing bonding or other security. The Mississippi bill was an enabling act. **New York** legislation would have prohibited state agencies from using P3s unless they have adopted regulations to establish the standards for P3s. Each authority in New York could have gone their own way on bonding.

California sought to reinstate the authority for Caltrans to use P3s for transportation projects, but the legislation stalled this year as it faced strong opposition from the public engineers. An effort to repeal transportation funding enacted last year has been the focus of transportation stakeholders this year. A P3 bill for a Caltrans pilot program for digital signs also failed in **California**. **Massachusetts** would have allowed municipalities to use P3s for projects for water projects that granted the municipality authority to determine bonding or security amount. **Nebraska** and **North Carolina** considered P3 bills for broadband and other communications services. A bill in **Oklahoma** would have authorized the Oklahoma Department of Transportation (DOT) to enter into P3s for a light rail passenger routes project in Tulsa.

Hawaii had several pending P3 bills this year. Three of these had a chance to pass that would have created an OP3 in connection with authorizing P3s for various projects. SFAA provided bonding language to address the legislation that was moving, but the bill provided that bonding was discretionary for the construction portion, but mandatory for operations and maintenance, which is the opposite of what we recommended. The bills ultimately failed due to concerns raised by the labor unions. **Maryland** and **Tennessee** also considered bills to create OP3s. Notably, the bill in Maryland would have given the OP3 broad regulatory, investigative, and enforcement authority for managing transit projects.

Illinois, Massachusetts, and Washington considered legislation that would have created study commissions and task forces for various kinds of P3 projects.

BOND THRESHOLD AND BOND WAIVER LEGISLATION

--Enactments. **Washington** enacted a law to exempt public transportation benefit areas and passenger-only ferry service districts from the bond requirements under the Little Miller Act. These entities are municipal corporations and municipalities that can set their own bond requirements under current law. **West Virginia** increased the threshold at which a bond is required for building or repairing school property from \$100 to \$25,000.

--Defeated. SFAA and AIA defeated a proposed increase in the bond threshold from \$100,000 to \$1 million in **Vermont** that was included in a transportation at the request of the Agency of Transportation (AOT). A later version of the bill would have increased the bond threshold from \$100,000 to \$500,000. The proposed increase was intended to allow the AOT to waive bonds for Indefinite Delivery Indefinite Quantity (IDIQ) contracts for small paving/pothole projects. Based on the information SFAA provided in our testimony on this issue, the AOT and the local AGC recommended removing the increase to the bond threshold, which the AOT initially supported. The transportation bill was enacted without the bond threshold increase.

SFAA and AIA defeated a bill in **Rhode Island** that would have granted the chief purchasing officer the discretion to waive the state bond requirements for projects up to \$250,000. The bill also would have increased the state bond threshold for public works projects from \$50,000 to \$100,000. SFAA and AIA worked the House leadership to address this legislation, which was backed by the Administration to cut costs. AIA's local counsel testified against the bill when it was heard in committee in the House and ultimately, the bill was held there.

--Still Pending. **Pennsylvania** has a pending bill to amend the Little Miller Act to require bonds and eliminate the authority for the contracting agencies to accept any financial security.

PRE-QUALIFICATION WAIVERS

--Enactments. A new law in **Virginia** amends a recently enacted law regarding waivers of the pre-qualification requirements imposed on local governments for public construction projects in between \$100,000 and \$300,000 when bonds are not required. The new law provides that the provisions allowing local government to waive prequalification will expire on July 1, 2021.

BID BOND AND PERFORMANCE AND PAYMENT BOND ISSUES

--Enactments. **Arizona** requires applicants for a license to provide video service to comply with all generally applicable, nondiscriminatory local laws, which would include requirements for performance bonds, security fund, indemnification or similar requirements that apply to the use and occupation of any highway. **Maryland** requires the Board of Public Works to adopt regulations that establish surety bond forms to require security for fixed price contracts and multiyear contracts. **Ohio** eliminated the requirement for a contractor to post a bid bond on a contract to complete the plugging of an oil or gas well when the owner or operator has failed to complete the required work.

--Still Pending. Pending legislation in **New Jersey** would revise the amount of the bid bond required on contracts with municipalities for public buildings, state colleges, county colleges, and school districts. Current law requires a bid bond equal to 10% of the contract price, but the maximum bond amount is \$20,000. The bill would require a bid bond equal to 50% of the contract price and the maximum amount would be \$100,000. An **Ohio** bill would establish requirements for a residential broadband expansion program to provide funds to municipalities and townships acting as project sponsors for the construction of broadband infrastructure. Bonding or other security in the amount that the municipality or township determines could be required to secure the construction portion. The bill passed the House, but it has not moved recently.

--Dead. A bill in **Illinois** would have amended the Illinois Public Construction Bond Act and related county and municipal codes. The provisions to be amended are generally understood to pertain to instruments securing subdivision related work. Surety bonds, among other security, are accepted to meet the existing requirements for subdivisions. The bill would have repealed a home rule preemption clause in the current law and eliminated a requirement for counties or municipalities with a population under one million people to approve the surety on the bond. The bill also would have removed cash bonds and filed security as options for subdivision

improvement performance security. SFAA and AIA sought clarification that the bill did not impact the current performance and payment bonding requirements in the existing law pertaining to public works and P3s.

