

THE SURETY & FIDELITY ASSOCIATION OF AMERICA

MEMORANDUM

TO: Government Affairs Advisory Committee

FROM: Lenore Marema
Daniel Wanke

RE: Missouri—End of Session Report

DATE: August 9, 2007

The Missouri General Assembly adjourned sine die on May 18, 2007. The following is a report on all surety and fidelity legislation considered during the session. All bills not enacted do not carry over to 2008. The Governor had until July 14, 2007, to sign bills that the Legislature passed. All enacted bills become effective 90 days after adjournment on August 18, 2007, or as provided in the bill. To the extent that a bill specified when it becomes effective, we have provided that date in the summaries below.

NOTE: Missouri Governor Blunt has called a special session, which will begin on August 20. One of the issues to be addressed in the special session is the Missouri 800 bridges project. The bonding language that is under consideration for that bill is identical to HB 596, summarized below in this report, which failed to pass in the regular session. SFAA is working on the bonding language for the special session with interested members. SFAA will keep its members informed of developments in the special session.

ENACTED

Commercial Surety:

HB 329: Debt Adjusters

INTRODUCED: 01/11/2007

ENACTED: 06/30/2007

HB 329 requires debt adjusters to furnish a blanket bond in the amount of \$100,000 for the benefit of any debtor who is damaged by the adjuster's breach of the debt management plan or the adjuster's failure to administer debtor funds collected or disbursed under the plan. Such a plan is required under the new law. Existing law provides that a debt adjuster is an intermediary between a debtor and his or her creditors for the purpose of settling, compounding, or otherwise altering the terms of payment of any debts.

HB 221: *Service Contracts*

INTRODUCED: 01/03/2007

ENACTED: 07/13/2007

HB 221 revised existing law on the regulation of service contracts. The new law subjects all motor vehicle service contracts and service contracts for property to the existing law's requirements, retaining the requirement that service contract providers maintain an insurance reimbursement policy, a reserve account, or post a security deposit. A surety bond is one available form of the security deposit. The bond must be for 5% of the gross consideration received, less claims paid, on the sale of the service contract for all service contracts issued and in force, but not less than \$25,000.

HB 426: *Public Official*

INTRODUCED: 01/16/2007

ENACTED: 07/13/2007

HB 426 creates the Missouri Propane Safety Commission (Commission), which consists of a Chairman, an Executive Director, and seven commissioners. The new law requires the Executive Director to post a surety bond in the amount of \$100,000, and each commissioner to post a surety bond in the amount of \$50,000 before entering into his or her duties. Also, the Chairman of the Commission may execute a blanket bond covering all members, the Executive Director, and the employees or other officers of the Commission, in lieu of individual bonds. Each surety bond is conditioned on the faithful performance of the duties of the office or offices covered, and must be executed by a surety company licensed in the State, approved by the Attorney General, and filed in the Office of the Secretary of State.

SB 82: *License Bond*

INTRODUCED: 01/03/2007

ENACTED: 07/13/2007

SB 82 subjects power sport dealers and trailer dealers to the license bond requirement in existing law for other vehicle dealers. Existing law provides that the bond may be in the form of a surety bond from a surety company licensed in the State, or an irrevocable letter of credit and must be in the amount of \$25,000.

VETOED

Commercial Surety:

HB 327: *Public Official*

INTRODUCED: 01/10/2007

VETOED: 07/06/2007

HB 327 would have authorized municipalities and counties to create a regional railroad authority, which would have been governed by a board of commissioners (Board). Each officer of the Board that handled funds would have had to post a surety bond.

FAILED

Contract Surety:

HB 88: *Electronic Bidding on Highway Projects*

INTRODUCED: 01/03/2007

FAILED: Adjournment

HB 88 would have provided for electronic filing of bids and bid bonds for contracts for the construction, maintenance, repair, or improvement of any bridge or highway on the state highway system. Bids and bid bonds submitted electronically would have had to contain digital signatures and seals, and all other required bid information and certifications, in accordance with the State Highways and Transportation Commission's administrative rules, the Uniform Electronic Transaction Act as adopted in Missouri, and any applicable federal competitive bidding requirements.

HB 596: *Public Private Partnerships*

INTRODUCED: 01/25/2007

FAILED: Adjourned

HB 596 would have authorized the State Highways and Transportation Commission (Commission) to accept an annual bid bond for its construction and maintenance projects. The bill also would have allowed public private partnerships for a period of 25 years. The bonding provisions in the bill would have required 1) a bid bond in the amount of \$5 million; 2) a payment bond that was in the form required under Missouri law; and 3) a performance bond that covered the maximum amount of construction work the contractor performed in any year of the agreement. The bill would have permitted the payment bond to be set at a lower amount if posting a bond in the full amount of all that would have been payable under the terms of the design-build highway contract was impracticable, but the amount of the payment bond could not have been less than the performance bond.

SB 175: *Prevailing Wage Penalties*

INTRODUCED: 01/03/2007

FAILED: Adjournment

SB 175 would have increased significantly the penalties in the existing prevailing wage law. For failure to pay the prevailing wage, the contractor would have had to pay a penalty to both the contracting public body and the Department of Labor and Industrial Relations (Department) in the amount of \$50 per calendar day, or for any portion of a calendar day, for each worker who is paid less than the prevailing wage rate for any work done under the contract. The current penalty is \$10 per day to the contracting body. The Department must deposit fines collected in a new Prevailing Wage Enforcement and Education Fund, and the funds must be used for enforcement of and education about the law. The bill also contained a provision specifying the conditions under which money from the Fund can be transferred to general revenues.

