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PRESENTATION OF
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
REGULATED INDUSTRIES COMPLAINTS OFFICE

TO THE HOUSE COMMITTEE ON
ECONOMIC REVITALIZATION & BUSINESS

TWENTY-SIXTH STATE LEGISLATURE
REGULAR SESSION, 2011

TUESDAY, APRIL 5, 2011
9:00 A.M.

TESTIMONY ON
HOUSE CONCURRENT RESOLUTION NO. 286/HOUSE RESOLUTION NO. 253

REQUESTING THE DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS TO
ESTABLISH A TASK FORCE TO WORK COLLABORATIVELY TO FIND WAYS TO
MORE EFFECTIVELY ENFORCE THE STATE'S CIVIL AND CRIMINAL LAWS THAT
MAY APPLY TO UNLICENSED CONTRACTORS

TO THE HONORABLE ANGUS L.K. MCKELVEY, CHAIR,
AND TO THE HONORABLE ISAAC W. CHOY, VICE CHAIR,
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs ("Department")
appreciates the opportunity to testify on H.C.R. No. 286 and H.R. No. 253. My
name is Jo Ann Uchida of the Department's Regulated Industries Complaints Office
("RICO"). RICO offers the following comments and amendments in support of
these resolutions.

H.C.R. No. 286 and H.R. No. 253 request that the Department establish a task force, comprised of representatives from RICO, the Department of Labor and Industrial Relations, the Department of Taxation, the Department of the Attorney General, and the Office of the Prosecuting Attorney of each county, to develop a collaborative enforcement strategy to combat unlicensed contracting, evaluate existing laws, and propose legislative revisions, as appropriate, to facilitate more effective enforcement.

It has been RICO's experience that unlicensed contractors continue to engage in unlicensed contracting despite the imposition of administrative or civil sanctions. A task force consisting of criminal as well as civil enforcement agencies and specifically charged with developing enforcement strategies will significantly enhance RICO's ability to deter unlicensed contracting.

RICO notes, however, that a fixed number of representatives from each State and County office would facilitate organized discussions and decision-making. As such, RICO suggests that the resolutions be amended, on page 2, line 30 of H.C.R. 286 and on page 2, line 25 of H.R. 253, to provide that the task force shall be comprised of two representatives from each State Department and County office identified in the resolutions.

Thank you for this opportunity to testify on H.C.R. No. 286 and H.R. No. 253. I will be happy to answer any questions that the members of the Committee may have.



**STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**

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April 05, 2011

To: The Honorable Angus L.K. McKelvey, Chair
and Members of the House Committee on Economic Revitalization & Business

Date: Tuesday, April 5, 2011

Time: 9:00 a.m.

Place: Conference Room 312, State Capitol

From: Dwight Y. Takamine, Director
Department of Labor and Industrial Relations

Re: Support of HCR286/HR253

I. OVERVIEW OF PROPOSED LEGISLATION

HCR286/HR253 requests that DCCA establish a task force and work collaboratively with other state and county agencies to more effectively enforce the state's civil and criminal laws that may apply to unlicensed contractors. The task force would be charged with further developing enforcement strategies and proposing new laws or revisions to existing ones.

III. HOUSE CONCURRENT RESOLUTION/HOUSE RESOLUTION

The Department supports the resolutions and recommends amending the measure by specifying that each agency provide two representatives to serve on the task force. DLIR asks, however, that due to the ongoing fiscal constraints facing the departments, consideration be given to the extent of the involvement of the representatives in the operations of the committee. The Department, recognizing that unlicensed construction activity undermines the state's regulatory system and puts contractors who follow the law at a disadvantage, fully supports the concept of a task force that will enhance the efforts of all agencies to enforce existing laws and deter unlicensed activity.

BIA-HAWAII

BUILDING INDUSTRY ASSOCIATION

April 5, 2011

Representative Angus McKelvey, Chair
Committee on Economic Revitalization and Business
State Capitol, Room 312
Honolulu, Hawaii 96813

RE: HCR 286/HR253 REQUESTING THE DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS TO ESTABLISH A TASK FORCE TO WORK COLLABORATIVELY TO FIND WAYS TO MORE EFFECTIVELY ENFORCE THE STATE'S CIVIL AND CRIMINAL LAWS THAT MAY APPLY TO UNLICENSED CONTRACTORS.

Chair McKelvey and Members of the Committee:

I am Karen Nakamura, Chief Executive Officer of the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, the Building Industry Association of Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii.