Georgia legislation would have established construction and maintenance requirements for residential community associations. A performance bond and a maintenance bond would have been required. A **Maryland** bill provided that a prime contractor could not have required a bid, payment, or performance bond in an amount that exceeds the total amount of the subcontract for public works projects in addition to the existing restrictions on the bond amount. Under existing law, the prime contractor also cannot require bonds from the subcontractor that are more stringent than the bond requirements of the Little Miller Act. **Massachusetts** would have allowed home improvement contractors to be exempted from the payment schedule requirements for home improvement contracts if they furnish a performance and payment bond, a lien and/or completion bond, or a bond equivalent covering a minimum of \$2 million. **Oklahoma** considered legislation that would have expanded the coverage requirements with regard to the scope and time period for the bond required for public projects to protect the public agency that awarded the contract against defective workmanship and materials. Existing law provides carve outs on the timeframe for the bond's coverage for the Department of Transportation (DOT) and the Oklahoma Turnpike Authority. **West Virginia** legislation would have authorized the Water Development Authority to construct broadband middle mile infrastructure projects. Bonding would have been required.

RETAINAGE

--Enactments. Rhode Island revised the existing retainage requirements to prohibit withholding retainage on a public construction contract in excess of 5% of the progress payment. The new law eliminates a provision allowing for the amount of retainage to be negotiated for contracts under \$500,000. Under prior law, retainage was released when the awarding authority accepts the project. The new law also contains detailed limitations on the amounts of retainage that can be released after substantial completion. A new **Vermont** law prohibits retainage that an owner or a contractor withholds on a private or a public construction contract from including any amount of payment due and owing for materials delivered for the construction project and are covered by a manufacturer's warranty or graded to meet industry standards, or both.

--Dead. SFAA and AIA opposed a bill in **Oklahoma** that would have prohibited retainage from being withheld from contractors on public buildings and public works projects if performance and payment bonds are in place. Under current law, the state bond threshold is \$50,000 so that no retainage would have been withheld on public contracts exceeding the threshold. Under existing law, the Department of Transportation and the Oklahoma Turnpike Authority are prohibited from requiring retainage on their contracts. This bill was the result of a local task force with representatives including surety underwriters, bond producers, contractors and subcontractors.

ALTERNATIVE PROJECT DELIVERY METHODS

--Enactments. California has authorized the Orange County (County) to use the design-build process for flood protection improvements, harbor and beach improvements, and bikeway

improvements. The Orange County Flood Control District (District) may use the design build process for flood protection improvements. The new law sets for a cost threshold for using this project delivery method. **California** also expanded the existing law that authorizes counties to use the construction manager at-risk method to any kind of infrastructure project except for roads. The new law also allows a county public entity to use this project delivery method. The construction manager at-risk must possess or obtain sufficient bonding for the construction services portion of the project. **California** has authorized the use of the construction manager/general contractor project delivery method for the Golden Gate Bridge.

Louisiana allows political subdivisions of the State to use the outcome-based performance contract as an alternative project delivery method to contract for coastal protection projects for projects over \$25 million. The offeror must provide information on its surety or other financial assurances. **Louisiana** reduced the project cost threshold for using the construction manager at-risk (CM at-risk) delivery method on any project from \$25 million to \$5 million. The new law eliminates a pilot program for using the CM at-risk method on certain projects. **Utah** eliminated the \$250,000 cost threshold for using the design-build project delivery method for public construction projects.

--Still Pending. A **New Jersey** would allow a contracting unit to use the design-build method for public projects. Requirements for contractors to obtain performance bonds, payment bonds, and insurance would have to be included in the solicitation. **New Jersey** also has pending legislation to authorize the New Jersey Turnpike Authority and the Department of Transportation to use the design-build project delivery method for public projects.

--Dead. **Illinois** legislation would have authorized the use of the design-build and construction manager/general contractor project delivery methods for transportation facility projects. The bill provided that the projects would have been subject to the requirements of the Little Miller Act. The legislation reflected SFAA and AIA's past work with the DOT to require bonding for these projects. A **Massachusetts** bill would have allowed construction managers at risk (CM at risk) to obtain a subcontractor default insurance policy (CDI) in lieu of trade contractors working for a CM at risk providing a 100% payment and performance bond. The CM at risk still must provide 100% payment and performance bonds to the public owner as required under existing law. SFAA and AIA met with the committee members and testified against the bill last year when it was heard in committee.

Arizona considered legislation to create the International Transportation and Trade Corridor Authority (Authority) to build and operate transportation and trade facilities through leasing and the design-build method. Bonding or other security could have been required. Another bill in **Illinois** would have allowed school districts to use the design-build project delivery method for public construction projects that included provisions for bid, payment, and performance bonds. **Iowa** would have allowed State and local governments other than the Department of Transportation to use the design-build or construction manager-at-risk procurement methods for public buildings, infrastructure, and facility projects. The bill included requirements for bid, payment and performance bonds. A **Missouri** bill would have eliminated the cost thresholds for political subdivisions to use the design-build and the construction manager at-risk (CM at-risk) project delivery methods. **Wisconsin** legislation would have authorized the Department of

Transportation, local governments, and technical colleges to use alternative project delivery methods, including design-build, design-build-finance, construction manager-general contractor, and fixed-price variable scope contracts. The request for proposals could have included bid, performance, and payment security requirements.

PREVAILING WAGES

--Dead. **Hawaii** legislation would have expanded the existing prevailing wage law to subject utility projects and utility workers to its requirements. Under existing law, sureties are liable for any extra costs associated with terminating a contract for prevailing wage violations. A **Kentucky** bill would have established prevailing wage requirements for public works contracts. The contractor's bond for the project would have had to guarantee the payment of the prevailing wage. The bill provided for the debarment of contractors and subcontractors for violating the prevailing wage law.

