In This Issue

SFAA 111th Annual Meeting - Register Today

Colorado Enacts P3 Bonding Requirements

AGC Chief Economist Ken Simonson to Discuss the Construction Market at the 111th Annual Meeting

States Consider Bond Requirements for Online Notaries

Retainage Bills in the States

Welcome, Dalton

SFAA 111th Annual Meeting

Register today for the 111th Annual Meeting of the Surety & Fidelity Association of America

Rooms can be booked at:

The Watergate Hotel
2650 Virginia Avenue NW
Colorado Enacts P3 Bonding Requirements

Colorado Governor Jared Polis has now signed SB 138 into law. The bill amends Colorado law to clarify that current surety bonding requirements for public construction projects apply to public-private partnership construction projects.

"Requiring surety bonds on P3 construction projects greatly reduces the risk of leaving taxpayers on the hook in the event of a contractor default, ensures projects are completed, and protects subcontractors, suppliers and workers," says SFAA President Lee Covington. "When surety bonding protections are in place, everyone wins."

P3s provide a new method of financing for public infrastructure projects. A P3 is a way for governments and agencies to access the capital market, but the construction risk remains the same. Research shows more than one out of four contractors fail. Surety bonds significantly increase the likelihood that a construction contract will be completed, and that subcontractors, suppliers and workers will be paid. No matter the project delivery method, surety bonds help public agencies assess and minimize their risk.

AGC Chief Economist Ken Simonson to Discuss the Construction Market at the 111th Annual Meeting

Kenneth D. Simonson will discuss the construction market at the 111th Annual Meeting. Ken has been Chief Economist for the Associated General Contractors of America since 2003 and has written a number of books and articles on the construction industry.
Ken has more than 40 years of experience analyzing, advocating and communicating about economic and tax issues. Before joining AGC, he was senior economic advisor in the U.S. Small Business Administration’s Office of Advocacy. Earlier, he was vice president and chief economist for the American Trucking Associations. He also worked with the President’s Commission on Industrial Competitiveness, the U.S. Chamber of Commerce, the Federal Home Loan Bank Board and an economic consulting firm.

Ken has a BA in economics from the University of Chicago, an MA from Northwestern University, and he has taken advanced graduate courses at the Université de Paris, Johns Hopkins and Georgetown Universities.

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**States Consider Bond Requirements for Online Notaries**

State legislators are considering bills that would address online and remote notaries. A new law in **Utah** requires notaries performing remote notarizations to post a $5,000 bond in addition to the $5,000 bond required under existing law for all notaries. Pending legislation in **Florida** would require online notaries providing electronic notarizations online to post a minimum $25,000 surety bond. SFAA has concerns with the expansion of notary’s obligations to determine the principal or testator's "competence and willingness" to witness the signing of the document, which could impact the bond's availability. The bill would also require qualified custodians of electronic wills to post a minimum $250,000 surety bond or liability insurance. Recently introduced legislation in **New Jersey** would allow the State Treasurer to require remote online notaries to post a bond.

For traditional notaries, **Kentucky** enacted a requirement of a $1,000 bond. **Montana** increased the bond amount from $10,000 to $25,000. Pending legislation in **Missouri** under SB 140/HB 495 would require the surety to report all claims on notary bonds to the Secretary of State. The surety's liability would be only for damages that result from the notary's acts during the bond term. The surety's aggregate liability would be limited to the bond amount. In **Illinois**, SB 2037 would require notary public remittance agents to post a $20,000 surety bond.

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**Retainage Bills in the States**

This year, retainage legislation has focused on changing the amount that can be withheld and a few states have considered bills to set additional restrictions on retainage.

Two bills in **Florida** are currently
being considered—one would cap retainage at not more than 5 percent for public projects and another would cap retainage at 5 percent until the project reaches 50 percent completion, at which point retainage would be 2.5 percent. **Oklahoma** provides that retainage for public projects could not be more than 5 percent until project is 50 percent complete, at which point it would reduce the retainage to 2.5 percent. Originally, the bill would have prohibited withholding retainage when bonds are in place. **Nevada** seeks to reduce the amount of retainage that the Department of Transportation may withhold from 5 percent to 2.5 percent.

In **Minnesota**, under legislation for public projects exceeding $5 million, the owner must reduce retainage to not more than 2.5 percent if the work on the project is 75 percent complete or more. A bill in **Texas** provides that for public contracts exceeding $1 million, retainage would be capped at not more than 5 percent of the contract price.

Other key retainage bills: **New York** AB 574 would prohibit withholding any amounts in a public or private construction project that are due for materials that have been delivered, accepted and are covered by a manufacturer's warranty, and/or are graded to meet industry standards. For public projects, the public owner and the contractor would have had to pay in full for these materials. SFAA and APCIA have defeated the bill in past sessions and it has not moved to date. A similar bill was introduced in **Oregon**, but the bill was amended to remove the provisions and the bill now requires the retainage to be held in an interest-bearing escrow account if the project exceeds $500,000.

Pending legislation in **Arizona** under SB 1285 would make retainage discretionary instead of mandatory on state and local projects.

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**Welcome, Dalton!**

The Surety and Fidelity Association of America (SFAA) is excited to welcome Dalton DeFendis as the new Director of Federal Government Affairs, effective April 22, 2019. Dalton joins the SFAA from the global reinsurer Swiss Re, where he was an integral member of Swiss Re’s Washington D.C. advocacy team. Dalton was responsible for executing the firm’s public policy initiatives on issues ranging from financial services and tax policy to cyber risk and climate resiliency. SFAA member companies will benefit immediately from his past experience lobbying Congress, providing executive briefings and coordinating congressional meetings for Swiss Re’s top level management globally.

Prior to joining Swiss Re, Dalton spent time with The Council of Insurance Agents & Brokers where he began his insurance advocacy career.
The Surety & Fidelity Association of America (SFAA) is a trade association of more than 425 insurance companies that write over 97 percent of surety and fidelity bonds in the U.S. SFAA is licensed as a rating or advisory organization in all states and it has been designated by state insurance departments as a statistical agent for the reporting of fidelity and surety experience.