



The Surety Association of America

ANNUAL STATE LEGISLATIVE REPORT

ON

FIDELITY BONDS

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2005 In Review

During 2005, the Surety Association of America (SAA) received and reviewed more than 3,000 bills and actively tracked 1,200+ bills. SAA staff has been active on a number of key state legislative issues affecting fidelity and surety, as well as coordinating with the American Insurance Association (AIA), the local surety associations and the National Association of Surety Bond Producers (NASBP).

Most of the state legislation impacting fidelity and surety involves contract surety or commercial surety issues. 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 protect the insured instead of third parties, whether to obtain a fidelity bond is usually an internal management decision rather than a statutory mandate.

Much of the existing state legislative activity on fidelity comes from requirements for public official bonds. As usual in the state legislative sessions, several states enacted new requirements for public official bonds for newly formed local governments or authorities. **Florida, Georgia, Indiana, Tennessee** and **Texas** had the most new laws in this area. **Arkansas, Montana** and **North Dakota** repealed the most bonding requirements. In the latter two states, however, many public official bonds are or can be provided from a state mechanism. Often, the state legislation regarding newly formed local governments, boards, commissions or other entities does not specify the type of bond. For some of the officials and functions now required to be bonded, a fidelity bond may be intended, even if the new law refers to a surety bond. Therefore, SAA included these types of enactments in its annual reports on both commercial surety and fidelity.

There were a few bills enacted of interest to all fidelity and surety companies. SAA members that do their own rate and form filings should note that **Oklahoma** repealed its deemer clause this year. That State, however, is not noted as a difficult one for rate and form filings, particularly for commercial lines.

Member Feedback is Needed!

As always, The Surety Association of America welcomes input from its members on its services. Since this is our first Annual State Legislative Report, we encourage members to give us feedback on whether this information is useful in the time frame and format in which it is received.

I. 2005 State Enactments on Fidelity Bonds

Because of the diversity of the business of its members, SAA tracks all state and federal fidelity and surety legislation. In reporting legislative developments, however, SAA has moved to reports based on the three major lines of business – contract surety, commercial surety and fidelity. The SAA Annual State Legislative Report on Fidelity Bonds contains all the new bond requirements in 2005 and any reductions or eliminations of any existing bond requirements. Interested SAA members can access the reports on contract surety and commercial surety on the SAA website.

SAA also publishes a monthly summary of new bond enactments on its website so that members will have prompt notice of these enactments. All the new bond enactments are compiled in the report below, along with other state legislation that could impact fidelity bonding.

This Report is accurate as to the enactments as of September 1, 2005. SAA will issue a year-end update on 2005 state and federal legislation in December 2005.

SAA members can obtain copies of these new laws on the websites of the state legislatures. SAA staff will be happy to assist members in obtaining copies of new laws.

ALASKA

-- H.B. 147 requires a self-funded governmental plan to maintain a fidelity bond covering each trustee of the plan. The bond must be in an amount not less than 10% of the benefits paid during the preceding year, with a maximum value of \$500,000. The surety issuing the bond must be licensed in Alaska.

ARKANSAS

-- H. B. 1469 repeals the \$5,000 bond required of the deputy director of the Arkansas Bureau of Standards and the \$1,000 bond required of each of the Bureau's inspectors.
-- H.B. 2464 removes a \$25,000 bond requirement from the Legislative Auditor.

CALIFORNIA—Adjournment on September 8, 2005; No Enactments to Date;

FLORIDA

-- H.B. 939 establishes the Panama City Bay County Airport and Industrial District and requires the officers, members and employees of the board of the District to post a fidelity bond.

There were numerous bills enacted in Florida this session creating a fire, education or other district or civic authority. All contain provisions requiring the officers and/or board or trustees to maintain a surety bond. In most cases, the amount of the bond required is \$5,000. See H.B. 987, H.B. 1053, H.B. 1183, H.B. 1291, H.B. 1321, H.B. 1361, H.B. 1381, H.B. 1537 and H.B. 1707. H.B. 939 is the only one to specifically require a fidelity bond.

