End of Session Report: ILLINOIS

From: Daniel Wanke

The Illinois legislature adjourned its regular session on May 31, 2017. The Governor has called a special session to address its ongoing budget issues. Below is a summary of the surety related bills that were introduced during the 2017 legislative session. Bills that did not pass in 2017 will carry over to 2018. For a copy of an enacted bill, please click on the bill number.

**ENACTED**

**Commercial Surety:**

**License Bonds**

**SB 1556**

Enacted: 08/30/2017
Effective: 01/01/2018

SB 1556 increases the amount of the license bond required for new and used motor vehicle dealers from $20,000 per location to $50,000 per location. Prior law permitted licensees to be exempted from the bond requirement after the bond had been in place for 36 months. The new law extends this requirement so that compliance is required for 60 months. The bond is conditioned on the proper transmittal of all title and registration fees and taxes that the vehicle dealer accepts. The new law also increases the minimum bond amount required for remittance agents, which collect money for motor vehicle registration and license fees and taxes for the State, from $10,000 to $20,000.

**Fidelity Bonds:**

**Escrow Accounts**

**HB 2702**

Enacted: 09/08/2017
Effective: 09/08/2017

HB 2702 requires independent escrowees issuing a closing protection letter in connection with a real property transaction to obtain a fidelity bond for a minimum of $2 million per occurrence.
Contract Surety:

Public-Private Partnerships

HB 500/SB 1937 provides for the disposal of the James R. Thompson Center for redevelopment. The Administrator would be allowed to enter into a lease, a public-private partnership (P3) with a real estate developer or other agreement for the redevelopment project.

HB 3266 would establish the High Speed Rail Authority (Authority) for conducting high speed rail projects and maintaining a high speed rail system. The bill provides that the Authority could use a P3 for these projects as set forth under the existing transportation P3 law. Contractors for any construction contract let under the proposed high speed rail law would have to provide a performance and payment bond equal to at least 50% of the contract price.

HB 1463, as introduced, is a placeholder bill unrelated to P3s. An amendment was filed this year for SB 1463 that would authorize the State, municipalities or local governments, school districts, public colleges or universities, and public building commissions to enter into P3s to provide or improve a public asset, public building, public service, or transportation asset. The bill is silent on bond requirements for these projects. The bill would create the Office of Public-Private Partnerships to manage and act as a resource center for these projects.

Alternative Project Delivery Methods

HB 2755/SB 1320 would authorize the use of the design-build and construction manager/general contractor project delivery methods for transportation facility projects. The bill provides that the projects would be subject to the requirements of the Little Miller Act. The request for proposals for these projects could set forth the bid, payment, and performance security requirements.

HB 3289, as introduced, would authorize the State, any agency, State universities, State colleges, community colleges, community college districts, school districts, and local governments to use the design-build and construction manager-at-risk methods for construction projects. The bill is silent on bonding requirements. An amendment was filed this year for HB 3289 that only would allow school districts to use the design-build method for constructing school facilities. The request for proposals would have to specify the performance and payment bond requirements for these projects. The design-build firm would have to submit a bid bond with its proposal.

Performance Bonds

HB 3700 would establish the Metro East Development Authority for conducting redevelopment projects in Madison, Monroe, Randolph, and St. Clair counties. For contracts for the demolition or removal of buildings, the contractor would have to provide the Authority a bond in an amount that the Authority will determine. For contracts for street paving and improvements, the contractor would have to furnish a performance bond with sureties that the Authority has approved.
SB 1936 would repeal the bond currently required for developers acquiring land from the State for a development project. The bond secures the completion of the project.

HB 3751 would revise the current bond requirements for projects let by counties and municipalities to provide that these entities would have the option to require a surety bond or other security from a builder or a developer to secure the completion of a project. Under current law, the county may not require a bond or other security if the developer already has provided a bond or other security in an amount equal to or greater than 110% of the amount of the bid on each project improvement. The bill would eliminate a requirement for counties or municipalities with a population under 1 million people to approve the surety on the bond. The bill also would eliminate a home rule preemption provision concerning the ability of counties and municipalities to establish requirements for bonding and security for projects.

SB 1266, as introduced, would permit general contractor on public works projects to either withhold retainage or require their subcontractors to obtain a performance bond, but not both. The bill sponsor filed two amendments this year. The first amendment would allow the Department of Transportation (DOT) to choose between performance bonds and retainage, but contractors for the Capital Development Board would be prohibited from requiring subcontractors to obtain performance bonds. The second amendment would prohibit contractors for the DOT and the Capital Development Board from requiring performance bonds from subcontractor. There is no prohibition on withholding retainage.

