

THE SURETY & FIDELITY ASSOCIATION OF AMERICA

MEMORANDUM

TO: Government Affairs Advisory Committee

FROM: Daniel Wanke

RE: Contract Surety Legislation

DATE: May 15, 2015

There are 24 states and the District of Columbia in session. In all states except New Jersey and Virginia, the 2015 sessions are the start of a new two-year session. The following report compiles and summarizes introduced contract surety legislation that SFAA is tracking as May 15, 2015. 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(s)	Recent History	Issue	SFAA Summary
AL	SB 50	05/05/2015 SB 50 passed the Senate.	Bid Bonds	SB 50 would increase the maximum amount of the bid bond required for contracts with the Department of Transportation from \$10,000 to \$50,000. The law requires the bid bond to be not less than 5% of the bid amount, but caps it at not more than \$10,000. (05/11)
AL	SB 111	04/14/2015 SB 111 has been enacted.	Infrastructure Bank	SB 111 establishes the Alabama Transportation Infrastructure Bank for selecting and assisting in financing of transportation projects exceeding \$5 million through loans and other financial assistance, such as grants and credit enhancements, to the State and its agencies, counties, and municipalities, or other political subdivisions or public bodies. The new law becomes effective on August 1, 2015. (04/23)

AL	HB 275/ SB 239	04/02/2015 HB 275 is to the third reading in the House. SB 239 has not moved since last reported.	Construction Manager-General Contractors Design-Build Projects	<p>HB 275 would establish procedures for the state, counties, and municipalities to award construction manager/general contractor (CM/GC) contracts for public works projects, except for public road and highway projects. The bill provides that a person providing CM/GC services would be subject to all licensing, insurance, and bonding requirements for public works projects in the State. The bill provides requirements for prequalifying these entities, which would include an evaluation of their bonding capacity. The CM/GC method could be used for projects that have construction costs in excess of \$25 million. The method also could be used with written approval from the State Building Commission for contracts exceeding \$15 million. (04/06)</p> <p>SB 239 is substantially similar, except that it applies to projects in excess of \$15 million and also authorizes design-build contracts.</p>
AZ	SB 1257	04/06/2015 SB 1257 has been enacted.	Performance Bonds	<p>SB 1257 revises the bonding requirements for regional behavioral health authority contracts to give the Director of the Department of Health Services discretion for the contract requirements, including the current performance bond requirement. The new law repeals a provision that permits such authorities to provide evidence that it has posted other security with a state agency for the performance of health service contracts in lieu of a new performance bond if the funds from the other security would be available in the event of a default. The new law becomes effective on June 30, 2016. (04/06)</p>
CA	AB 484	05/06/2015 AB 484 has been referred to the Assembly Appropriations Committee.	Small Business Assistance Programs	<p>AB 484, as amended, would revise the existing law for an expansion fund used for small business assistance programs to permit the bank board to include insurance, coinsurance, and other forms of “surety” in expansion programs that the bank administers. The law permits the bank board to use the expansion fund to pay for financial instrument programs, including defaulted loan guarantee or surety bond losses. The insurance, coinsurance or other forms of surety would be available to California businesses with less than 250 employees that import or export items in compliance with the bill’s requirements to export goods, services, and agricultural commodities. (04/16)</p>

