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2021 LEGISLATIVE REPORT

In the 2021 legislature there were 2820 bills introduced. Of that, 265 passed. Who cares? Well probably no one except for people like us who had to look at all of them.

This was the second year that the Legislature had to operate under COVID conditions. Some would argue that due to COVID and therefore the necessity of ZOOM hearings, the session was easier particularly in terms of providing input. Others would argue that legislators were a lot harder to contact, particularly on a "one on one" basis. Whatever the viewpoint, the Legislature marched on and they passed some legislation that will affect our members that you need to know about.

Normally we start of by giving you a rundown of the bills that passed and then a few comments at the end about the bills that died. This year we want to stress the importance of our efforts in killing two (2) big bills that are probably, in the big picture, more important than the other bills that did pass.

H.B. 58, HD 1, SD 1, CD 1 – This bill temporarily suspends a whole variety of general excise tax exemptions. It also increases the conveyance tax for the sale of non-commercial properties if they are valued at over \$4,000,000.00. The original terms of this bill would have repealed the subcontractor GET exemption.

You may remember the battle that we had on this exemption back in 2011 when the Legislature actually did repeal the exemption. As a result you had to pay the general excise tax even though the general paid it when he got paid. You also paid it when you received it. That is the purpose of the general excise tax exemption. The subcontractor general excise tax exemption is that it allows the general contractor to pay the 4% on your behalf to avoid double taxation. The original bill proposed repealing a whole variety of current general excise tax exemptions, the subcontractor exemption among them. We lobbied heavily against this bill and ultimately the version that was passed repeals the exemption for eight (8) different general excise tax exemptions who will now have to pay the GET from January 22 thru December 31, 2023. This one effort alone saved many of our members who do business with general contractors many thousands of dollars. (Vetoed by Governor Ige on July 6, 2021.)

The second effort we spent a lot of time on is the Subcontractor Listing Clause. This clause applies anytime you do State and County work and requires the general contractor to list his proposed subcontractors. The general contractors have tried for the past eight (8) or nine (9) years to try to get rid of the Subcontractor Listing Clause in what has become a very apparent motivation of wanting to be able to bid shop. They disguise this effort saying that they sometimes make mistakes so they need to be able to correct them. The law however already provides for mistakes to be corrected.

In this legislative session, the Legislature turned to a study that had been done previously and had proposed to delete from the Subcontractor Listing Law the nature and scope of the work to be done by each subcontractor. We felt that this would really confuse the issue and would allow entirely too much "wobble room" for dishonest general contractors to play around with subcontractor bids so we opposed it and that version died. In the meantime, other bills had been introduced extending the time period for when a general contractor can change his bid list from two (2) hours after bid time (**H.B. 1214**) to five (5) days after bid time (**S.B. 625**) and one to establish a total deletion of subcontractor listing, calling it a "pilot project" (**H.B. 1211**).

We are happy to report that we defeated ALL of these proposals and the Subcontractor Listing Clause remains intact.

JOBS

H.B. 1278, HD 1 – Perhaps the most important bill in this area is the reform of the unemployment insurance compensation taxation system. As a result of COVID, the state unemployment insurance fund went broke. Money had to be borrowed from the federal government in order to pay benefits. Existing law, provided that in the event of the fund being in such poor financial shape, the taxation schedule would move to a different tax table which would in effect triple most employer unemployment insurance taxes. We, along with the rest of the business community, rallied the Capitol in order to plead with legislators to assist in this cause. As a result, this bill was passed which changes the funding schedule to Schedule D which will likely result in about a doubling of your unemployment insurance tax instead of a tripling.

The other thing that happened in this area, although not a part of this bill, was legislators making the decision to use part of the COVID federal money provided to the State to help pay off the unemployment insurance loan from the federal government to the state. Our plea was that it wasn't our fault that unemployment was caused. It was the government that shut businesses down. The legislators did not have to act on this and we feel really obligated to give credit where credit is due because we feel they went "overboard" assisting the business community by helping to payoff this debt. The net effect of it is that your federal unemployment tax which currently is rather negligible at .007 would have likely gone to 7.00%. All of this at the same time that your state unemployment tax was going to go up. Legislators were criticized for helping the business community instead of helping others. We think that if you ever have thought about thanking a legislator, this is an issue that you should rise to the occasion on. The legislature not only acted on this but also passed it in an unprecedented amount of time, getting it to the

Governor's desk at the end of February (most bills don't make it until the end of April) and the Governor signed it as Act 1 on March 2, 2021.