**Payment Bond Claims**

HB 2615 would prohibit an owner, contractor, or subcontractor from waiving, affecting, or impairing any other claimant's rights under the mechanic's lien law. Any term of a contract that purports to do so is void and unenforceable, unless it complies with the provisions set forth in the bill for a claimant to waive their rights. The waiver and release would not release the owner, construction lender, or surety on a payment bond from a lien or claim unless the claimant's release is provided in the form set forth in the bill and if the release is a conditional release, there is evidence of payment to the claimant.

**Energy Savings Contracts**

HB 2582/SB 950 would authorize the Department of Central Management Services, the Capital Development Board, and other agencies that have procurement authority through intergovernmental agreements to enter into guaranteed energy savings contracts. The bill would require the contractor to provide a performance bond to secure the installation and the faithful performance of all the measures included in the contract. The contractor would have to guarantee that either the energy or operational cost savings, or both, will meet or exceed the costs of the energy conservation measures within 20 years. The bill also provides that the Little Miller Act applies to these contracts.
**Commercial Surety:**

**License Bonds**

HB 4002/HB 2498/HB 3669/SB 7 would authorize electronic gaming at race tracks. The bill provides that pari-mutuel wagering facilities that have electronic gaming would have to post a bond for $500,000 to guarantee that the licensee makes all payments, keeps the books and records and makes reports, and conducts games of chance in compliance with the applicable laws and regulations. Existing racetrack organization licensees would have to increase the bond they have posted under existing law from $200,000 to $500,000 when they start using electronic gaming.

**Miscellaneous Bonds**

HB 712/SB 834 would require independent auditors contracting to perform a parallel election tabulation and audit to provide a performance bond in the amount of $1 per registered voter in the jurisdiction holding the election.

HB 3486 provides that the requirement for pre-need cemetery contract sellers to have a pre-construction trust fund or a performance bond only would apply to contracts entered into prior to the enactment of the bill. Instead, the purchaser would have the option to deposit funds into a local banking institution of the purchaser's choosing, deposit funds into a trust program that the seller operates, or other means offered by the seller. The seller would be required to disclose these options.

HB 3853 would require employees of a third-party provider shipping wine on behalf of a winery shipper's license holder to post a $1,000 surety bond conditioned that he or she will not unlawfully transport or deliver any alcoholic liquors within or into the State.

**Court Bonds**

HB 2526 would repeal the existing trust law and replace it with the Uniform Trust Code. The bill provides that a trustee would be required to post a bond only if it is required by the terms of the trust and the court has not dispensed with the requirement. The liability of the trustee or of any sureties on the bond for acts or omissions of the trustee would not be discharged or affected by the trustee's resignation. Corporate fiduciaries would be exempt from the bond requirement. Current law does not specify a bond requirement for trustees.

SB 640 would permit other forms of security to be posted in lieu of the bond required under current law for petitioning for judicial review of a decision from the Workers' Compensation Commission on a workers' compensation claim. The bond secures the payment of the award and the costs of the appeal if the review is not successfully prosecuted.
Public Official Bonds

HB 3266 would establish the High Speed Rail Authority (Authority) for conducting high speed rail projects and maintaining a high speed rail system. The bill provides for the creation of the Illinois High Speed Rail Authority Fund (Fund). The Fund would have to be "protected by a corporate surety bond" that the Treasurer for the State would execute. The Authority would determine the bond amount required. The chairperson of the Authority's Board of Directors (Board) would have to post a $100,000 surety bond. All other members of the Board would have to post a $25,000 bond. If the secretary for the Board is not a member of the Authority, he or she would have to post a $15,000 bond. The bonds would be conditioned on the faithful performance of the duties of office.

Release of Lien Bonds

HB 2351 would provide for a lien on an employer's property for the amount of unpaid wages owed to an employee. The employer could obtain the release of the lien by obtaining a bond or insurance that provides for payment of the wages and other compensation, penalties, and interest claimed by the employee. The bond or insurance would have to be in an amount that is adequate to fully satisfy the employee's claim.

Fidelity Bonds:

Homeowners' Associations

HB 2932 would repeal the current fidelity bond requirements for condominium and community associations. Current law requires the association or any management company that it hires to obtain a fidelity bond to secure the handling of the association's funds.

Financial Institutions

HB 527 would require entities that only perform independent loan processing or underwriting to register as an exempt entity under the State's mortgage licensing law and comply with the applicable federal and state mortgage licensing laws, which would include obtaining "fidelity commercial crime insurance" equal to $50,000.

HB 2702 would require independent escrowees issuing a closing protection letter in connection with a real property transaction to obtain a minimum $2 million fidelity bond.

FAILED

Commercial Surety:

Financial Assurance

HB 2880 would have established procedures for owners and operators of clean construction or demolition debris fill operations to transfer a portion of a fill operation site to another person. The owner or operator would have had to provide a performance bond to secure closure and
post-closure maintenance of the portion of the site being transferred. The bond amount would have been based on the estimate of the costs to remediate the transferred portion of the site to a condition that meets the closure and post-closure maintenance requirements. The bill failed to pass the Senate.