

SAH - Subcontractors Association of Hawaii

1188 Bishop St., Ste. 1003**Honolulu, Hawaii 96813-3304

Phone: (808) 537-5619 ★ Fax: (808) 533-2739

2018 Legislative Report

The 2018 legislature was lighter than most sessions and certainly a lot lighter than 2017. Assisted suicide passed, paid sick leave passed and the rail financing issue got mostly resolved in a special session.

For the two (2) year legislative session combined, there were 3107 Senate Bills and 2754 House Bills. Of that, 229 bills were passed in the 2018 Legislative Session. Who cares? Well probably no one except for people like us who had to look at all of them. This is because title of bills can be very deceptive. While a bill entitled, "Relating to Illegal Acts" might not be about us, a bill entitled "Relating to Unlicensed Contractors" is certainly something we care about.

The Legislature passed a \$14.4 billion budget for the fiscal year plus a \$4.65 billion construction budget.

MONEY

State Budget. As noted above, the State budget was passed and it is a \$14.4 billion with \$4.65 billion in construction. *Reference H.B. 1900, CD 1.*

County Tax. An item to watch is a bill which passed which allows Maui and the Big Island extra time to adopt a surcharge on the State tax. Kauai has already adopted it but it will not implement the county surcharge until January, 2019. This is the ½% rail tax that Oahu adopted. It extends the time period for the other two (2) counties to do this from March 31, 2018 to March 31, 2019. This is a provision to watch inasmuch as if they do that, your transactions which occur solely on those islands would be subject to the additional ½% general excise tax. Are your contracts worded appropriately to allow you to pass on whatever the "applicable tax rate" is? *Reference H.B. 2587, CD 1, Act 11, signed by the Governor 5/4/18.*

Energy

Energy efficiency appropriation. This bill creates a revolving line of credit and a sub-fund within the Hawaii Green Infrastructure Special Fund that a state agency can use to finance cost effective energy efficiency measures. *Reference H.B. 1508, CD 1, Act 121, signed by the Governor on 7/5/18.*

Micro Grid. Passed is a bill that directs the PUC to establish a micro-grid services tariff which is to encourage and facilitate the development and use of energy resilient micro-grids. *Reference H.B. 2110, SD 2, Act 200, signed by the Governor on 7/11/18.*

Transportation

DUI. H.B. 2003, CD 1 allows an individual who is convicted of driving while intoxicated to file a request for a permit to drive or operate an employer's vehicle during the period that their license is revoked to be supported by the employer's sworn statement that they will only drive for the purpose of employment and for specified hours. *Reference H.B. 2003, CD 1, Act 74, signed by the Governor on 7/5/18.*

Contractor Licensing

Electrical Contractors. This bill extends the sunset date which provided for a limited exemption to the licensing requirements for individuals in situations when an electric utility must retain qualified individuals to work with high voltage (600 volts or higher) who are not licensed in the State but are otherwise deemed qualified by the utility. It requires the Board of E and P to submit reports to the Legislature. *Reference S.B. 2297, CD 1, Act 60, signed on 6/29/18.*

Procurement

U.H. This bill is a “gimmee”. Several years ago, in the face of problems at the University of Hawaii, in particularly procurement problems, SAH endorsed a bill that removed the President of UH as the Chief Procurement Officer. This bill reinstates the President as the Chief Procurement Officer for their contracts and requires a report to the Legislature twenty (20) days prior to every legislative session. *Reference S.B. 2831, CD 1, Act 42, signed by the Governor on 6/13/2018.*

Employer – Employee laws

Marijuana. This bill does everything from establishing standards to clarifying dispensary licensee’s rights and increasing the strength of cannabis products. Most importantly, it establishes a working group to make recommendations regarding the employment of patients under the influence of marijuana. This last part was an area that we were involved in only at the last minute of the bill. The original bill called for a prohibition against the “discrimination, suspension or termination” of any employee who had a valid marijuana certificate without stating any qualifying factors. Obviously this would lead to a whole variety of complicated situations, most of which the employer would probably not be able to defend. After pointing out a lot of those situations, legislators agreed to drop that language and instead formulate a working group in order to discuss the parameters of when an employer could take some sort of action. *Reference H.B. 2729, CD 1, Act 116, signed by the Governor on 7/5/18.*

Wage secrecy. This new law prohibits employers from asking for or considering a job applicant’s past wage or salary history as part of the employment application process or offer to hire. It also prohibits retaliation or discrimination against employees who disclose or discuss their own or co-workers wages. *Reference S.B. 2351, CD 1, Act 108, signed by the Governor on 7/6/18.*