CA	SB 562	05/07/2015 SB 562 is to the third reading in the Senate.	Public-Private Partnerships	SB 562 would authorize the City of Long Beach to use a public-private partnership for the redevelopment of a Long Beach Civic Center. The bill does not specify a bonding requirement. (04/16)
CA	SB 762	05/12/2015 SB 762 is to the third reading in the Senate.	Best Value Contract Awards	SB 762 would establish a pilot program for counties to award contracts through a “best value” award system in which the county would have to prequalify the contractor, including a review of the contractor’s financial condition. The bill provides that the bidder’s capacity to obtain all required payment bonds, performance bonds, and liability insurance would be a mandatory part of reviewing his or her financial condition. (04/30)
CA	AB 1185	05/07/2015 AB 1185 has been re-referred to the Assembly Committee on Education.	Best Value Contract Awards	AB 1185 would allow the Los Angeles Unified School District (LAUSD) to award the contract based on “best value” when the contract exceeds \$1 million until December 31, 2020. The bill provides that for these best value contracts, if performance and payment bonds are required for the contractor, retainage shall not exceed 5%. In the district’s construction contracts between the contractor and a subcontractor, and in a contract between a subcontractor and any sub-subcontractor, the amount of retainage withheld shall not exceed the retainage amount in the contract between the district and the contractor. The contractor could require a bond from the subcontractor if the contractor provides notice to the subcontractor. If the subcontractor fails or refuses to provide the bond, the contractor would be permitted to withhold retainage in excess of the amount specified in the contract between the district and the contractor from the payments to the subcontractor. (05/08)
CA	AB 1265	05/06/2015 AB 1264 has been set for a hearing and referred to the Assembly Appropriations Committee Suspense File.	Public-Private Partnerships	AB 1265 would extend the authorization for the Department of Transportation and regional transportation agencies to enter into comprehensive development lease agreements for public-private partnerships (P3s) for transportation projects from January 1, 2017, from January 1, 2030. As introduced, the bill would have extended the authority indefinitely. The bill also would authorize the Santa Clara Valley Transportation Authority to enter into P3s for transportation projects. The law requires the contracting entity or the lessee to provide evidence that it has the capacity to obtain all required payment and performance bonding, liability insurance, and errors and omissions insurance. (05/01)

CA	AB 1358	05/07/2015 AB 1358 is to the third reading in the Assembly.	Design-Build	AB 1358 would rewrite the existing law authorizing the use of design-build firms for school facilities, which requires the design-build firm to possess or obtain sufficient bonding to cover the contract amount for non-design services. The bill provides that the design-build firm would have to obtain payment and performance bonds in the form and amount the school district requires. The payment bond amount could not be less than the performance bond amount. School districts would have to develop a standard payment and performance bond form for its design-build projects instead of using the Department of General Services' form. The bill would revise the law to cap retainage at no more than 5% for all contracts, which under current law only applies when bonds are required. The bill would eliminate an option for the design-build firm to furnish securities in lieu of retainage. The bill would reduce the threshold for using design-build firms from \$2.5 million to \$1 million. (05/08)
CA	AB 1431	05/04/2015 AB 1431 has been re-referred to the Assembly Committee on Appropriations.	Job Order Contracts Payment and Performance Bonds	AB 1431, as amended, would authorize job order contracting for school districts for public works and maintenance contracts until January 1, 2022. The contractor would have to provide evidence that it has the capacity to obtain all required payment and performance bonding and liability insurance. The bill defines a job order contractor and subcontractors as being "licensed and bonded." (05/04)
CO	HB 1197	04/10/2015 HB 1197 has been enacted.	Indemnity Provisions in Construction Contracts	HB 1197 revises the law for indemnity provisions for negligence in construction contracts to provide that a contractor's obligation to defend, indemnify, or hold harmless a public entity would be limited to the amount of negligence attributable to the contractor, its agents, representatives, subcontractors, and suppliers. The new law repeals an exemption for contract clauses for the costs of defense. The new law deletes a provision exempting a contracting party from being required indemnify or hold harmless from any liability or damages from the negligent acts of the indemnified party. The extent of any liability or obligation for an indemnity obligor will be determined through adjudication, alternative dispute resolution, or other mutual agreement for persons or entities providing architectural, engineering, surveying, or other design services. The new law exempts insurance policies