BONDING FOR SMALL AND EMERGING CONTRACTORS

--Still Pending. **Pennsylvania** has a pending bill to establish the Surety Bond Guarantee Fund Program for disadvantaged business enterprises (DBEs) to provide bond guarantees of up to \$1 million. The bill also would establish a technical assistance program for DBEs. The bill also would set forth the requirements for the bond to qualify for a guarantee.

--Dead. **Missouri** legislation would have created the Missouri Minority Business Loan Program, which would have included a bond guarantee program with the Department of Economic Development (Department). The Department could have secured letters of credit to guarantee the bonds. The bill provided \$5 million for the program. A **New York** bill would have authorized the New York State Urban Development Corporation (Corporation) to create a certified service disabled veteran-owned business enterprise contracting assistance program that included a bond guarantee program and a technical assistance program. An additional **New York** bill also would have established small business mentoring and set-aside programs for construction contracting for the Dormitory Authority of the State of New York, the Office of General Services, the Department of Health, the Department of Transportation, and the Empire State Development Corporation. The bill also included a bonding assistance program. **Oklahoma** legislation would have established penalties for state highway construction contracts and related work contracts that fail to include requirements for disadvantaged business enterprise (DBE) participation that meet federal DBE requirements. The contract could have been suspended or cancelled.

INFRASTRUCTURE BANKS

--Enactments. A new law created the **District of Columbia** Green Finance Authority (Authority) to increase private investment in clean energy, clean transportation vehicles and infrastructure, clean water, stormwater management, energy efficiency, water efficiency, and green infrastructure projects in the District of Columbia. The Authority will invest in these projects and establishes a fund comprised of both public and private funds to support them.

--Dead. **Alaska** considered a bill that would have created Alaska State Bank and would have authorized the bank to provide surety bonds for public and private construction banks in the State. The bank would have been exempt from the existing insurance code when it offers insurance. SFAA and AIA raised concerns about the bonding provisions in the bill, but the bill had other opposition and failed to pass. **New York** would have created the New York State Infrastructure Development Bank to provide financial assistance to energy, environmental, telecommunications, or transportation infrastructure projects. P3s were among the eligible groups to receive financial assistance.

PROJECT FUNDING

--Enactments. A new law in **Maryland** establishes the Public School Facility Construction Innovation Incentive Pilot Program to encourage public school systems to pursue innovative public school facility construction projects by providing additional state funding for the projects and exempting the projects from certain statutory requirement concerning project funding.

GUARANTY FUNDS

--Dead. A bill in **Massachusetts** would have established the Public Construction Surety Bond State Guarantee Fund (Fund) to pay those purchasing surety bonds for a public building construction project delivered under the construction manager at risk procurement method if the entity issuing the bond fails to pay a claim. The bill would have imposed a registration requirement and minimum \$10,000 fee on all entities issuing surety bonds in the Commonwealth to provide for the Fund. The bill would have imposed a fine for issuing bonds without registering. SFAA and AIA met with committee members and testified against the bill when it was heard in committee last year.

ANTI-BID SHOPPING

--Dead. **Connecticut** considered a bill that would have prohibited bid shopping for public construction contracts that would have required a list of their subcontractors that will perform work on the project. A subcontractor on this list could not have been substituted except in the limited cases set forth in the bill. The bill provided for a five-year debarment penalty for contractors that violate the anti-bid shopping law.

ELECTRONIC BIDDING

--Still Pending. **New Jersey** has pending legislation that would require the use of electronic bidding on public works contracts exceeding \$5 million. The regulations for this system would have to set forth the required components of the bid package, including a bid bond and a performance bond.

STATUTE OF LIMITATIONS

--Dead. A **California** bill would have revised the existing law's ten-year statute of limitations for bringing a civil action to recover damages from any person, or the person's surety for projects

involving an improvement to real property to address personal injury resulting from water contamination. A **Connecticut** bill would have extended the time for initiating an action against an architect, professional engineer and land surveyors based on the discovery of a latent deficiency, or when a written warranty, guarantee or tolling agreement provides for a longer period of time.

OF GENERAL INTEREST

Commercial Lines Modernization

This year, the American Insurance Association (AIA) again has made a significant effort to enact commercial lines modernization legislation to exempt these lines from the rate and form filing requirements. Surety and fidelity are among the lines for which AIA seeks an exemption from the rate and form filing requirements. SFAA files fidelity forms, rules, and loss costs and surety rules and loss costs in accordance with state filing requirements so that these bills that include exemptions for these lines benefit SFAA and its members.

--Enacted. West Virginia exempted several commercial insurance lines from the rate and rule filing requirements, including surety and fidelity. Under current law, rates and rules are filed under a file and use system with a 30-day waiting period.

Missouri exempted commercial insurance rates from the existing law's rate filing requirements, except for the following lines of business: workers' compensation; medical malpractice liability; farm property and liability; any coverage issued by an assigned risk or residual market plan; and any specific policy or bond required for self-insured workers' compensation plans.

New Hampshire eliminated the 30-day waiting period for the approval of certain commercial insurance policy forms, including fidelity forms, and instead provides that these forms only would be filed for informational purposes. Under current law, rates for commercial insurance policies are not subject to a 30-day waiting period and only have to be filed for informational purposes. The insurance department requested the bill.

Maryland, Missouri, and Tennessee also enacted reforms to the filing requirements for large commercial policy holders.

--Dead. Massachusetts and New York considered legislation to exempt commercial specialty lines of insurance from the existing law's rate and form filing requirements, including surety and fidelity.

