



## **End of Session Report: NEW YORK**

From: Daniel Wanke—SFAA

The New York legislature concluded its regular session on June 17, 2016. Below is a summary and disposition of the surety related bills that were introduced during the 2016 legislative session. Bills not enacted in 2016 will not carry over to 2017.

### **ENACTED**

#### **Contract Surety:**

##### **Performance and Payment Bonds**

[AB 9932](#)

To Governor

AB 9932 would establish the Yonkers Joint Schools Construction Board (Board) for administering the school district's construction projects. Contractors performing on contracts for the Board would have to furnish a labor and material bond as required by the construction contract and performance bond that complies with requirements of the general municipal law.

#### **Commercial Surety**

##### **License Bonds**

[AB 8166](#)

To Governor

AB 8166 would revise the bond requirements for motor vehicle dealers to require used motor vehicle dealers to post a \$20,000 surety bond if they sell 50 or fewer motor vehicles in a year, and a \$100,000 surety bond if they sell more than 50 motor vehicles in a year. The bill would repeal the requirement for a \$25,000 bond for dealers making a first application or who sold 200 or more motor vehicles in the previous year or to post a \$10,000 bond for dealers making a first application or who sold less than 200 vehicles in the previous year.

### [SB 5949](#)

Enacted: 04/14/2016

Effective: 09/01/2016

SB 5949 requires persons applying for a license to conduct combative sports matches to post a surety bond conditioned on compliance with the applicable laws and regulations. An additional bond is required to secure the payment of professional combative sports participants' purses, salaries of club employees licensed by the State Athletic Commission (Commission), and the legitimate expenses of printing tickets and all advertising material. The Commission will determine the amount required for these two bonds.

The new law also requires promoters for a professional wrestling match to post a minimum \$20,000 bond conditioned on the payment of professional wrestler's purses, salaries of club employees, the legitimate expenses of printing tickets and all advertising material, payments to sponsoring organizations, and the applicable state and local taxes.

### **Tax Bonds**

#### [SB 6409](#)

Enacted: 04/13/2016

Effective: 12/01/2016

SB 6409 authorizes the Commissioner of Taxation and Finance (Commissioner) to require motor fuel wholesalers to post a surety bond in connection with registration in amount as the Commissioner requires to secure the wholesaler's compliance with the applicable law. The Commissioner also may require additional bonds or other security if necessary.

### **Miscellaneous Bonds**

#### [SB 6406](#)

Enacted: 04/04/2016

Effective: 04/01/2016

SB 6406 eliminates the separate security requirements for self-insurers of disability benefits and subjects them to the existing self-insurance requirements for all private employers, which includes a requirement for surety bonds or other security.

### **Court Bonds**

Each year, New York introduces several bills that would require a bond in connection with review processes for tax assessments made by local authorities. Anyone who disputes the tax or seeks a refund is required to deposit an amount equal to the tax and any penalties due, along with a surety bond from a state-licensed surety for the costs of the proceeding. The petitioner has the option of posting a bond in the amount of the taxes, including interest and penalties, in addition to the costs bond. Anyone disputing a denied refund claim is subject to the same bond requirements described above. The following bills passed in 2016:

**Hotel Occupancy Tax:** [AB 209](#) (Town of Greenburgh and Village of Sleepy Hollow)—To Governor; [AB 9690](#) (Village of Tuckahoe)—To Governor; [AB 9691](#) (Town of North Castle)—To Governor; [AB 9692](#) (Village of Harrison)—To Governor; [AB 9693](#) (Village of Mamaroneck)—To Governor; [AB 9694](#) (Village of Port Chester)—To Governor; [AB 9776](#) (Town of Woodbury)—To Governor; [AB 10033](#) (Village of Mount Kisco)—To Governor; [AB 10302](#) (City of Hudson)—To Governor; [SB 7093](#) (Fulton County)—To Governor; [SB 6965](#) (Town of Clifton Park)—To Governor.

**FAILED**

### **Contract Surety:**

#### **Bond Threshold**

SB 1568/AB 9141 would have increased the bond threshold for public construction contracts subject to the separate award requirements of the Wicks Act from \$100,000 to \$150,000 for public improvements and 200,000 to \$300,000 for contracts not subject to the Wicks Act. The bond amounts would have been adjusted annually for inflation.