				providing for the defense, indemnification, or holding harmless of public entities. The new law becomes effective on September 1, 2015. (04/17)
CT	SB 830	05/06/2015 SB 830 has been reported favorably from the Senate Government Administration and Elections Committee and has been reported from the Legislative Commissioner's Office.	Surety Bond Guarantees Bond Waivers	SB 830 would exempt emerging contractors from the requirements of the Little Miller Act if they participate in a surety bond guarantee program that the bill would authorize to be created. A contractor would be able to obtain a bond guarantee on contracts that exceed \$500,000. The bill would direct the Commissioner of Administrative Services to establish the program by October 1, 2015. Emerging contractors would be eligible for the program for a period of up to five years. The bill would define emerging contractors as minority-owned businesses who are not pre-qualified under the State's requirements and are unable to obtain the bonding required under the Little Miller Act to bid on state or municipal public works contracts (excluding DOT contracts) or is unable to perform work under such a contract as a substantial subcontractor. (05/08)
CT	SB 831	05/07/2015 SB 831 has been reported favorably from the Senate Government Administration and Elections Committee and has been reported from the Legislative Commissioner's Office.	Contract Set-Asides	SB 831 would subject municipalities to the existing law for state contracts to be set aside for small businesses when the municipality contracts with state agencies for new construction valued at less than \$400,000 and reconstruction valued at less than \$100,000. The law provides that in lieu of bonds, contractors and subcontractors obtaining a contract through a set-aside may provide a letter of credit equal to 10% of the contract for any contract that is less than \$100,000, and equal to 25% of the contract for any contract that exceeds \$100,000. (05/08)
CT	SB 947	04/30/2015 SB 947 has been referred to the Legislative Commissioner's Office in the Senate.	Bonding Assistance Programs	SB 947 is a budget bill that would provide \$2 million in funding for the implementation of a minority business enterprise assistance program to assist these businesses in obtaining surety bonds, including bid, performance and payment bonds, for capital construction projects. (02/20)

CT	SB 948	04/16/2015 SB 948 has been reported from the Legislative Commissioner's Office in the Senate.	Bond Waivers	<p>SB 948 would permit the Commissioner of Administrative Services (Commissioner) to waive the requirements to post performance and payment bonds for contracts for the construction, reconstruction or rehabilitation of public buildings that are less than \$500,000. To qualify for the bonding waiver, the contractor or subcontractor would have to be pre-qualified under the existing law's state prequalification program for contracts of \$500,000 or less. The contractor or subcontractor also would have to apply for the waiver, which the Commissioner would grant based on a review of the applicant's past performance on projects with a similar size, scope and complexity; the applicant's compliance with the applicable financial obligations for construction projects; and the size, scope and complexity of the specific project for which the applicant is seeking a waiver. The Commissioner would have to adopt regulations for the application and waiver process. (04/20)</p>
CT	SB 1032	05/19/2015 SB 1032 passed the House.	Nullum Tempus	<p>SB 1032 would limit the application of the common law doctrine of nullum tempus (no time limit runs against the king). As introduced, the bill would have created a statute of repose only for architects, professional engineers and land surveyors and not for contractors and their sureties. As amended the bill would defines a "tolling agreement" in a construction related project to include any person performing construction related work and their sureties or insurers.</p> <p>For any improvement to real property substantially completed on or after October 1, 2017, the bill provides that State and political subdivisions cannot make a claim, in contract or tort, for damages for deficiencies in the construction related work or for bodily injury or wrongful death arising out of a deficiency in the construction-related more than ten years after the date of substantial completion. For improvements to real property completed before October 1, 2017, the state have until October 1, 2027 to bring such claims.</p> <p>For any improvement to real property substantially completed on or after October 1, 2017, the State and its political subdivisions must bring an action or claim for indemnity for contribution arising out of construction-related work within ten years of substantial completion or within three years after the</p>