GEORGIA

-- S.B. 337 requires officers and employees of the City of Colbert to execute surety and fidelity bonds in such amounts and upon such terms and conditions as the city council shall require.

-- H.B. 360, H.B. 457, H.B. 511, H.B. 676 and S.B. 337 contain the charter for various cities and require the officers and employees of these cities to post surety or fidelity bonds as the city council determines necessary and as required by law.

-- H.B. 466 establishes the office of disbursing clerk in Stewart County. The disbursing clerk is required to post a \$25,000 surety bond.

HAWAII

-- H.B. 1608 requires an employee organization, which establishes a voluntary employees' beneficiary association trust, to post a fidelity bond of a reasonable amount for the chairperson of the governing board of the trust and any other person authorized to handle trust moneys.

IDAHO

-- H.B. 159 requires applicants for an escrow agency license to post a fidelity bond providing coverage in the aggregate of no less than \$200,000 for the licensee, the corporate officers, managing agent and employees. In addition, the licensee must post a surety bond or certificate of deposit in an amount based on the average monthly balance of the escrow accounts

INDIANA

-- S.B. 578 requires the public finance director and any other employee or agent of the Indiana Finance Authority, authorized by board resolution to handle funds or to sign checks, to post a \$50,000 surety bond. A blanket bond can be used. The new law enacts similar provisions for the Indiana Health Care Facility Financing Authority, the Indiana Housing Finance Authority and the Indiana State Fair Commission. In addition, the law raises the bond required of members of the Indiana Port Commission from \$25,000 to \$50,000 and requires any employee of the Commission who handles funds or signs checks to post a similar bond.

KENTUCKY

-- S.B. 86 requires that workers compensation group self-insurers must meet minimum financial standards by providing a fidelity bond of at least \$300,000, which may be subject to a \$10,000 deductible for each trustee.

MASSACHUSETTS—still in session

-- H.B. 4109 requires the town administrator of Rockland to post a surety bond.

MICHIGAN—still in session

MINNESOTA

-- H.B. 925 requires a prepaid limited health service organization to post a fidelity bond or other securities of at least \$20 million for itself, its officers and its employees.

-- S.B. 1555 removes a \$10,000 fidelity bond for a gambling manager and replaces it with a \$10,000 dishonesty bond.

MISSISSIPPI

-- S.B. 2790 raises the amount of the fidelity bond that can be required of those who sell pesticides in the State from not more than \$10,000 to at least \$10,000.

MISSOURI

-- H.B. 323 modifies the pension law for police officers and civilian employees of the police department. Prior to the passage of this bill, the secretary and treasurer of the pension program had to be bonded at a value of not more than 25% more than the maximum amount on hand during the previous calendar year, but not less than \$20,000. The new law requires the value of the bond to be determined by the retirement board and requires a corporate surety company to issue the bond.

-- H.B. 707 requires all employees of the Division of Finance to post a surety bond.

-- S.B. 270 allows the state treasurer to enter into agreements with vendors, banks, agents, consulting firms or not-for-profit businesses for the provision of services to the State relating to the treasurer's duties. These businesses are required to maintain fidelity bonds on their employees.

-- S.B. 287 requires the chief financial officer of a charter school to post a bond.

NEW JERSEY

-- S.B. 1752 allows employees/partners in dental organizations that deal with the money of the organization to maintain crime insurance, or its equivalent, instead of being bonded. Prior to the passage of this bill, a fidelity bond was the only suitable instrument.

NEW MEXICO

-- S.B. 619 creates the New Mexico exposition center authority. Members of the authority are required to post a surety bond.

NORTH CAROLINA—Adjournment on August 31, 2005; No Enactments to Date;

NORTH DAKOTA

-- S.B. 2043 eliminates some of the bonding requirements for state public officials and employees. All are provided through the State Bonding Fund.

