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SuretyFidelityPAC is Ready to Go

SuretyFideltyPAC is up and running. This political action committee (PAC) was formed to support federal candidates that understand the value of surety bonds and who will positively address the issues that affect the surety industry in Congress. *SuretyFidelityPAC* supplements SFAA's existing advocacy efforts by enhancing relationships with key decision makers and making SFAA a more visible player. Given the limited number of surety issues in Congress, when SFAA addresses a surety issue, we often must start over with Members and their staffs. Having a PAC allows SFAA to educate federal candidates and Members of Congress on a continuing basis and solidify our relationships with our champions in Congress so that we always have someone looking out for industry interests.

Impact of the State Midterm Elections on Surety Issues

One-third of the state insurance commissioners may change in 2019. Four new insurance commissioners were elected. The Democrats took control over seven governorships and the Republicans flipped the seat, which will mean new appointments. In four states, the incumbent Democrat was replaced with a new Democratic governor and a new Republican governor was elected to replace a Republican incumbent in six states. The latter new governors may retain the insurance commissioner from the previous administration, but it is likely that some new governors will want their own appointees.

The New York Senate flipped to Democratic control, giving the Democrats a trifecta. Although the Republican previously had a slim lead, they were against legislation that would have let the contracting agencies determine the bonding on design build projects regardless of the Little Miller Act and perennial legislation to prohibit the withholding of retainage on materials delivered. Governor Cuomo declined to pursue P3 legislation until after the election.

The Democrats flipped the Senate in Colorado, and there are a lot of new faces in the legislature. SFAA and the Rocky Mountain Surety Association have worked on legislation to require bonding for P3 projects and to exempt surety bonds from the fees and penalties for insurers that unreasonably delay or deny claims. This year will be an educational effort. Infrastructure is not a current priority for the new governor and voters rejected ballot measures on funding.

One of SFAA's affirmative goals is to enact reasonable limits on the award of attorneys' fees in Washington. Democrats enjoyed narrow partisan control in both chambers going into the midterms and increased their control in both chambers. We will need bipartisan sponsors in both chambers.

Key Surety Issues Still Under Consideration in Ohio

With a short time left to go in the 2018 session, Ohio is considering SB 255, which is an occupational licensing bill based on model legislation from the American Legislative Exchange Council (ALEC). The bill would make it the State's policy to use the least restrictive form of occupational regulation to protect consumers, and bonding and insurance are considered among the more restrictive forms of regulation. Twenty percent of existing occupational licenses would be reviewed between 2018 and 2022 and could be replaced with a less restrictive form of regulation. The bill has passed the Senate with numerous Republican co-sponsors and the bill still could pass the House this year.

SFAA's new Occupational Licensing Working Group is developing amendments to assure that bonding requirements are considered favorably when occupational licenses are reviewed. Since much of the legislation we've seen to date is based on the ALEC models, our amendments in Ohio become a precedent that is used in other states in 2019.

Ohio HB 668 would authorize all state and local governmental entities to use public-private partnerships (P3) for public facility projects. The legislation has the same bonding provisions as the existing P3 law—for projects that include a construction services component, the P3 agreement must to include a requirement for performance and payment bonds in an amount that the contracting authority would determine. SFAA is working with the Ohio Insurance Institute to amend the bill to require bonding in the amount of the contract price.

Can an Agreement be Reached in Congress on Infrastructure in 2019?

The FAST Act already will be in play in 2019 as it needs to be reauthorized in

2020, but the House Democrats initially will look for a broader bill than just highways. Finding a long-term solution to fund the Highway Trust Fund will be part of the FAST Act discussions. Infrastructure is one area that the President could reach agreement with the new House Democrats and the President will have an infrastructure bill introduced in the new Congress. The Senate likely will stifle any proposal that is too expensive or otherwise unacceptable. The Democrats may also decide not to hand Trump any major victory ahead of 2020.

An infrastructure bill likely will hinge on how it is paid for—a hike in the federal gas tax or more borrowing without a tax increase. The House is likely to support a hike in the federal gas tax as part of an overall funding approach. How much more in debt would Congress be willing to go? In FY 2018, which ended on September 30, the cost of debt service was $316 billion, and it is projected to be $363 billion in FY 2019. A $1 trillion infrastructure package over ten years seems highly unlikely. House Democrats are talking about a $500 billion infrastructure package. The TIFIA and WIFIA programs and Public Activity Bonds (PABs) that leverage government funds and private financing may well look all the more attractive to Congress in getting an infrastructure package done.

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