Captive Insurers

--Enactments. Kansas amended the existing law concerning captive insurers to prohibit captives from writing surety. Prior law was silent on whether these entities can write this line of business.

Looking Ahead to 2019

All 50 states and the District of Columbia will meet in 2019.

In November 2018, there will be 36 gubernatorial seats up for election, with nine Democrats in the Governor's office and 26 Republicans. In 19 states, an incumbent is running for re-election and in 17 states there are open races largely due to term limits. Any change in the governor can result in a new insurance commissioner in states in which the governor appoints the commissioner. States with insurance commissioners running for election are California, Georgia, and Oklahoma.

There are 99 chambers among the 50 state legislatures. Nebraska is a unicameral state. In 2018, 87 of the 99 chambers will be up for re-election. New Jersey and Virginia had their elections in November 2017. Some states do not conduct elections in even-numbered years or have only one of two chambers running in 2018.

In **California**, a ballot initiative would repeal the transportation funding law enacted in 2017, which included a significant gas tax and vehicle fee increase. However, two ballot measures passed in June that require the revenue from these tax increases to be used for transportation-related purposes only and exempts the revenue from the state appropriations limit. California voters also approved \$4 billion in general obligation bonds in June for parks, environmental, water, and flood protection projects and will decide on an additional \$4 billion for housing programs for veterans in November. **Colorado** also has two initiatives on the ballot for transportation funding resulting from a transportation bill enacted this year that requires voter approval. One ballot measure would provide for \$3.5 billion in bonds for statewide transportation projects to be paid out of the general fund, but without a tax increase. The other measure in Colorado would authorize \$6 billion in bonds to fund transportation projects and would raise the state sales tax rate to fund the measure. **Maine** has several ballot measures for November for various kinds of infrastructure projects for approximately \$200 million in funding. **New Jersey** voters will decide on a measure to authorize \$500 million in general obligation bonds for grants for various kinds of school infrastructure projects. **New Mexico** will vote on nearly \$150 million in bonds for school infrastructure projects and just over an additional \$10 million in bonds for senior citizen facilities. **Connecticut** has a ballot measure to prohibit the use of transportation funds for any other spending and **Utah** will decide on a nonbinding measure to express support for the legislature to pass a gas tax increase of 10 cents per gallon to fund local road construction and maintenance.

With states still facing fiscal challenges, the insurance industry's tax credits and preferences can be vulnerable, include the premium tax offset against state corporate taxes, premium taxes in lieu of other state taxes and the regional home office tax credit. In addition, state fiscal problems create the climate for a review of surety bonds as a cost in the budget. This year, we were able to hold off most of these challenges.

2018 STATE ENACTMENTS IN CONTRACT SURETY

ALABAMA

Effective Date: Enacted bills become effective upon enactment, or as provided in the bill. Specified effective dates have been provided in the bill summaries.

Bid Bonds

[SB 6](#)

Enacted: 03/15/2018

Effective: 06/01/2018

SB 6 includes the Alabama Fire College as an educational institution that is subject to the existing law on entering into a joint purchasing agreement under the competitive bid law for materials, equipment, supplies, or other personal property. Awarding authorities may require a bid bond for these agreements under existing law.

ALASKA

No Contract Surety Enactments in 2018.

ARIZONA

No Contract Surety Enactments in 2018.

ARKANSAS

Budget Session Only in 2018.

CALIFORNIA

Effective Date: Enacted bills become effective on January 1, 2019, or as specified in the act. Specified effective dates are provided in the bill summary.

Alternative Project Delivery Methods

[AB 2654](#)

Enacted: 08/28/2018

Effective: 01/01/2019

AB 2654 authorizes Orange County (County) to use the design build process for flood protection improvements, harbor and beach improvements, and bikeway improvements. The new law also authorizes the Orange County Flood Control District (District) to use the design build process for flood protection improvements. The County is limited to no more than an average of one project per year in excess of \$5 million. The District is limited to no more than 12 projects in excess of \$5 million prior to January 1, 2025.

[SB 848](#)

Enacted: 06/27/2018

Effective: 06/27/2018

SB 848 revises the existing law authorizing the use of the construction manager/general contractor project delivery method for expressway and bridge projects to allow the Golden Gate Bridge, Highway and Transportation District to use this project delivery method for the Golden Gate Bridge.

[SB 914](#)

Enacted: 07/16/2018

Effective: 01/01/2019

SB 914 expands the existing law that authorizes counties to use the construction manager at risk method to any kind of infrastructure project, including, but not limited to, buildings, utility improvements associated with buildings, flood control and underground utility improvements, and bridges, but excluding roads. The new law also allows a public entity, in which members of the county board of supervisors compose its governing body, to use this project delivery method. There is a \$1 million project cost threshold in the law for using this project delivery method. Existing law requires the construction manager at risk to possess or obtain sufficient bonding for the construction services portion of the project.

COLORADO

Effective Date: Enacted laws become effective on the date specified in the bill or upon enactment if no date is specified. Specified effective dates are provided in the bill summary.

Indemnity Agreements

[SB 62](#)

Enacted: 05/30/2018

Effective: 08/08/2018

SB 62 provides that provisions in a snow removal agreement that require one party to indemnify the other party for damages, hold the other party harmless for damages, and provide for the defense of the other party in a liability lawsuit are void against public policy. The new law exempts surety bonds from this requirement.

CONNECTICUT

No Contract Surety Enactments in in 2018.

DELAWARE

Public-Private Partnerships

[SB 246](#)

Enacted: 07/25/2018

Effective: 07/25/2018

SB 246 is an enabling bill that allows a county and municipal governments to enter into P3s for public lands through a lease, concession agreement, easement, or license agreement. The new law does not specify the type of projects that could be undertaken as a P3 or any procurement requirements.

