

THE SURETY & FIDELITY ASSOCIATION OF AMERICA

MEMORANDUM

TO: Government Affairs Advisory Committee

FROM: Daniel Wanke

RE: Contract Surety Legislation

DATE: December 29, 2015

Most states expedite their legislative process by permitting bills to be drafted and introduced before the legislative session begins. The pre-filing process varies greatly among the states in terms of the time period bills can be pre-filed, who can pre-file bills and how many bills each legislator may pre-file. In all states except New Jersey and Virginia, the 2015 sessions are the start of a new two-year session and if a state permits pre-filing, they allow it at the start of a new session. The following report compiles and summarizes pre-filed and introduced contract surety legislation that SFAA is tracking as of December 29, 2014. The text for all pre-filed bills, however, is not always available before the session starts. For additional information on how SFAA is addressing these bills, as necessary, with the AIA, NASBP, the local surety associations and other interested parties, please visit the Government Relations page of the SFAA website at www.surety.org.

Jurisdiction	Bill Number(s)	Recent History	Issue	SFAA Summary
AR	HB 1008	12/08/2014 Pre-filed for 2015.	Retainage	HB 1008 would address the fairness in the bidding practices for public construction projects and retainage of funds in a public construction contract. No bill text is available to date, but this is a local subcontractor's bill.

FL	HB 63	12/08/2014 Pre-filed for 2015.	Public-Private Partnerships	HB 63 would expand the existing law authorizing public-private partnerships (P3s) for construction projects to authorize special districts, Florida College System institutions, and state universities to enter into P3s. The bill also would authorize municipalities, political subdivisions, school districts, and school boards to award design-build contracts through P3s. The bill also would create the Division of Public-Private Partnerships. The bill also would make a technical change concerning the pricing of the payment and performance security required for P3s.
MO	HB 145	12/04/2014 Pre-filed for 2015.	Contract Indemnity Provisions	HB 145 would revise the law concerning indemnity provisions in construction contracts to require all parties entering into a contract for private or public construction work to be responsible for any liability or damages arising from the party's own negligence, wrongdoing, or recklessness, and shall not transfer, delegate, or assign responsibility for liability or damages to another person. The existing law makes such provisions in construction contracts void and unenforceable as against public policy. The bill also would eliminate an exemption from the law that is given to indemnity agreements in which a party promises to indemnify, defend or hold harmless another person in connection with obtaining insurance. Existing law also exempts construction bonds and insurance contracts or agreements. The bill also would expand the definition of construction work to include additional types of work.
MO	HB 206	12/11/2014 Pre-filed for 2015.	Public-Private Partnerships	HB 206 would authorize state and local governmental entities to use public-private partnerships (P3s) for the development or operation of all non-transportation buildings, facilities and infrastructure and improvements. The comprehensive agreement between the public entity and the private partner would have to provide for the delivery of maintenance, performance and payment bonds, and letters of credit in connection with the development or operation of the qualifying project in the forms and amounts that are satisfactory to the responsible public entity. The bill would authorize the public entity to make claims under the maintenance, performance, or payment bonds, or lines of credit in the event of a material default of the private partner.
NJ	AB 3943	12/04/2014 Introduced	Public-Private Partnerships	AB 3943 would authorize municipalities to enter into a public-private partnership (P3) with a private entity for the construction, reconstruction, repair, alteration, improvement, or extension of water supply infrastructure, or the

				management or operation of a water supply facility. For public improvement projects conducted as a P3, the chief financial officer of the municipality must require the private entity to furnish a payment bond when no public fund has been established for the financing of a public improvement. The payment bond would have to guarantee payment to the contractor, his or her subcontractors and to all persons furnishing labor or materials to the contractor or his or her subcontractors for the project.
NY	SB 37	12/17/2014 Pre-filed for 2015.	Retainage	SB 37 would require any retainage withheld on a private construction contract to be deposited in a separate, interest bearing escrow account with a third party escrow agent. For sums that the public owner withholds from the contractor, the retainage would become the contractor's property, and the interest on the deposits would have accrued to him or her.
TX	SB 219/ HB 550	12/19/2014 Pre-filed for 2015.	Performance Bond	SB 219/HB 550 would revise the current law for the Texas Department of Health's building improvement program for state facilities to eliminate a requirement for the contractor to furnish a performance bond in an amount equal to the bid. The bond is conditioned on the faithful performance of the contract.