				<p>date that an action or claim is brought against the State for which the State is seeking indemnification, whichever is later. For improvements substantially completed before October 1, 2017, the State and its political subdivisions shall not bring a claim for contribution or indemnity after October 1, 2027, or three years from the date of the determination of the action or claim against the State has been made for which the State is seeking indemnification, whichever is the later date.</p> <p>The limits on nullum tempus do not apply to claims: 1) under a written warranty or guarantee with a tolling agreement for a longer amount of time; 2) based on willful misconduct in the performance of construction-related work; 3) under environmental remediation laws; or 4) under contracts for asbestos removal. (04/22)</p>
CT	HB 6705	04/01/2015 HB 6705 has been reported from the Legislative Commissioner's Office in the House.	Prevailing Wages	HB 6705 would subject businesses receiving financial assistance from the State or its agencies for a construction project on its property to the law's prevailing wage requirements. If the business finds that a contractor or subcontractor knowingly or willfully is paying less than the prevailing wage, it could either terminate the contractor's right to proceed on the work or withhold payment from the contractor or subcontractor. If the contract is terminated, the contractor and its sureties would be liable to the business for any excess costs resulting from it. For violations, the bill also provides for civil penalties and requires restitution of the wages owed. The contractor or subcontractor would be subject to a two year debarment period for repeated violations on these projects. (04/02)
CT	6906	04/07/2015 HB 6906 has been reported from the Legislative Commissioner's Office in the House.	Bid Security Requirements	HB 6906 would increase the threshold at which bid security is required for competitive sealed bidding for construction contracts in a design-bid-build procurement from \$500,000 to \$1 million. The law requires the State Contracting Standards Board to adopt regulations for the bid security requirements for contracts that exceed this threshold. (04/08)

FL	HB 87	04/24/2015 HB 87 has been sent to the Governor.	Construction Defect Claims	HB 87 would revise an existing alternative dispute resolution process for claims for construction defects in private work. The bill would revise the notice procedures to require additional details about the defect, such as the location of the project and the specific violations that occurred. The bill would revise the existing notice provisions for a contractor's insurer to provide that the notice would not count as a claim for insurance purposes unless it is provided in the insurance policy. The bill also would revise the legislative findings in the bill to provide that the contractor's insurer should be included in the notice requirements for an effective alternative system. The bill also would impose penalties for frivolous claims. (04/17)
GA	SB 59	05/05/2015 SB 59 has been enacted.	Public-Private Partnerships	SB 59 authorizes the use of public-private partnerships (P3s) for the State and for local governments for any project, except for generation of electric energy for sale, communications services, cable and video services or water reservoir projects. SFAA and AIA successfully had the bill amended in committee to clarify that the comprehensive agreement would have to provide for performance and payment bonds in the amounts required under the Little Miller Act for the construction portion of the P3. Surety bonds or other security acceptable to the public entity are required for the other phases and components of the project. For a material default on the project, the public entity could terminate the comprehensive agreement for cause and exercise the rights and remedies available under the law, including claims on the bonds or other security. The new law became effective upon enactment. (05/11)
HI	HCR 178-15	05/01/2015 HCR 178-15 has been adopted.	Public-Private Partnerships	HCR 178-15 is a resolution that urges the Governor to develop an Oahu Community Correctional Center in the vicinity of the Halawa Correctional Facility through a public-private partnership. (05/04)
IA	SB 492/ SB 307/ SB 411	05/06/2015 SB 492 has been reported from committee in the House.	Financial Responsibility	SB 492/SB 307/SB 411 would establish a disaster case management fund and provides for the adoption of rules to implement a statewide system of disaster case management. The rules would have to allow the Department of Human Services to accept a surety bond or other form of financial responsibility that a local administrative entity previously provided in connection with another contract with the State to provide services or implementing a state or federal program, so long as the bond requirement in the contract is sufficient. (04/25)

		SB 307/SB 411 has not moved since last reported.		
IA	HB 529	04/17/2015 HB 529 has been enacted.	Bid Bonds Performance and Payment Bonds	HB 529 revises the existing bidding procedures for levee and drainage districts. The new law requires bid security in an amount equal to 5% of the bid. Bid bonds must comply with the bid bond requirements in the public contracting law. The new law provides that if the maximum limit on a bid security would cause a denial of funds or services from the federal government which would otherwise be available, or is otherwise inconsistent with the requirements of federal law, the maximum limit could be suspended. The new law requires a successful bidder to furnish a performance and payment bond in an amount not less than 75% of the contract price. The new law becomes effective on July 1, 2015. (04/22)
IN	HB 1019	05/06/2015 HB 1019 has been enacted.	E-Verify	HB 1019 subjects state public works contracts to the existing law's requirements for using E-Verify to verify the eligibility of the contractor's newly hired employees. The contractor must submit an affidavit that he or she did not knowingly hire an unauthorized alien. The State may terminate the public works contract if the contractor fails to remedy the violation within 30 days. If the public agency determines that terminating the public works contract will be detrimental to the public interest or public property, it may allow the contract to remain in effect until a new contractor is hired. The contractor is liable to the public agency for actual damages. These provisions for public works contracts mirror the existing law for public contracts for services. The new law becomes effective July 1, 2015. (05/08)
KY	HB 408	04/01/2015 HB 408 has been enacted.	Construction Manager-General Contractors	HB 408 authorizes the use of the construction manager-general contractor procurement method for state construction projects. The procurement process must include information on the applicable bond, insurance, and security requirements. The new law becomes effective on June 25, 2015. (04/02)
LA	SB 151	05/14/2015 SB 151 is to the third reading in the House.	Retainage	SB 151 would revise the existing law concerning the release of retainage or other payments due to a contractor for contracts with the Department of Transportation and Development (DOTD) to eliminate the provision that the retainage would be released if the DOTD's engineer does not complete the final estimate within 45 days of the DOTD receiving a clear lien certificate.