H.B. 526, HD 1, SD 2, CD 1 – establishes past performance as a method for awarding State and County contracts and it authorizes the establishment of a database by December 31, 2023. The database will include information on whether or not the project was timely completed, what the projects authorized budget was and if there was any difference between the project's cost and the project's authorized budget, including the reasons. Based on our lobbying we also got included procedures to inform a contractor about the information contained in the past performance database about you and procedures for a contractor to correct or respond to the information contained in that past performance database. *(Act 188 signed on July 6, 2021.)*

S.B. 793, SD 1, HD 1, CD 1 – This bill eliminates the differential where employers are allowed to pay a lower than minimum wage to employees with disabilities. Efforts to increase the overall minimum wage died in the 2021 Legislature but legislators felt obligated to pass this measure. *(Effective on approval, Act 55. 6/16/2021.)*

S.B. 936, SD 2, HD 1, CD 1 – This bill would have potentially been a "headache" inasmuch as it originally would have required employers to get involved in seizure health information for employees. This is the result of one (1) incident in the State where a person had a seizure and no one knew what to do. Originally the bill would have been assigned to HIOSH as an occupational safety measure. Of course, this would likely mean fines and penalties. Ultimately the bill was moved to the Department of Health and requires them to disseminate information on seizures. *(Effective 7/1/2021. Act 150.)*

S.B. 1329, SD 2, HD 3, CD 1 – Protest bonds. Protests have been the subject on many occasions at the legislature and usually associated with the Subcontractor Listing Clause being blamed as the culprit. However we feel protests serve a very legitimate function. That is, to alert government to a discrepancy if they haven't already discovered it in the bidding process. However if want to file a protest, you have to "pay to play". This bill revises the amount of bond that you must post in order to file a protest. Only a bidding party can file a bond. We took this opportunity to try to find ways to expedite the protest procedure in order to deflect more attacks on the Subcontractor Listing Clause. One feature put into this law is that the Procurement Officer must uphold or deny the protest within seventy-five (75) calendar days. There can be an extension of an additional forty-five (45) calendar days with "extenuating circumstances". The bond amount which was previously \$1,000.00 for contracts under \$500,000.00 and \$2,000.00 for contracts between \$500,000.00 and \$1,000,000.00 has now been changed to 1% or the estimated value of the contract. The bad part about this bill which effects primarily larger projects is that it also eliminates a previous cap which said that "no protest bond based on the percentage would be more than \$10,000.00". That has been taken out. *(Effective on approval. Act 224 signed on July 6, 2021.)*

TRANSPORTATION

H.B. 766, HD 1, SD 2, CD 1 – This is the photo red light imaging detection system bill. A controversial project that was around at one time and then it was repealed and has now come back. The bill appropriates \$2,000,000.00 for 2021, \$400,000.00 for 2022 and 2023 in order to fund the Photo Red Light Imaging Detectors Systems Pilot Program. Be sure to educate your drivers on this one because the bill for the violation goes to the owner of the vehicle NOT the driver. This bill makes a good case for using GPS on all your vehicles! *(Effective June 30, 2021, Act 133.)*

H.B. 485, HD 1, SD 1, CD 1 – This bill increases your cost for rental cars when you send crews to the neighbor islands and they rent cars. The new rental car tax will be an additional \$.50 per day, per year beginning in 2022 all the way through 2027; a \$3.00 increase on the current \$5.00 per day surcharge. *(Act 237 WITHOUT Governor's signature on July 6, 2021.)*

MORE DEAD BILLS

S.B. 1104, HD 1 – This bill would increase the payouts to consumers from the Contractors Recovery Fund. This fund is financed entirely by licensed contractors via an assessment that can be triggered by the Contractors License Board. The fund is payable to homeowners who have used licensed contractors and currently a homeowner can get up to \$12,500.00 out of the fund for their project but the fund can only payout a total of \$25,000.00 on behalf of any one contractor. This particular bill would have raised the \$25,000.00 to \$75,000.00 and would have raised the maximum payout from \$12,500.00 to \$25,000.00.

The bottom line for this fund is that it is the "good guys" paying for the "bad guys". The only time homeowners can access the fund is when there are no other assets of the contractor; in other words, they have gone out of business. Nobody else except real estate has a recovery fund to go after. When a company is out of business, they are out of business. So while the amounts referred to in this bill are not huge, they are nevertheless based on the principal of the "good guys" paying for the "bad guys". We have objected to the bill all along and it died this year, for the second year in a row.

H.B. 1325, HD 1 – This is a bill that defies logic. Although someone is obviously interested in protecting the State. It would have been very much so at the expense of the contractor. The bill would have required that the successful bidder on a State or County project would need to purchase insurance to cover at least one-half of the project in case the contractor failed to complete the job or went out of business. Talk to your insurance agent about what kind of policy that would be, how much it would cost.

S.B. 1035, SD 2, HD 1 – This bill would have imposed a unspecified fee on all procurements through the State Procurement System for State and County projects. It would have been done in the name of "modernization". While we are not opposed to modernizing because it could likely be more efficient for contractors, the major problem was that the amount was not specified as to what the fee would be, how it would be

collected, how it would be spent and what it would be spent for. We did not necessarily oppose the bill but we did ask for clarification. Unfortunately the Administration could not provide any information on the bill and the Legislature felt it best to die until somebody has more information.

Lastly, **S.B. 228** clarifies that work practice standards for facilities containing asbestos also would apply to single family residences and it died without a hearing. Another bill, **S.B. 327** was on the use of leaf blowers and when you could use them (9:00 a.m. – 4:00 p.m. Monday – Saturday). It actually passed the House but died in the Senate Judiciary Committee. This is as far as this bill has ever gotten which may mean that it is soon to be passed.