BIA-Hawaii strongly supports the passage of HCR286 and HR253. BIA-Hawaii strongly supports upholding the Contractors Licensing Law because we believe the consumer must be protected from those who represent themselves as competent and experienced builders. A licensed contractor must meet rigorous tests of the Contractors License Board, such as having the required training and experience in the trade, and financial standing and knowledge of state law. The licensed contractor must have workers compensation insurance and liability insurance. Hiring a licensed contractor provides certain remedies to the consumer if a licensed contractor has violated the law. There are no remedies for the consumer if they hired an unlicensed builder.

HCR286 and HR253 focus on a huge problem in our industry. Because licensed contractors are held accountable for their actions and must show proof of their

liability and workers compensation insurance, many builders have chosen not to be licensed. We believe the underground economy sustained by these unlicensed builders is an untapped revenue source for the State. The proposed task force will direct greater effort to identifying and dealing with unlicensed builders. The unsuspecting public is ultimately liable for the injuries sustained by workers of an unlicensed builder or for faulty workmanship.

Please pass these resolutions to support the effort of dealing with unlicensed activity in construction.

Thank you for the opportunity to share our views with you.

A handwritten signature in black ink that reads "Karen I. Nakamura". The signature is written in a cursive, flowing style.

Executive Vice President

Chief Executive Officer

BIA-Hawaii

April 4, 2011

Chair Mckelvey, Vice Chair Choy

H.C.R. 286 and H.R. 253

Tue April 5, 2011 9a.m. ERV

My name is Scotty Anderson, Chair, State Contractors License Board, and I support HCR 286 and HR 253 with the change suggested by RICO (JoAnn Uchida), regarding the composition of the task force at two representatives from the departments named.

Thank you for this opportunity.

F.M. Scotty Anderson
2435 Aha Aina Place
Honolulu, Hi 96821
306-5697



Testimony of C. Mike Kido
External Affairs
The Pacific Resource Partnership

House Committee on Economic Revitalization and Business
Representative Angus L.K. McKelvey, Chair
Representative Isaac W. Choy, Vice Chair

**HR 252/HCR 285 – REQUESTING COMMERCIAL GENERAL LIABILITY INSURERS TO SUBMIT
PREMIUM INFORMATION TO THE LEGISLATURE.**

Tuesday, April 5, 2011
10:20 am
Conference Room 312

Aloha Chair McKelvey, Vice Chair Choy, and Members of the Committee:

My name is C. Mike Kido, External Affairs of the Pacific Resource Partnership (PRP), a labor-management consortium representing over 240 signatory contractors and the Hawaii Carpenters Union.

PRP **supports** HR 252/HCR 285 – Requesting Commercial General Liability Insurers to Submit Premium Information to the Legislature. The request includes every domestic and foreign insurance company that has ever issued commercial general liability policies in the State of Hawaii submit information to the Legislature no later than May 3, 2011.

PRP **strongly agrees** with the following cited by Land Use Research Foundation of Hawaii (LURF):

The requests for information made by HR 252/HCR 285 arise in connection with the issue raised by currently pending HB 924, which proposes to add new sections to the Insurance Code to clarify coverage for liability for damages arising from construction defects. The measure is in response to a recent Hawaii Intermediate Court of Appeals decision, *Group Builders, Inc. v. Admiral Insurance Co.*, 123 Haw. 142 (2010), which held that a construction defect claim does not constitute an “occurrence” under a commercial general liability policy, or in short, that commercial general liability insurance policies do not provide coverage for construction defects.

The premium information sought by HR 252 and HCR 285 may constitute a mere portion of the critical information actually required to satisfactorily and effectively clarify the existing insurance laws in order to mitigate the negative impact of the *Group Builders* decision on the local construction industry and economy.

Other inquiries which may also be pertinent to the Committees’ determination include:

- The total number of construction defect claims received by the identified insurance companies from local contractors and construction professionals over the past ten (or more) years, together with claims’ history/information indicating the coverage decisions made and dollar amounts paid on each of such claims;

- The understanding of the insurance carrier regarding liability and coverage for construction defects;
- Whether the risk of liability arising from construction defects had in fact been/continues to be calculated into the cost of premiums charged to contractors and construction professionals; and
- Whether premium costs have been/are planned to be lowered in view of the coverage position now being taken by insurers based on the *Group Builders* decision.

Thank you for the opportunity to share our views with you and we respectfully ask for your support on HR 252/HCR 285.