				Retainage would be released if the DOTD failed to make any final payments after the formal final acceptance of the project and within 100 days of the DOTD receiving a clear lien certificate. (04/29)
MD	HB 844	04/14/2015 HB 844 has been enacted.	Surety Bond Guarantee Program	HB 844 revises the maximum amount of the bond that the Maryland Small Business Development Financing Authority (Authority) may guarantee for its Small Business Surety Bond Program, which previously was an amount equal to 90% of or \$1.35 million for a surety's loss on a bid, payment, or performance bond for federal, state, private, utility, and local government financed contracts, whichever is less. The new law provides that it is the lesser of 90% or \$2.25 million of the surety's losses on these bonds. The new law increases the amount of the bond for which the Authority may execute and perform as a surety under its surety program from \$1 million to \$2.5 million for federal, state, private, utility, and local government financed contracts. The new law becomes effective July 1, 2015. (04/15)
MD	936	05/12/2015 HB 936 has been enacted.	Public-Private Partnerships	HB 936 is legislation that SFAA and AIA sought to correct a technical problem with the bonding language in the P3 law that Maryland enacted in 2013. The existing law requires that the amount of the payment bond must be based on the value of the construction elements of the P3 and not on the total value of the P3. The existing law also requires a performance security, but prior law did not limit it in a similar manner as the payment bond. SFAA and AIA's technical correction amends the law so that the payment bond and performance bond both are based on the value of the construction portion of the P3. The new law becomes effective on October 1, 2015. (05/14)
ME	HB 884	04/09/2015 HB 884 has been introduced.	Public-Private Partnerships	HB 884 would authorize the State, its political subdivisions, and institutions of higher education to enter into public private partnerships for developing or operating public buildings and facilities and related infrastructure, or any improvements to real estate that a governmental entity deems necessary or desirable. The bill would require the comprehensive agreement to include requirements for the delivery of performance and payment bonds for all construction activities. The construction for the project could not be performed until performance and payment bonds in compliance with the Little Miller Act are in place. The obligee under a performance bond could be a public entity, a private person or an entity consisting of both a public

				entity and a private person. Letters of credit or other security may be required for the development or operation of a qualifying project in the forms and amounts satisfactory to the responsible governmental entity. (04/10)
ME	HB 916	04/16/2015 HB 916 has been introduced.	Performance Bonds	HB 916 would revise the existing law to clarify that the competitive bidding requirements for goods and services contracts would apply to grant awards. Existing law provides that a performance bond may be required. (04/17)
NH	SB 88	05/12/2015 SB 88 is scheduled for executive session in the House Public Works and Highways Committee on 05/20/2015.	Public-Private Partnerships	SB 88 would establish a committee to study public-private partnerships for intermodal transportation. The committee would be required to report its findings and any recommendations for proposed legislation by January 1, 2016. (04/01)
NV	SB 254	05/21/2015 SB 254 passed the Senate.	Retainage	SB 254 would revise the law that requires a minimum of 5% retainage to be withheld from the progress payments on public projects until the project reaches 50% completion. Retainage would have to be exactly 5% of the progress payment until the project reaches 50% completion. The contractor's determination of the satisfactory completion of the work also would be a condition for the release of retainage from the public owner. The bill would revise the retainage requirements for private construction contracts so that not more than 5% retainage may be withheld. Current law permits up to 10% to be withheld as retainage. (05/20)
NV	AB 345	04/14/2015 AB 345 was heard in the Assembly Government Affairs Committee and was re-referred to the Assembly Ways and Means	Individual Sureties	AB 345 would permit individual sureties to provide bid, payment, performance, and protest bonds for state and local public works projects (including highway, construction manager, and design-build contracts) and for state and local public purchasing contracts. The bill appears to create a scheme of regulation for individual sureties, patterned after the Maryland law, which expired this year. When carefully read, however, AB 345 creates an unregulated alternative market for surety bonds on all public works and purchasing contracts. To date, the bill sponsor has heard numerous objections