#### **Performance and Payment Bonds**

SB 4309 would have established procedures for the Nassau County School District to enter into contracts for capital construction projects. The bill would have required the contractor to obtain performance and payment bonds in compliance with the requirements of the general municipal law for the project.

#### **Design-Build**

AB 10709/SB 8111 would have authorized the New York City Department of Design and Construction, the New York City Department of Environmental Protection and the New York City Department of Transportation to use the design-build method for 25 public works projects that cost more than \$10 million and are subject to a project labor agreement. The method could have been used for highways, bridges, dams, flood control projects, canals, and parks. The bill did not specify a bonding requirement.

#### **Infrastructure Banks**

SB 6296/AB 5883 would have established the New York State Infrastructure Development Bank to provide financial assistance to energy, environmental, telecommunications, or transportation infrastructure projects. Eligible entities for receiving assistance would have included individuals, corporations, partnerships (including public-private partnerships), joint ventures, trusts, the State or other governmental entity, including a political subdivision or any other instrumentality of the State or a revolving fund.

## **Retainage**

SB 7652/AB 10275 would have prohibited withholding any amounts for a public or a 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. This would have expanded the types of funds that cannot be withheld as retainage. The bill would have exempted contractors from this change if the materialmen also had the installation contract.

AB 9965 would have repealed existing law that contractors may not withhold more than 5% of the progress payment to a subcontractor, unless the subcontractor does not provide a bond, in which case retainage would be not more than 10%. The bill also would have mandated that contractors pay their subcontractors regardless of whether the public owner has paid the contractor.

AB 9740 would have revised the retainage requirements for state and municipal public works projects so that the public owner would have withheld the retainage from the subcontractor instead of the contractor. The bill provided that the public owner would have paid the subcontractors directly instead of the contractors paying the subcontractors.

AB 10446 would have capped retainage on private construction contracts at not more than 5%. The bill would have provided for the release of retainage when the project reaches substantial completion instead of final completions as provided under current law.

SB 7613 would have established payment requirements for private construction contracts and would have capped the amount of retainage that the owner could withhold at not more than 5% of the progress payment, unless performance and payment bonds are not required in which case, retainage could not have been more than 10% progress payment

SB 2924 provided that the retainage that a public owner or contractor withholds that is for a subcontractor's work on state and municipal construction contracts would have had to be released within 60 days from the completion and the public owner's acceptance of the subcontractor's work. A portion of the retainage to be released could have been withheld to settle claims and unfinished punch list items.

AB 9868/SB 6315 would have revised the existing retainage law for state and municipal construction contracts to define "substantial completion" for the purposes of releasing the remaining contract amount to the contractor. The bill provided that the project would have been considered substantially complete when the work under the public contract is sufficiently complete in accordance with the contract so the public owner may occupy or utilize the work for its intended use.

AB 10276 would have required the retainage withheld on a public construction project to be held in a separate, interest bearing escrow account.

## **Contract Bundling**

AB 6906 would have required the Director of the Division of Minority and Women's Business Development to adopt rules that require each state contract to avoid the unnecessary and unjustified bundling of contract requirements that preclude small, women, and minority-owned businesses from participating in procurements as prime contractors. The chief executive officer of every state agency, department, and authority that has let more than \$2 million in service and construction contracts in the prior fiscal year would have had to adopt this contracting requirement as well. Current law requires contracting agencies to consider where practicable, the severability of construction projects and other bundled contracts.

## **Commercial Surety**

### **License Bonds**

AB 6654 would have subjected mobility dealers to the existing licensing and bond requirements for motor vehicle dealers. For an initial license, the law requires dealers to post a \$10,000 bond if they sold less than 200 vehicles in a calendar year, or a \$25,000 bond is required if the dealer sells more than 200 vehicles in a calendar year. A \$50,000 bond is required for renewal licenses.