Labor law enforcement. This bill establishes a special fund known as the “Labor Law Enforcement Special Fund” which is meant to finance the collection of penalties and fees for violations of the labor law. It establishes two (2) positions including an attorney and a legal assistant in the Department of the Attorney General to represent the Department of Labor in collecting penalties for violations of the law. *Reference S.B. 2801, CD 1, Act 187, signed by the Governor on 7/11/18.*

Paid family leave. This bill requires the Legislative Reference Bureau (LRB) to conduct an analysis of the best framework to establish a paid family leave program. This is done by looking at the requirements that may exist in other jurisdictions and other states and then requires a report to the Legislature by September 1, 2019. This would mean that it would be the 2020 Legislature which would consider it and any legislation they pass would likely not become effective until July 1, 2020 at the earliest and more than likely not until January 1, 2021. *Reference S.B. 2990, CD1, Act 109, signed by the Governor 7/6/18.*

DEAD BILLS

Again, the dead bills are usually the good news and that is true for this year.

Handyman exemption. A bill pushed by the Realtors would have increased the current \$1000.00 handyman exemption for contractor licensing to \$5000.00. The handyman exemption was created in order to allow for minor work to be done such as changing a lock or doing a little “spot” painting without having to hire a fully licensed contractor. Along now come the Realtors who want to use this provision in order to do work up to \$5000.00. It is important to remember that in many cases homeowners would purchase the materials on their own, meaning that the contract would only be for labor. This could be a sizable contract in the residential world. Realtors did not seem to care much about the plight of licensed contractors but only wanted to be sure that their transactions could close escrow in a quick and expeditious manner by hiring these unlicensed handymen, often some of whom seem to respond in hours particularly for cash. The Senate Labor Committee passed this bill out however Senator Rosalyn Baker, the Senate Consumer Protection Committee Chair, refused to schedule a hearing on the bill which killed the bill. In the House, the House Labor Committee passed the bill but the House Consumer Protection and Commerce Committee killed the bill. Passage of this bill could have set a horrible precedent and although it may have been \$5000.00 this year, it would be sure to go up again in future years.

One bill that took an extra amount of time was the creation of the Airport Authority. Our position has always been that we are not against the establishment of an Airport Authority. The problem is that the airlines want this Airport Authority to be established outside of the Procurement Code of the State of Hawaii. In other words, they want to be able to do their own thing even though they would be using the law to collect the fees. Our opposition to that rests on the fact that an exemption from the Procurement Code also removes several protection provisions from any subcontractors who perform work for the Airport Corporation including subcontractor listing, prompt payment and bonding. Partially based on our opposition and the fact that the airlines refused to have a bill that operated within the scope of the procurement code, the bill died.

Perhaps the scariest part of the 2018 Legislature is the fact that all bills introduced in the 2017 Legislature pick up in 2018 from where they left off in 2017. That is to say, that if they were assigned to five (5) Committees and passed four (4) Committees in 2017, all they had to do in the 2018 session is pass one Committee and the bill would be subject to a final floor vote. This included then the multiple bills being pushed by the General Contractors Association and the Building Industry Association all focusing on “watering down” the subcontractor listing clause. Their attack included giving general contractors an additional two (2) days or two (2) hours to change their listing of subs, additional time for them to change license numbers, names and scope of work and exempting certain trades from the subcontractor listing clause. The attempt here was to weaken the opposition by allowing some trades in and some trades out.

What was important in the 2018 legislative session is that “our friends remained our friends” and none of the bills from 2018 were scheduled for a hearing in the House. Unfortunately in the Senate that was not the case and Senator Donna Mercado Kim continued to push and tried to get a resolution between subs and generals on the bills. She eventually passed a bill through the Senate that would have put on another trial project at the University of Hawaii by exempting subcontractor listing for jobs \$3M and below. Fortunately and thanks to the solidarity of the subcontracting trades, even though some of the

trades (notably plumbing and electrical) would have been included in the subcontractor listing regardless of the size of the job, the subcontracting community stuck together and unanimously opposed the bills. Ultimately the bill was not scheduled for a hearing in the House and died.

Again, in 2018 we are happy to report on the contributions of our member Associations as well as many of our individual members who participated in the process by making phone calls, coming down to the Capitol and attending fundraisers to help us spread the word.