		Committee without recommendation.		to the bill and appears to agree that individual sureties is not the right approach to helping small and emerging contractors obtain bonding. (04/15)
NV	450	04/21/2015 AB 450 has been amended and re-referred to the Assembly Ways & Means Committee.	Public-Private Partnerships	<p>AB 450 would authorize the Department of Transportation to use public-private partnerships for any transportation facility. Persons entering into the P3 agreement would have to obtain a performance bond and payment bond, letter of credit, parent company guarantee or other acceptable security, or any combination of these, in amounts that the DOT would determine. The bill also would revise the existing bonding requirements for the DOT to exempt the proposed P3 law.</p> <p>As introduced, the bill only would have authorized a P3 for the proposed route of the future Interstate 11 that will pass through Nevada. The bill also would have required the bonds for this project to be adequate to protect the interests of the State and its political subdivisions and to ensure completion of the toll road project without this State or its political subdivisions being liable for any of the direct costs of the project. (04/25)</p>
NY	AB 4610	04/13/2015 AB 4610 has been enacted.	Design-Build Projects	<p>AB 4610 authorizes the New York State Thruway Authority, the Department of Transportation, the Office of Parks, Recreation and Historic Preservation, the Department of Environmental Conservation, and the New York State Bridge Authority to use the design-build method of contracting for capital projects for infrastructure that cost more than \$1.2 million. The authorized contracting authority may determine the payment and performance bond requirements it deems necessary.</p> <p>The new law establishes new corporate taxes for New York City. The new law permits persons subject to the tax to obtain a six month extension to pay any taxes owed for which a bond or other security could be required in an amount not exceeding twice the amount of the payments for which an extension is granted. The new law became effective upon enactment. (04/13)</p>
NY	AB 6906	04/10/2015 AB 6906 has been introduced.	Contract Bundling	AB 6906 would revise the existing law to require 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 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. (04/13)
OH	HB 64	04/22/2015 HB 64 passed the House.	License Bond— Pawn Brokers	HB 64 provides that the amount bid bond required for printing goods and services contracts would have to be specified in the invitation for bids. The bill would authorize the Director of Development to pledge up to \$10 million in unclaimed state funds from the bill to the Minority Business Bonding Program. (04/23)
OR	HB 2277	05/06/2015 HB 2277 has been heard in the Senate Environment and Natural Resources Committee.	Performance Bonds	HB 2277 would authorize drainage districts to conduct flood control projects. These projects would be subject to the district’s existing authority to require contractors to furnish a “good and sufficient bond” for construction contracts in connection with the district’s projects. The bond is conditioned that the contractor will comply with all the provisions of the contract and perform all work in accordance with its terms. (04/22)
OR	HB 3303	04/22/2015 HB 3303 has been read twice in the House.	Service-Disabled Veterans Public Works Bond	HB 3303 would authorize the Oregon Business Development Department to certify that service-disabled veteran-owned businesses as disadvantaged business enterprise. Service-disabled veteran-owned businesses would qualify for a four year exemption available to disadvantaged business enterprises under existing law from the requirement to provide a \$30,000 public works bond to secure the payment of claims made by laborers on the project. Service-disabled veteran-owned businesses also would be eligible for existing programs that provide assistance in obtaining bonding and training programs on bonding. (04/07)
PA	HB 1044/ SB 340	04/27/2015 HB 1044 has been introduced.	Performance and Payment Bonds	HB 1044/SB 340 would revise the existing municipal finance laws in Pennsylvania. The bill provides that in order for a local government unit to obtain preliminary approval for the issuance of debt, the unit would have to provide a description of the type and amount of payment or performance bond, letter or credit or other financial security proposed to insure the completion of the project. (04/28)