The bill would have authorized the Department to notify the Attorney General if it appeared that such a violation has occurred and the Attorney General could bring suit in order to obtain restitution on behalf of workers not properly paid or penalties due to the public body and to the Department. Existing law allows the Attorney General to enjoin

the contract. The bill provided, however, that any person or public body would have retained the right to assert any cause of action that it might have against a contractor or subcontractor or surety under contractual or statutory rights.

The bill also would have expanded the definition of workers (laborers, workmen, and mechanics) to include “other individuals who are engaged in actual construction work,” and would include “an individual is a worker when the person or persons for whom the work is performed have the right to control and direct the individual who performs the work...” This bill would have created a \$5,000 threshold at which the prevailing wage would be required on all projects or aggregate of projects.

Commercial Surety:

HB 699: *License Bond—Motor Vehicles*

INTRODUCED: 02/01/2007

FAILED: Adjournment

HB 699 would have amended existing law, which requires new motor vehicle franchise dealers, used motor vehicle dealers, wholesale motor vehicle dealers, and boat dealers to file a surety bond or irrevocable letter of credit in the amount of \$25,000 in connection with licensure. The bill would have subjected trailer dealers to such licensing and bonding requirements, and increased the amount of the bond or letter of credit to \$100,000 for all licensees.

SB 193/HB 487: *County Planning Act*

INTRODUCED: 01/03/2007

FAILED: Adjournment

SB 193/HB 487 would have provided for the adoption of regulations to permit the County Planning Commission to accept a bond in lieu of the immediate completion or installation of the work. The bond would have had to be in an amount and with surety and conditions satisfactory to the County Commission. The bond would have had to provide for and secure to the County Commission the actual construction of the improvements and utilities within a period that the County Planning Commission would specify. The County Commission would be granted the power to enforce the bond by all proper remedies.

HB 808: *School Bond*

INTRODUCED: 02/07/2007

FAILED: Adjournment

HB 808 would have created a scholarship fund for students from low-income families in urban areas. The bill would have required an educational assistance organization receiving more than \$50,000 in scholarship funds to file a surety bond that is payable to the State, and in an amount equal to the aggregate amount of contributions expected to be received during the school year.

HB 1196: *School Bond*

INTRODUCED: 03/28/2007

FAILED: Adjournment

HB 1196 would have enacted the Equal Opportunity Education Contract Program, permitting low-income students at poorly performing schools to attend a private school of their choice, with the school district paying the tuition. The private school would have had to post a surety bond or letter of credit equal to the amount of tuition expected to be received.

HB 1267: *License Bond*

INTRODUCED: 03/30/2007

FAILED: Adjournment

HB 1267 would have required funeral establishments to post a license bond in the amount of two times the annual revenues that it reported to the Department of Revenue. The bond would have had to be in force and available at all times.

SB 122: *Depository Bond*

INTRODUCED: 01/03/2007

FAILED: Adjournment

SB 122 would have established the Missouri Health Care Trust Fund (Fund), which would have consisted of all federal payments received from health care programs established under the Social Security Act, and all money appropriated by the General Assembly to the Missouri Universal Health Assurance Program (Program). The Executive Director of the Program's Board of Governors (Board) would have been responsible for all funds, securities and property belonging to the Program and would have had to give a corporate surety bond for the faithful handling of the Program's money as the Board required.

SB 589: *Release of Lien Bond*

INTRODUCED: 02/26/2007

FAILED: Adjournment

SB 589 would have required anyone selling a unit within a planned community to either record or furnish the purchaser with releases of all liens on the property that the purchaser does not agree to assume. In lieu of that, the seller could have posted a release of lien surety bond, collateral, or purchased insurance against the lien.

SB 618: *School Bond*

INTRODUCED: 02/28/2007

FAILED: Adjournment

SB 618 would have created a scholarship program to provide for certain students from low-income families and other disadvantaged children to attend private schools. The bill would have required such schools receiving funds from the State to demonstrate fiscal soundness by either being in existence for three years, or by posting a surety bond or a letter of credit covering the amount of funds received on behalf of scholarship recipients.

Fidelity Bonds:

HB 440: Labor Organizations

INTRODUCED: 01/17/2007

FAILED: Adjournment

HB 440 would have required every officer, agent, shop steward, or other representative or employee of any labor organization who handles funds or other property of the organization to post a surety bond for protection against loss by reason of acts of fraud or dishonesty on his or her part directly or through connivance with others. This would have applied to labor organizations with property and annual financial receipts that exceed \$5,000 in value, or of a trust in which a labor organization is interested. The bill provided that the surety bond could have been in an individual or schedule form, and would have required that the bond be from a corporate surety company licensed in the State.

If in the opinion of the Department of Labor and Industrial Relations (Department) a labor organization had made other bonding arrangements providing the protection required at a comparable cost or less, the Department would have been able to exempt the labor organization from placing a bond through a surety company as described above.