OHIO—still in session

OKLAHOMA

-- S.B. 823 creates the Oklahoma Tourism and Recreation Commissions and requires any employee involved in the collection, custody or payment of any funds to post a bond. The new law allows a blanket bond to cover all employees.

-- H.B. 1535 repeals a deemer clause for fidelity, surety and guaranty bond rate and form filings.

PENNSYLVANIA—still in session

SOUTH CAROLINA

-- H.B. 506 allows a county to purchase a fidelity bond covering all county officials and employees instead of purchasing individual bonds to meet specific statutory requirements. The new law provides that a fidelity bond used to replace an existing bond must meet or exceed the minimum value required by statute.

TENNESSEE

- H.B. 2358 creates the Director of Accounts and Budget who is required to post a surety bond in an amount not less than 50% of the trustee's bond amount.
- H.B. 2379 requires every officer, agent and employee having duties embracing the receipt, disbursement, custody or handling of money of the Town of Englewood to post a surety bond.
- H.B. 2389 creates the county budget committee for the county of Dyer. The director of finance and budgets of the county must post a surety bond valued between \$10,000 and \$25,000.
- H.B. 2423 requires the officers and employees of the City of Munford who handle the funds of the city to post surety bonds.

TEXAS

- H.B. 7 requires management contractors who provide services to worker's compensation health care networks to post a fidelity bond or other security of at least \$250,000.
- H.B. 1353 amends the self-insurance worker's compensation guaranty fund and replaces some performance bond requirements with fidelity bonds.
- H.B. 2019 requires the manager and any employees of the Baytown area water district charged with collection, custody or payment of the district's money to post a fidelity bond.
- H.B. 1139 removes the \$25,000 surety bond requirement from the receiver of the General Land Office.
- H.B. 2017 requires bonds of several public officials: the receiver of an insolvent insurer's estate, the members of the board governing a Texas child-care facility liability pool, every board member of a junior college district excess liability pool, those involved in a junior college risk management pool, any employee of a Texas public utility excess insurance pool and each member of the board governing a Texas nonprofit organization liability pool.

VERMONT

- H.B. 149 requires a credit union service organization (CUSO) to maintain a blanket fidelity bond covering its directors, officers and members of official committees, attorneys, agents and employees. The bond shall be in an amount prescribed by the commissioner.

VIRGINIA

- H.B. 2210 provides a charter for the city of Waynesboro. The charter requires all officers, elected or appointed, to execute the bonds as may be required by general law, by this Charter or by ordinance or resolution of the council and file the same with the city clerk. The city treasurer and city commissioner of revenue also must post a bond.

WASHINGTON

- H.B. 2173 provides that, when a court suspends or vacates an order due to military service, the court may also suspend or vacate the liability of a surety.

WEST VIRGINIA

- S.B. 558 transfers the consolidated fund of state monies to the West Virginia Board of Treasury Investments for better cash management. The West Virginia Board of Treasury Investments will consist of five board members, each of whom must post a \$1 million surety bond. In addition, the board must purchase a blanket bond for either \$50 million or an amount equivalent to 1% percent of the assets under management, whichever is greater.

WISCONSIN—still in session

II. States with No Enactments to Date

Only six states are still in session in 2005: **Massachusetts, Michigan, New Jersey, Ohio, Pennsylvania** and **Wisconsin**. **Illinois** and **New York** will likely re-convene briefly this fall.

States adjourned with no enactments to date: **Arizona, California, Colorado, Connecticut, Delaware, District of Columbia, Illinois, Iowa, Kansas, Louisiana, Maine, Maryland, Montana, Nebraska, Nevada, New Hampshire, North Carolina, Rhode Island, South Dakota, Utah and Wyoming**.