		SB 340 has not moved since last reported.		
RI	SB 785	04/01/2015 SB 785 has been introduced.	Retainage	SB 785 would revise the retainage requirements for sewers and water mains, or any public works projects for municipalities and political subdivisions of the State to provide that retainage could not exceed 5%. When the project reaches substantial completion or when a permanent certificate of occupancy is issued (whichever occurs first), the amount of retainage would have to be equal 200% of the value of any punch list as determined by the owner for each project. The bill also provides that the State would be subject to the proposed retainage requirements. General contractors and construction managers could not hold more than 5% retainage from their subcontractors. Under current law, retainage for municipalities and political subdivisions cannot exceed 5% of the contract price. For such contracts less than \$500,000, the law permits the contracting parties to otherwise agree on the amount of retainage. (04/03)
TN	SB 877	04/10/2015 SB 877 has been enacted.	Payment Bond Claims	SB 877 revises the mechanic's lien law. For prime contractors on private work who have furnished a payment bond, the new law repeals a requirement that the bond provide for payment for extras, (labor, materials, services, equipment, machinery, overhead and profit, for improving real property, authorized by the owner and not included in previous contracts), not exceeding 15% of the prime contractor's contract price, if and to the extent the lien claimant is claiming extras. The new law provides that claims on bonds provided for the project would have to be filed in the county where any portion of the real property is located. The new law became effective upon enactment. (04/22)
TX	SB 219	04/02/2015 SB 219 has been enacted.	Performance Bonds	SB 219 revises the current law for the Texas Department of Health's (Department) 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. SFAA worked with its members to address this change and discovered that the Department currently operates under the existing government procurement law for all state agencies, which includes bonding, so that the new law eliminates an obsolete law.

				<p>The new law permits a person appealing a civil penalty for a violation of the laws for youth camps, rendering businesses and establishments, radioactive materials, food, drugs, and cosmetics, meat and poultry inspections, aquatic life, asbestos, or for mold assessors and remediators to file a sworn affidavit that they are financially unable to pay the penalty and post a supersedeas bond. The option to provide an affidavit already is available for other entities appealing civil penalties. The new law became effective upon enactment. (04/04)</p>
TX	SB 1894	<p>05/11/2015 SB 1894 passed the Senate.</p>	<p>Bid Bonds Performance and Payment Bonds</p>	<p>SB 1894 would have allowed navigation districts to set the bond amount for performance and payment bonds for its construction contracts. SFAA and AIA had the bill amended in committee in the Senate to remove this change from the bill. Also removed was a provision that would have repealed the district's authority to require the bond to be from a surety listed on the U.S. Treasury Department's Circular 570.</p> <p>As amended, the bill would revise the bid security requirement for a lease or a sale of land that a navigation district owns so it would have to be in an amount equal to 5% of the bid or equal to the amount of the first rental payment under the lease. Current law requires the security to be equal to the bid price or the first rental payment. The bill also would increase the lease term for which bid security would be required from 30 years to 50 years. (05/11)</p>
TX	SB 1907/ HB 3298	<p>05/05/2015 SB 1907 was placed on the Senate Intent Calendar.</p> <p>05/18/2015 HB 3298 has been scheduled for a hearing in the</p>	<p>Public-Private Partnerships</p>	<p>SB 1907/HB 3298 would direct the Texas Water Development Board to conduct a study to evaluate improvements to the transfer of water entitlements in this state and the establishment of a water grid, including an integrated network of pipelines, pumping stations, reservoirs, and other works for the conveyance of water between river basins, water sources, and areas of water use in the state. The study would have to include an evaluation of alternative methods for ownership, construction, operation, maintenance, control, and financing of the water grid, including public-private partnerships. A report on the study would be due to the legislature by September 1, 2016. (05/12)</p>