[HB 295](#)

Enacted: 02/14/2018

Effective: 02/14/2018

HB 295 authorizes the Department of Transportation (DOT) to enter into a P3 for the construction of the Wilmington Transit Center and an associated parking facility. The existing P3 law for the DOT does not specify a bond requirement, but the projects must comply with all existing, applicable statutes and rules. The provisions are contained in capital improvements funding legislation.

[HCR 76](#)

Adopted: 04/24/2018

HCR 76 provides the legislature's approval of the final agreement between the Diamond State Port Corporation and GT USA Wilmington, LLC that authorizes the Diamond State Port Corporation Board of Directors to enter into a lease for up to 50 years to operate the Port of Wilmington and Edgemoor. One of the conditions requires GT USA Wilmington, LLC to provide a minimum \$15 million, two year, renewable and continuous letter of credit or surety bond to guarantee concession fees and contract performance.

Retainage

[SB 208](#)

Enacted: 08/06/2018

Effective: 08/06/2018

SB 208 provides that if a contractor does not meet the existing performance rating requirements to bid on a contract with the Department of Transportation, the contractor may agree to the withholding of retainage to become eligible to bid. In this case, retainage will be capped at an amount not to exceed 5% of the progress payments until the project reaches 50% completion, at which point the contractor may request that retainage be reduced to 2% of the payments. Under existing law, all agencies may withhold an amount equal to 5% of the value of the work that the contractor has completed.

DISTRICT OF COLUMBIA

Effective Date: Emergency bills become effective immediately upon the Mayor's signature and remain in effect for 90 days. Regular bills take effect following approval by the mayor and a 30-day Congressional review. Temporary bills take effect the same as regular bills, but expire after 225 days of effect. Specified effective dates are provided in the bill summary.

Infrastructure Funding and Financing

LB 257

Enacted: 07/02/2018

Effective: 08/22/2018

LB 257 creates the District of Columbia Green Finance Authority (Authority) to increase private investment in clean energy, clean transportation vehicles and infrastructure, clean water, stormwater management, energy efficiency, water efficiency, and green infrastructure projects in the District of Columbia. The Authority will invest in these projects and establishes a fund comprised of both public and private funds to support sustainable projects.

FLORIDA

Effective Date: Enacted bills became effective 60 days after adjournment, which was on May 11, 2018, or as specified in the act. Specified effective dates are provided in the bill summary.

HB 1393

Enacted: 03/23/2018

Effective: 03/23/2018

HB 1393 creates the Water Street Tampa Improvement District (District) in the City of Tampa and authorizes it to use public-private partnerships for the construction and operation of communications systems and related infrastructure for the carriage and distribution of communications services, as well as for providing electrical, sustainable, or green infrastructure improvements, facilities, chillers, and services. The new law also provides that the District's board may require bidders on any contract with the District to provide a bond for contracts for construction, goods, supplies, or materials.

GEORGIA

No Contract Surety Enactments in 2018.

HAWAII

No Contract Surety Enactments in 2018.

IDAHO

No Contract Surety Enactments in 2018.

ILLINOIS

Effective Dates: Enacted bills become effective immediately or on the date specified in the bill. Specified effective dates have been provided in the bill summary.

Alternative Project Delivery Methods

[SB 3128](#)

Enacted: 07/17/2018

Effective: 07/17/2018

SB 3128 allows the Capital Development Board or the Department of Veterans' Affairs to use the design-build project delivery method for public projects to renovate, restore, rehabilitate, or rebuild the Quincy Veterans' Home. The request for proposal (RFP) must contain the material requirements of the contract, including the required performance and payment bonds. Bid bonds also are required in the form of security that is specified in the RFP.

Retainage

[SB 3052](#)

Vetoed: 08/24/2018

SB 3052 would have capped retainage at not more than 10% for private construction projects until the project reaches 50% completion. After the project reaches 50% completion, not more than 5% retainage could have been withheld. A veto statement was not issued with this bill.

INDIANA

Effective Date: Enacted bills in this report became effective on July 1, 2018, or as provided in the bill. Specified effective dates are provided in the bill summary.

Public-Private Partnerships

[HB 1301](#)

Enacted: 03/25/2018

Effective: 07/01/2018

SFAA and AIA pursued amendments this year to the three public-private partnership (P3) laws in Indiana this year under HB 1301 to require 100% bonding. As enacted, HB 1301 requires the Legislative Council to form an interim study committee to examine requiring performance and payment bonds for future P3 projects for the three P3 laws that SFAA sought to amend. The bill was amended twice in the House to reduce the bond requirements from 100% to 50% and then down to 25% before it was amended again to send the issue to another study committee. There also are study provisions on bonding for any kind of P3 project in HB 1374, which also revises the existing law for the Indiana Finance Authority.

[HB 1374](#)

Enacted: 03/21/2018

Effective: 03/21/2018, 07/01/2018

In addition to the study provisions described above, HB 1374 revises the existing law concerning the Indiana Finance Authority (Authority). The new law eliminates the Authority's ability to use P3s for communications infrastructure projects. The new law requires additional financial, experience, and performance history information for offerors on P3 projects for toll roads,

freeways, and facilities. The Authority also now must review the offeror's business history concerning its affiliates, predecessors, and any entities with which the offeror will enter into a contract. The Authority will have to require periodic financial statements during a P3 from the operator of the project. Under prior law, the Authority may require such statements. The new law establishes procurement procedures for recreational development projects that the Authority conducts for the Department of Natural Resources. Bidders on these projects must provide a sufficient bid bond and a performance bond for at least 50% of the contract price.