III. Looking Ahead to 2006.....

The state and federal insurance legislative and regulatory agendas in the near future may well be dominated with issues related to Hurricane Katrina in New Orleans. An unprecedented level of construction will be needed to rebuild the highways and infrastructure of New Orleans. This effort will pressure the capacity of the surety, construction and other industries involved in rebuilding activities. Availability and affordability issues may need to be addressed. In addition, the area may be highly visible focal point for many of the current legislative and regulatory issues that affect surety, particularly contract surety.

The National Conference of State Legislatures (NCSL) published some surprising news early in 2005. In its first quarter report on state budgets, the NCSL reported that, while many states are still treading water in trying to keep costs within expected revenues, the states also had made progress in eliminating the large budget deficits that have plagued them in recent years. In April, 34 states collected more tax dollars than projected. The increase in revenues, combined with deep cuts in state spending, has improved the overall state financial picture. The NCSL confirmed at its Annual Meeting in August that the states collectively have slashed \$235 billion in spending since 2001. By its August meeting, the NCSL reported that no state ended fiscal year 2005 with a deficit. States had an aggregate balance of \$37.8 billion, with most states having a 7% balance. **Maryland**, for example, reported a \$1 billion budget surplus due to cuts in spending and increased revenues. This is considerable improvement compared to 2004, when ten states had new gaps after the fiscal year began, and 2003 in which 31 states had that problem. Yet, over half of the states are projecting spending overruns in some portion of the budget, usually for education, Medicaid and other health care costs.

The state budget picture is by no means rosy, but it has turned the corner. The cuts that the states have made over the past several years are now generating pressure to restore state funding in a few states, including public construction. **New Jersey**, for example, just approved a \$27.9 billion budget for 2006, the second largest in state history, not long after being listed as one of the states with the largest budget deficits. **Connecticut, Maryland, New York** and **Ohio** are all

using 2005 “windfalls” to restore funds to education and health programs and in grants to cities and towns. Other states are returning excess funds to the taxpayers. **Nevada**, for example, will return \$300 million.

Yet, the current push in many states is to institutionalize cuts and limitations on state government spending. In **California**, Governor Schwarzenegger is pushing the *Live Within Our Means* ballot initiative in November, which will ask voters to enact an initiative to prevent the state budget from growing faster than average increases in state revenues from the three prior years. Almost half of the states considered spending cap bills this year. Some had different approaches than California, such as prohibiting budget growth faster than the growth rate of the population, inflation or personal income. None of these passed, but the Americans for Tax Reform, an anti-tax activist group pushing these initiatives, believes that a successful effort in California this November is a catalyst for the 2006 state sessions.

Overall, states still fear budget shortfalls due to export of the federal deficit to the states in unfunded federal mandates, particularly through statutory and fiscal obligations imposed on the states for entitlement and mandatory programs, such as Medicaid.

A. State-Specific Issues

SAA has approached the **Indiana** and **Nebraska** Insurance Departments about amending their laws to permit sureties to appoint the insurance commissioner as agent for service of process. These are the only two states that still require sureties to have an agent for service of federal process in each federal judicial district in the state in which bonds are provided. SAA hopes that each state will make the necessary amendment a part of the state insurance department legislative package next year. **Indiana** is one of the states that will have a short session next year, but the insurance department will still have a limited bill it will seek.

As usual, there are a number of states that need to develop a bond form and process as a result of new bond enactments in 2005. SAA will offer assistance to the states with any new bond forms.

B. Carryover States

Arkansas, Montana, Nevada, North Dakota, Oregon and **Texas** are not in regular session in 2006. A number of other states have a short session in the even-numbered years in which only state budget and a limited number of other issues are considered before the state legislators go home to campaign for re-election.

The states in which legislation not enacted this session carries over to 2006 and can be considered next year are: **Alaska, California, Delaware, Georgia, Hawaii, Illinois, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Nebraska, New Hampshire, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Washington and Wisconsin.**