

SAH - Subcontractors Association of Hawaii

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2019 Legislative Report

This year the legislature passed a \$16 billion operating budget that began on July 1, 2019. Of that, \$3.4 billion is dedicated as a construction budget. The legislature introduced 3142 new potential laws in both the House and the Senate. Who cares? Well probably no one except for people like us who had to look at all of them. This is because the 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. Only 298 actually went to the Governor's desk for his approval. What follows below is our report on both the good bills and the bad bills and those that passed and those that died.

TAXES

Family Leave. We put this under the tax section because when it is fully developed, it will be a payroll tax. What hasn't been developed yet is whether it will be paid or unpaid leave and whether it will be an employer or an employee paid program or a combination. The 2018 legislature passed a bill calling for a study in order to look at other state systems and come back with recommendations. That's a big task and it wasn't finished in time for the 2019 legislature so a bill to extend the study to November, 2019 was passed this year. For other family leave bills see the "DEAD BILL" section. *Reference H.B. 32, HD1, SD 2, CD 1. Act 190, 7/2/2019.*

Rental cars. The legislature passed a bill that increases the current rental car per day tax from \$3.00 to \$5.00. Previously, Hawaii residents paid \$3.00 while tourists paid \$5.00. Now everyone will pay \$5.00. *Reference S.B. 162, SD 2, HD 3, CD 1, Act 174, 7/1/2019.*

Resort Fee. The legislature has tried to pass this for several years and the hotel industry has resisted. Basically the legislature felt the resort fees which you pay when you go to most hotels are just another source of income for the hotels that they don't put under the hotel room income category. As such, they felt it should be taxed. As a result S.B. 380 calls for the 10.25% hotel room tax to be assessed on resort fees. *Reference S.B. 380, SD1. Act 20, 4/23/2019.*

Government

Protests. Too many protests? Well, some people felt that way and as a result the Department of Commerce and Consumer Affairs introduced a bill in order to get some money out of the deal. This is a non-refundable protest fee which is charged at the time you file the protest. If the contract in dispute is under \$500,000.00 there is no fee. If it is between \$500,000 to \$1,000,000 you will pay a \$200 administrative fee and if it is over \$1,000,000 you will pay a \$1000 administrative fee. Keep in mind that this is above and beyond the "pay to play" protest fee which you pay in order to continue your protest which is done so in a bond form and which you lose if you lose your protest. *Reference S.B. 1213, SD 1, HD 1, CD 1, Act 73, 6/7/2019.*

Unlicensed Handyman. The handyman law was passed as an exception to the contractor's license law originally at \$100. In other words, a contractor's license is not needed in order to do work under \$100. 27 years ago the legislature passed a bill originally at \$500 and in the last few hours of conference upped it to \$1000. That is where it has been for the last 27 years. The Realtors have made strong pushes to increase that \$1000. Bills have been introduced over the years at \$5000, \$10,000, \$25,000 and even \$50,000. It came its closest in the 2018 legislature where it almost passed at \$5000. This year the proposal went in at \$1500, a proposal seen by some as reasonable and it passed. The only other change is that it eliminates the tax. That is, the \$1500 is a combination of labor and materials NOT including the tax. *Reference S.B 767, SD 1, HD 1, CD1.*

General Interest

Marijuana. H.B. 1383 decriminalizes the possession of 3 grams or less of marijuana. It treats it more like a traffic violation in that if you are busted you get a \$130 fine assessed. But you don't have to go to court unless you want to contest it. It also establishes a Task Force in order to look at other penalties involving marijuana that ought to be changed. *Reference H.B. 1383, HD 2, SD 1, CD 1.*

Gift Cards. If you have a gift card and the balance is less than \$5.00 you are able, under H.B. 314, to take it back and asked to be cashed out. *Reference H.B. 314, HD 1, SD 1, Act 236 7/2/2019.*

Got a Boat? If it is over 26 feet, you now must have mandatory general liability marine insurance in the amount of a minimum of \$100,000.00. *Reference H.B. 1033, HD 2, SD 2, CD1, Act 94 6/7/2019.*

DEAD BILLS

In our sometimes not too friendly to business legislature, dead bills are far more important than bills that have been passed. It seems that every year there are more attacks on honest businesses. We work very hard every year to pass bills but we also work even harder to kill bills. This year was no exception. Among the bad bills are those that follow.

Employer/Employee Laws

Family Leave. As referenced above, family leave was a hot topic. Two bills were actually put in to provide for family leave. One would be for paid family leave time and the other would be for unpaid family leave time. Neither passed, deferring to the study. A bill however that came very close to passing would have given one (1) week of family leave to any employee who had a grandchild with a health condition. Note: The current paid/unpaid family leave law does not cover grandchildren.

Minimum wage. Minimum wage proposals were also a hot subject this year with a variety of proposals. Basically both the House and Senate called for an increase in the minimum wage from \$10.10 to \$15.00. The Senate targeted that at 2023 and the House stretched it out to 2024. The other factor for the House is they provided for a lower minimum wage if the employer provided pre-paid health care. This is the first time the legislature has recognized that Hawaii employers face higher costs than most mainland employers because of our mandatory pre-paid healthcare law.

General Contractor liability for sub wages. This bill was a sleeper and became an increasingly hot issue as the session went on. A Carpenter's bill, it basically provided that the general contractor would be responsible for all wages owed by a subcontractor to their employees and any sub of a sub on any job both government and private. Although it sounds like a fair proposition we became increasingly concerned when GCA wholeheartedly supported the bill. It appeared to us that the bill had many unintended consequences. As an example, a general contractor could decide to withhold payment on all subs for fear that there may be one employee of one sub (or one sub of a sub) who he did not know about and would continue to have liability exposure for the two (2) year window period as provided in the bill. We got the two (2) years lowered to one (1) year however it still concerned us that the amount of information general contractors could require of their subcontractors was excessive and provided a very convenient excuse for general contractors not to pay their subs in a timely manner. We fought aggressively hard on this bill and ultimately managed to stop it from going to Conference Committee and therefore passage.

Government

Incidental and Supplemental. One of the Union's introduced a bill this year that would have disallowed a specialty contractor from acting as a general contractor. We objected, the bill died.

Also dying was a bill to require past performance to be used as a factor in awarding government jobs.

An additional bill would have required the Davis Bacon wage scales to recognize the foreperson wage scale in a Collective Bargaining Agreement, if such wage scale was identified in the CBA.

Airport Corporation. This was a big bill for us. Not because we oppose the airport corporation but because it would be one of the few times that a major construction project would be taken out of the Procurement Code and the precedent that this would set. We opposed and for the second year in a row we were able to block this effort. The primary reason being that if it comes out of the Procurement Code along with it comes subcontractor listing, bonding and prompt payment. The House is to be credited for stopping this effort again while the airlines are pushing heavily to get it established.

Taxes

Three (3) tax bills that you may want to know about include 1) a failed effort to increase the general excise tax by ½ of 1% for the purpose of funding education; 2) the Air BNB bill which would have gathered millions of dollars in taxes by setting up a registry of vacation rentals. This bill actually passed but was vetoed. And 3) the REIT bill which would have disallowed the current tax deduction on dividends paid from real estate investment trust. This bill also actually passed but was vetoed.

General Interest

A bill died that would have outlawed passengers in pickup trucks.