IOWA

No Contract Surety Enactments in 2018.

KANSAS

Effective Date: Enacted laws become effective upon publication in the Kansas Register, in the bound session laws or as provided in the bill. Specified effective dates have been provided in the bill summary.

Captives

[SB 410](#)

Enacted: 04/25/2018

Effective: See Summary

SB 410 amends the existing law concerning captive insurers to prohibit captives from writing surety. Prior law was silent on whether these entities can write this line of business. The new law becomes effective upon publication.

KENTUCKY

No Contract Surety Enactments in 2018.

LOUISIANA

Effective Date: Enacted bills became effective on August 1, 2018, or as provided in the bill. Specified effective dates have been provided in the bill summary.

Alternative Project Delivery Methods

[HB 573](#)

Enacted: 05/20/2018

Effective: 08/1/2018

HB 573 allows political subdivisions of the State to use the outcome-based performance contract as an alternative project delivery method to contract for the financing, designing, constructing, and monitoring integrated coastal protection projects. Such projects would have to cost more than \$25 million or have a contract term of more than seven years for this project delivery method to be used. The request for proposal must include requirements for the offeror to provide

information on its surety or other financial assurances. The request for statement of interest and qualifications also may include a request for this information.

[HB 208](#)

Enacted: 05/23/2018

Effective: 08/01/2018

HB 208 reduces the project cost threshold for using the construction manager at-risk (CM at-risk) delivery method on any project from \$25 million to \$5 million. For any project that exceeds \$15 million, legislative approval will be required. The new law eliminates a pilot program for using the CM at-risk method on a single project costing more than \$3 million.

MAINE

No Contract Surety Enactments in 2018.

MARYLAND

Effective Date: Enacted laws became effective on June 1, 2018, or as otherwise provided in the bill. Specified effective dates are provided in the bill summary.

Rate Filings

[SB 876/HB 1127](#)

Enacted: 04/24/2018

Effective: 10/01/2018

SB 876/HB 1127 revises the existing law for exempt commercial policyholders to provide that the rates for these policyholders do not need to be filed. The new law reduces the financial thresholds that the policyholder must meet for its net worth from \$5 million to \$2.5 million, from \$10 million to \$5 million for its annual budget for nonprofit corporations, and from \$10 million to \$5 million for its annual revenues or sales to qualify for the exemption.

Public-Private Partnerships

[HB 1783](#)

Enacted: 04/05/2018

Effective: 06/01/2018

HB 1783 revises the existing authority for counties to enter into public-private partnerships (P3s) for school projects to allow the P3 to include an operations and maintenance component. The new law also allows a county to enter into a P3 with county revenue authorities for school projects. The new law creates the Interagency Commission for School Construction (Commission), which is charged with adopting regulations for school construction requirements instead of the Board of Public Works (Board). The new law exempts these projects from the existing regulations for school construction under the Board. The Commission also will review and approve P3 school projects to ensure that they meet construction standards and would develop a P3 pilot program for schools seeking to use alternative financing. There were several

versions of this highly politicized legislation that Democratic legislators sought to shift the control over school construction away from the Governor and state agencies to a new commission of appointees. As expected, the Governor vetoed the bill, but the legislature passed it with a veto-proof majority and voted to override the Governor's action.

Performance and Payment Bonds

[SB 245](#)

Enacted: 05/15/2018

Effective: 10/01/2018

SB 245 requires the Board of Public Works to adopt regulations that establish separate surety bond forms for procurement officers to use to require security for fixed price contracts and multiyear contracts.

Construction Funding Programs

[HB 968/SB 92](#)

Enacted: 05/08/2018

Effective: 07/01/2018

HB 968/SB 92 establishes the Public School Facility Construction Innovation Incentive Pilot Program to encourage public school systems to pursue innovative public school facility construction projects by providing additional state funding for the projects and exempting the projects from the statutory requirements for approval of project funding and determining replacement costs, as well as the regulations governing public school construction. These projects still must comply with the existing cost-sharing, state allocation, smart growth, minority business enterprise, prevailing wage, environmental, and public bid notice requirements.

MASSACHUSETTS

No Contract Surety Enactments in 2018.

MICHIGAN

Effective Date: Enacted bills become effective 90 days after adjournment, unless otherwise specified in the bill. Specified effective dates are provided with the bill summary.

Infrastructure Study

[HB 5335](#)

Enacted: 06/28/2018

Effective: 07/02/2018

HB 5335 creates a new Michigan Infrastructure Council (Council) within the State Department of Treasury. The Council must develop a multi-year plan for asset management in the State, which will be updated annually. The bill sets forth the state agencies and legislators that will be part of the Council, as well as private sector representatives from the public or private sector with expertise in public construction projects, finance, and procurement. The Council has a

broad charge for its study, including reviewing funding and financing models, best practices, and impediments to delivery.

MINNESOTA

No Contract Surety Enactments in 2018.

MISSISSIPPI

No Contract Surety Enactments in 2018.

MISSOURI

Effective Dates: Enacted bills became effective 90 days following adjournment, which was on August 28, 2018.