AB 9155 would have required process servers to be licensed and post a surety bond, contract of indemnity, or letter of credit in an amount ranging from \$10,000 to \$75,000 based on the number of process servers that the licensee employs. The bond would have been conditioned on compliance with the applicable laws and regulations and on the licensee's payment obligations.

SB 6793 would have required fantasy contest operators to be licensed and post a \$1 million surety bond payable to the State.

AB 10594 would have increased the amount of the license bond required for towing companies in New York City from \$5,000 to \$25,000. The bill also would have increased the maximum amount of the bond that the Commissioner of the New York City DOT can require from \$25,000 to \$250,000. Existing law permits towing companies to participate in a recovery fund in lieu of posting the bond. Companies with violations of the law would have been required to post a bond in lieu of participating in the fund.

SB 190/AB 408 would have required debt collection agencies to be licensed and post a surety bond or other security. The bond amount would have been based on the number of persons the licensee employs in an amount ranging from \$10,000 to \$75,000. The bond would have secured the licensee's compliance with the applicable law and the payment of all costs and penalties.

### **Court Bonds**

SB 6857 would have capped appeal bonds that an appellant may post for civil cases involving the Master Settlement Agreement for tobacco manufacturers at not more than \$250 million. A bond for the full amount of the judgment could have been required if an appellant is proven to be dissipating assets outside the course of ordinary business to avoid paying a judgment.

Each year, New York introduces several bills that would require a bond in connection with review processes for tax assessments made by local authorities. Anyone who disputes the tax or seeks a refund is required to deposit an amount equal to the tax and any penalties due, along with a surety bond from a state-licensed surety for the costs of the proceeding. The petitioner has the option of posting a bond in the amount of the taxes, including interest and penalties, in addition to the costs bond. Anyone disputing a denied refund claim is subject to the same bond requirements described above. The following bills failed to pass in 2016:

***Hotel Occupancy Tax:*** AB 7286 (Town of Java); AB 8546 (Town of Dickinson); AB 9267 (Suburban Towns); SB 5770 (Any county not otherwise authorized to impose one.);

***Non-Resident Earnings Tax:*** AB 2600/AB 999 (Cities with a population of 1 million or more).

AB 5501/SB 2232 would have established procedures for posting the bond in connection with lien cases for the payment of wages. The bond would have had to be for no more than \$500. The bill would have allowed the court to waive the bond requirement for these cases.

SB 7615 provides that for private construction contracts, when a subcontractor brings a claim in an arbitration proceeding, the contractor would have had to post a performance bond in an amount equal to the amount of the demand for payment. If the contractor failed to post the bond within five days of when it is required would result in an immediate award to the subcontractor that could not have been appealed.

### **Depository Bonds**

AB 774 would have permitted credit unions to accept deposits from the State. The bill would have subjected credit unions that receive such deposits to the law's security for the deposits. Surety bonds, among other financial instruments, are accepted to meet this requirement under existing law.

### **Miscellaneous Bond**

AB 3702/SB 5981 would have provided for civil penalties against employment agencies that violate the applicable laws governing their practices. The bill provided that the bond required under existing law for such agencies would have been liable for the payment of the penalties if the agency fails to do so.

SB 7864/AB 10063 would have exempted group self-insurers for workers' compensation plans that are comprised only of public entities from the requirement to provide financial security to secure their plans. Surety bonds are accepted to meet this requirement under existing law. Instead, the joint and several liability of the public group self-insurer's members would have served as the security for the plan.

AB 9089/SB 7151 would have required contractors to register with the Department of Labor before they can bid on a public works project. For violations, the Commissioner of Labor could

have required a contractor to post a surety bond as a condition of registration. The bond would have been for the benefit of workers damaged by the contractor's failure to pay wages or benefits in compliance with the applicable law. The Commissioner of Labor would have determined the bond amount, but it could not have exceeded \$10,000.

### **Financial Assurance**

SB 5513 would have directed the Commissioner of the Department of Environmental Conservation (Department) to adopt regulations requiring the owner or operator of a drilling site for natural gas production to provide a form of financial responsibility, for which surety bonds would be accepted. The bond would have been conditioned on performance of the owner's or operator's cleanup and decontamination responsibilities.