



# THE LEGISLATIVE CENTER

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**2015**

**SPECIAL LEGISLATIVE**

**REPORT**

**PREPARED FOR THE**

**TILE CONTRACTORS ASSOCIATION OF HAWAII**

Now that the 2015 legislature has adjourned we can report to the Association on our activities for the legislative session. This year did not see as many bills as usual and there were not as many bills pertaining to the industry however the few bills that were there, were extremely important.

## **Favorable actions**

### **Sub-listing**

The sub-listing requirement is extremely important for the subcontracting construction industry. It not only prevents general contractors from bid chiseling but it also prohibits other tile subcontractors from bid pedaling, at least on state and county jobs. The General Contractors Association has identified this as one of their priorities for the last three (3) legislative sessions and this year they have made no secret of their desire to have the requirement eliminated. Generals have been more and more vocal and this year hired a professional lobbyist in order to push their cause. We are happy to report that we defeated the bill (H.B. 550) that would have repealed the subcontractor listing requirement and made it a penalty to bid shop...but how would you ever prove it? TCAH was instrumental in helping to defeat this bill by its participation in the process.

### **Handyman Licensing Exemption**

Also crucial to the Tile Contractors Association of Hawaii is a periodic effort to increase the threshold for when a contractors license is required. The bill, as originally introduced, would have said that anything under \$5000.00 did not require a contractors license. After we objected and also rallied up other subcontracting associations as well as the Unions, the Committee dropped the \$5000.00 but still increased it to \$2000.00. We concentrated our efforts on *Representative Angus McKelvey of Maui* who ultimately agreed not to hear the bill which kills it. To have your members compete with unlicensed contractors is bad enough but to have them compete with unlicensed contractors to do work up to

\$5000.00 per project is even worse particularly if all the materials are purchased by the owner.

### **Past performance**

For the last couple of years there has been a debate going on at the Capitol on how to develop a system to throw out past contractors who have not performed on state and county jobs. The debate has been on how do you establish a system and what would be fair and objective as opposed to one that uses subjective judgments? On this issue the general contractors and the subcontractors are probably aligned. There are many questions to be answered prior to developing a system such as this including what happens if the supplier is late or what happens if the specification is defective? We are also concerned about a contractor who is classified as a "poor performer" being given the right of appeal in order to explain extenuating circumstances. We want to be sure that the subcontractor is not dinged in those instances. In order to "take a stab" at developing a past performance system the legislature has created a Task Force and it includes representation from the Subcontractors Association of Hawaii as well as GCA, some unions and eight (8) governmental agencies.

### **Rail tax**

Most of the Oahu members have probably gotten used to paying the additional one-half of one percent excise tax for the rail tax. This years legislature extended the existence of the tax by five (5) years. Some contractors have actually supported this effort because they realize that they are going to get TOD (Transit Oriented Development) construction activity as a result of a rail station in a specific location. We are hopeful this will spur projects where tile is needed.

## **DEAD GOOD BILLS**

A number of bills were good but didn't pass. These included H.B. 131 which would have allowed for the disclosure of the experience statement when an applicant applies for a license at the Contractors License Board. Currently that information is subject to the right of privacy so even if you know an individual only has thirty (30) days of installation experience but if they list four (4) years they will succeed because it is not checked. We continue to support a change to the law that would make this information public.

H.B. 133 allowed for a tax credit for hotels. Obviously it will help hotels but it also would help the construction industry inasmuch as it would provide a tax credit for both new and renovation work in hotels. Unfortunately the legislature, considering the upward economy, did not feel that any tax credits would provide much of an incentive for the industry at this point.

H.B. 54 would have required general contractors to pay the licensing fee for and to get examined for any specialty contractors licenses that they automatically get. Right now both A-general engineering and B-general building contractors receive a variety of free and clear specialty licenses allowing them to act as subcontractors without further exam and without the payment of fees. SAH has long felt that this should not be the case and individuals should have to pay for those licensing exams and demonstrate their experience just like subcontractors have to do if they apply for another specialty license. We were unable to convince the Consumer Protection Committees of the need for this legislation.

### **BAD BILLS THAT DIED**

There are a variety of bad bills that died many of which we encouraged to die.

Among them was H.B. 499 which would have increased the threshold for when prevailing wages are required to be paid on public works projects from the current \$2000.00 to \$5000.00. It was our feeling that small specialty tile jobs might easily fall into this category making for a situation that would be uneven competition.

H.B. 1137 would have increased the general excise tax on suppliers (wholesalers) from the current one-half of one percent to one and one half percent.

Raising the minimum compensation (currently \$2000 a month) to be paid to an individual so that you can avoid paying them overtime is the subject of S.B. 1122, CD 1. The amount is 276 times the minimum wage. That means this amount could be fluctuating as the minimum wage goes up, now \$7.75 and rising to \$10.10 on 1/1/18. Another version did this by a \$250.00 step increase every other year for six (6) years. There is no agreement as to which way this should be done so the bill died. *Note: This is not likely to affect many of our members because if you do business on other islands or have an annual dollar volume of more than \$500,000, you are subject to the federal Fair Labor Standards Act not the state law.*

Independent contractors. This is an area that has been particularly bothersome. First, it is misinterpreted by businesses commonly and second, it is mishandled by the Department of Labor. Hawaii actually has one of the strictest tests for determining whether someone is an independent contractor. If you think they are but the state says they are not you can owe up to three (3) years of back unemployment insurance taxes. Under the terms of S.B. 1219 the test that would have to be used is twenty (20) different common law factors typically used by the feds in order to determine who is an employee and who is an independent contractor.

Your workers compensation insurance would have gone up for a bill that allows the IME (Intermediate Medical Exam) to be performed by a physician of mutual selection. (Currently the Employer decides on the doctor.)

Lastly there were four (4) Resolutions introduced all of which addressed the small purchase requirements. The small purchase provisions are instances under the Public Works Law that allows the agencies to do things like get three (3) estimates from contractors and go with that as opposed to putting it out to bid. We have no problem with that however these Resolutions requested a study to increase the small purchase program dollar amounts. The problem with that is that there is no subcontractor listing under small purchase. We felt that it would be detrimental to have any increase without a corresponding accompaniment of the subcontractor listing clause.

Based on our testimony all four (4) Resolutions died.

### **Summary**

The Tile Contractors Association of Hawaii's involvement in the legislative process was essential. General contractors are becoming more vocal particularly on things like the subcontractor listing requirement. It is extremely helpful to have another specialty association in the mix opposing detrimental legislation to subcontractors and supporting legislation that would be beneficial. Sometimes legislators "count noses" and having one more association involved like the Tile Contractors Association is extremely helpful.