Rate and Form Filings

[SB 594](#)

Enacted: 06/22/2018

Effective: 08/28/2018

SB 594 exempts commercial policy forms for large commercial policyholders who employ a full-time risk manager or retain a licensed insurance producer to negotiate on its behalf from the form filing requirements in existing law. The new law exempts commercial insurance rates from the existing law's rate filing requirements, except for the following lines of business: workers' compensation; medical malpractice liability; farm property and liability; any coverage issued by an assigned risk or residual market plan; and any specific policy or bond required for self-insured workers' compensation plans. Under current law, commercial property and casualty forms are subject to a use and file system under which they must be filed within ten days of their effective date. Commercial property and casualty rates were filed for information only under prior law.

Public-Private Partnerships

[SB 881](#)

Enacted: 06/01/2018

Effective: 08/28/2018

[HB 1291](#)

Enacted: 07/05/2018

Effective: 08/28/2018

SB 881 expands the existing P3 law for the Highways and Transportation Commission (Commission) to allow political subdivisions to use P3s. HB 1291 is a similar enactment that also expands the existing law to allow P3s to be used for storm water facilities and systems.

MONTANA

Not in Session in 2018.

NEBRASKA

Effective Dates: Enacted bills became effective three months following adjournment, which was on July 18, 2018, or as otherwise specified in the bill. Specified effective dates are provided in the bill summary.

Public-Private Partnerships

[LB 994](#)

Enacted: 04/17/2018

Effective: 04/18/2018

LB 994 creates the Rural Broadband Task Force to study issues concerning the deployment of rural broadband technology and infrastructure, including an examination of alternatives for the deployment of broadband services to areas that are unserved or underserved, such as public-private partnerships (P3s), funding for competitive deployment, reverse auction programs and other measures. The task force is required to make recommendations to encourage deployment in these areas.

NEVADA

Not in Session in 2018.

NEW HAMPSHIRE

No Contract Surety Enactments in 2018.

NEW JERSEY

Effective Date: New laws become effective on the July 4th following enactment, as provided in the bill. Specified effective dates are provided in the bill summary.

Public-Private Partnerships

[SB 865](#)

Enacted: 08/14/2018

Effective: 02/14/2019

SB 865 grants broad authority to the State, local governments, and school districts to enter into P3 agreements for public works projects. The new law includes a provision reflecting SFAA and AIA's work in prior sessions that requires the general contractor, construction manager, or design-build team to post a performance bond and a payment bond that complies with the State's Little Miller Act. The new law also revises the existing P3 law for state and county colleges to include our bonding provisions. Under prior law, the private partner had to furnish the bonds if

no public fund has been established for state and county college P3 projects. The Association for the Improvement of American Infrastructure (AIAI) was a key stakeholder for this legislation and acknowledged SFAA's role in ensuring that best practices and taxpayer protections were included in the new law. The new law also sets forth criteria for the New Jersey Economic Development Authority to assess whether a P3 should be used for projects, such as feasibility, financial plans, and the private entity's qualifications and experience.

NEW MEXICO

No Contract Surety Enactments in 2018.

NEW YORK

No Contract Surety Enactments in 2018.

NORTH CAROLINA

Effective Date: Enacted bills become effective upon enactment, unless otherwise specified in the bill. Specified effective dates are provided in the bill summary.

Performance Bonds

[HB 573](#)

Enacted: 06/25/2018

Effective: 10/01/2018

HB 573 establishes procedures for placing a vacant building in receivership or for having the building rehabilitated or demolished. If the building will be rehabilitated or demolished, the owner, mortgagee, other person with an interest in the vacant building must post a bond in an amount that a court will determine to secure the performance of the work in compliance with a required schedule.

NORTH DAKOTA

Not in Session in 2018.

OHIO

Effective Date: Enacted bills become effective 91 days after being filed with the Secretary of State, unless the bill is declared an emergency, in which case the bill becomes effective immediately.

Bid Bonds

[HB 225](#)

Enacted: 06/29/2018

Effective: 10/29/2018

HB 225 eliminates the requirement for a contractor to post a bid bond on a contract to complete the plugging of an oil or gas well when the owner or operator has failed to complete the required work. Under existing law, these kinds of contracts are exempted from the Little Miller Act. The bid bond requirement still applied under prior law.

OKLAHOMA

No Contract Surety Enactments in 2018.

OREGON

No Contract Surety Enactments in 2018.

PENNSYLVANIA

Effective Date: Enacted bills become effective as specified in the bill. Specified effective dates are provided in the bill summary.

Retainage

[HB 566](#)

Enacted: 06/12/2018

Effective: 10/10/2018

HB 566 sets forth the requirements for releasing retainage on private work. If retainage is withheld, a contractor or subcontractor may post a bond to obtain the release of retainage when the project reaches substantial completion. The bond must be for 120% of the amount of retainage being withheld.

RHODE ISLAND

Effective Date: Enacted bills became effective on July 1, 2018, or as provided in the bill. Specified effective dates are provided in the bill summary.

[HB 7855](#)

Enacted: 07/02/2018

Effective: 07/02/2018

HB 7855 prohibits withholding of retainage on a public construction contract in excess of 5% of the progress payment. The new law eliminates a provision allowing for the amount of retainage to be negotiated for contracts under \$500,000. Under prior law, retainage was released when the awarding authority accepts the project. The new law allows retainage to be released at substantial completion, except for the following amounts: 0.5% for unknown or foreseeable defects that may become known in the first year after substantial completion, 2.5% for incomplete, incorrect or missing deliverables, 150% of the reasonable cost to complete or correct incomplete or defective work items, and an amount for the reasonable value of claims and any

costs, expenses and attorneys' fees incurred as a result of the claims if permitted in the construction contract for the person seeking the payment of retainage.

SOUTH CAROLINA

No Contract Surety Enactments in 2018.