		Senate Agriculture, Water, & Rural Affairs Committee.		
TX	HB 1966	05/12/2015 HB 1966 has been placed on the House General State Calendar.	Retainage	HB 1966 would establish a construction trust fund account for depositing retainage for improvements to real property. The property owner could obtain a surety bond in lieu of the trust fund. The owner would have two options. He or she could obtain a bond that the contractor furnishes in compliance with the payment bond requirements under the State's lien law. The owner also could obtain a bond that is at least equal to 10% of the value of the total of the contract amount and the "normal and usual extras not exceeding [15%] of the original contract amount." The bond would be conditioned on prompt payment of retainage owed. The bonds would not be subject to any notice or perfection obligation other than as may be required by the State's lien law. There would be a one year limitation on claims for the bond starting from either the date of completion of the contract or the date on which retainage is due to the contractor, whichever is later. (05/12)
TX	HB 1991/ SB 598	05/13/2015 HB 1991 has been placed on the House General State Calendar. SB 598 has not moved since last reported.	Public-Private Partnerships	HB 1991/SB 598 would expand the definition of a qualifying project under the existing law authorizing public-private partnerships for public facilities and infrastructure so that it would include improvements to real property that is owned by another person that is made available for public use. (05/13)
TX	HB 2475	05/15/2015 HB 2475 passed the House.	Public-Private Partnerships	HB 2475 would direct the Texas Facilities Commission to establish the Center for Alternative Finance and Procurement to consult with governmental entities on the best practices for procurement and the financing of P3 projects and to assist governmental entities in the receipt of proposals, negotiation of interim and comprehensive agreements, and management of such public works projects. (05/15)
VA	SB 891	04/15/2015	Payment Bond Claims	SB 891 revises the current mechanics' lien law to prohibit a subcontractor, lower-tier subcontractor, or material supplier from waiving or diminishing his

		SB 891 has been enacted.		or her lien rights, right to assert payment bond claims, or right to assert claims for demonstrated additional costs in a contract in advance of furnishing any labor, services, or material. The new law provides that provisions waiving or diminishing these rights for such costs prior to providing any labor, services, or materials are null and void. The new law becomes effective on July 1, 2015. (04/21)
WA	HB 1575	04/22/2015 HB 1575 has been sent to the Governor.	Retainage Surety Qualifications	HB 1575 would repeal a provision in the procurement code that some public entities have used to impose eligibility requirements for the sureties issuing the retainage bonds on public works projects. Under existing law, a contractor may submit a bond for all or any portion of the contract retainage in a form acceptable to the public body from a bonding company meeting the standards established by the public body. The public body must accept a bond meeting its requirements unless the public body can demonstrate good cause for refusing to accept it. These provisions would be repealed and replaced with a provision that the public entity may require an authorized surety with a financial strength rating of rating of "A-" or higher. (04/21)
WA	HB 1851	04/29/2015 HB 1851 has been enacted.	Bid Bonds Performance Bonds	HB 1851 permits any a city, town, or county may use the contracting process that the DOT uses under existing law for the repair or replacement of structurally deficient bridges. The law provides that bid and performance bonds may be required for such projects. The new law becomes effective on July 24, 2015. (05/01)
WI	AB 21/ SB 21	05/07/2015 The Joint Committee on Finance has taken executive action on AB 21. 05/07/2015 An executive session was held by the Joint	Construction Manager-General Contractors	AB 21/SB 21 would authorize the Wisconsin DOT to use the construction manager-general contractor procurement method for no more than three highway improvement projects. The bill does not specify a bonding requirement for this procurement method. (02/05)

		Committee on Finance for SB 21.		
WI	SB 107/ AB 155	04/08/2015 SB 107/AB 155 have been introduced.	Performance Bonds	SB 107/AB 155 would create the Badger Health Benefit Authority. The bill would require the notice for any competitive bid for a contract for professional services to include specifications on any surety requirements. (04/13)