SOUTH DAKOTA

Effective Date: Enacted bills became effective on July 1, 2018, unless otherwise specified in the bill. Specified effective dates are provided in the bill summary.

Bid Bonds

[HB 1107](#)

Enacted: 03/06/2018

Effective: 07/01/2018

HB 1107 revises the bid bond requirements for county and township bridge and culvert construction contracts. Prior law required a certified check for 10% of the bid amount. The new law requires either a surety bond for 10% of the bid amount or a certified check for 5% of the bid amount. The new law also establishes a \$50,000 threshold for requiring a bid bond or certified check.

TENNESSEE

Effective Date: Enacted laws become effective on enactment or as provided in the bill. Specified effective dates are provided in the bill summary.

Rate and Form Filing

[HB 1795](#)

Enacted: 05/21/2018

Effective: 05/21/2018

SB 1795 reduces the \$250,000 premium threshold required to obtain a filing exemption for policies issued to exempt commercial risk policyholders to \$200,000.

TEXAS

Not in Session in 2018.

UTAH

Effective Date: Enacted laws take effect 60 days after adjournment, which was on May 8, 2018, or as provided in the bill. Specified effective dates are provided in the bill summary.

Public-Private Partnerships

[SB 136](#)

Enacted: 03/22/2018

Effective: 05/08/2018

Having amended the procurement code last year to authorize the use of public-private partnerships (P3), this year, SB 136 created the Planning and Investment Division (Division) under the Department of Transportation to oversee and coordinate P3. The Division also is in charge of creating and managing an intermodal terminal facility and promoting strategies to synergize development of an intermodal inland port.

Design-Build

[SB 133](#)

Enacted: 03/15/2018

Effective: 05/08/2018

SB 133 eliminates the \$250,000 cost threshold for using the design-build project delivery method for public construction projects.

VERMONT

Effective Date: Enacted laws became effective on July 1, 2018, or as provided in the bill. Specified effective dates are provided in the bill summary.

Public-Private Partnerships

[HB 917](#)

Enacted: 05/21/2018

Effective: 05/21/2018

HB 917 provides for a pilot program to enable the AOT to enter into public-private partnerships (P3) for transportation infrastructure projects. The new law is an enabling act that sets forth the process for AOT to review proposals, but no other procurement requirements. The new law states it would not change any rights or obligations under existing law. Projects with a lifetime cost over \$2 million in state funding or projects that are not approved in the most recent Transportation Program are subject to legislative approval. The program will expire on July 1, 2023. The P3 provisions are part of a transportation bill.

Retainage

[HB 593](#)

Enacted: 05/28/2018

Effective: 07/01/2018

HB 593 prohibits retainage that an owner or a contractor withholds on a private or a public construction contract from including any amount of payment due and owing for materials delivered for the construction project and are covered by a manufacturer's warranty or graded to meet industry standards, or both.

VIRGINIA

Effective Date: Enacted laws became effective either on July 1, 2018, or as provided in the bill. Specified effective dates are provided in the bill summary.

Pre-qualification Waiver

[HB 398](#)

Enacted: 03/23/2018

Effective: 07/01/2018

HB 398 amends a law enacted last year regarding waivers of the pre-qualification requirements imposed on local governments for public construction projects in between \$100,000 and \$300,000 when bonds are not required. The new law provides that the provisions allowing local government to waive prequalification will expire on July 1, 2021. SFAA supported the enactment of the sunset provision as it was part of the deal we achieved when the law was enacted last year. The original bill would have undone a compromise in past sessions concerning a bond threshold increase. The final bill enacted last year allows a locality to waive the requirement for prequalification of a bidder in limited cases.

WASHINGTON

Effective Date: Enacted laws became effective 90 days following adjournment, which was on June 8, 2018, or as provided in the bill. Specified effective dates are provided in the bill summary.

Public-Private Partnerships

[HB 2664](#)

Enacted: 03/22/2018

Effective: 03/22/2018

HB 2664 revises the existing law for rural port authorities to enter into public-private partnerships (P3) for wholesale telecommunications services and infrastructure so that all port authorities could enter into P3s for such projects. A bonding requirement is not specified in the law.

Bond Threshold

[HB 2317](#)

Enacted: 03/15/2018

Effective: 03/15/2018

HB 2317 exempts public transportation benefit areas and passenger-only ferry service districts from the bond requirements under the Little Miller Act. Under existing law, a public transportation benefit area is a municipal corporation. Passenger-only ferry service districts are run by the governing bodies for public transportation benefit areas under current law. Municipalities can set their own bond requirements under current law and would be permitted to do so for these entities under this bill. A public transportation benefit area or a passenger-only

ferry service district may determine the kind of alternative security that may be provided in lieu of a bond as allowed under existing law for the construction, maintenance, or repair of a marine vessel.

WEST VIRGINIA

Effective Date: New laws become effective 90 days after enactment, or as provided in the bill. Specified effective dates are provided in the bill summary.

Rate and Rule Filings

[SB 495](#)

Enacted: 03/27/2018

Effective: 06/10/2018

SB 495 exempts several commercial insurance lines from the rate and rule filing requirements, including surety and fidelity. Under prior law, rates and rules for these lines of business had to be filed under a file and use system with a 30-day waiting period. SFAA has filed loss costs and its rules manual under the prior law's system.

Bond Thresholds

[SB 561](#)

Enacted: 03/27/2018

Effective: 06/05/2018

SB 561 increases the threshold at which a bond is required for building or repairing school property from \$100 to \$25,000.

WISCONSIN

No Contract Surety Enactments in 2018.

WYOMING

No Contract Surety Enactments in 2018.

