

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 285 and HB 252 Requesting Commercial General Liability Insurers to
Submit Premium Information to the Legislature

Dear 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 HCR 285 and HR 252. HCR 285 and HB 252 request that every domestic and foreign insurance company that has ever issued commercial general liability policies in the State to submit information to the Legislature on the total premiums received for their commercial general liability policies during the past ten years. These resolutions seek information from the insurance carriers who sold commercial general liability policies on how much they were paid for these policies and the underlying risks that were calculated in the premiums.

The construction industry was greatly affected by the Group Builders decision in May of 2010 in which the Intermediate Court of Appeals held that construction defect claims are not covered under commercial general liability policies and that the insurance carriers who sold such policies were not obligated to pay on claims for bodily injury or property damage. The construction industry is working toward the restoration of that insurance coverage.

Without the restoration of coverage, numerous contractors, subcontractors, consumers, and even governmental entities would be adversely affected.

Under Hawaii law, contractors are subject to claims for construction defects for ten years after performance of the allegedly defective work. As a result of the *Group Builders* decision, contractors are left exposed to liability not only for alleged construction defects which may now occur, but which may have occurred in connection with projects already completed within the past ten year period for which coverage has already been paid.

BIA-Hawaii believes that the *Group Builders* decision has created a windfall for insurance carriers at the expense of construction-related companies such as developers, contractors, sub-contractors, and sureties. We believe that insurance carriers have, over time, calculated the risk of liability arising from construction defects into the premiums charged to their insured. Construction professionals report that they have paid these commercial general liability insurance premiums for such coverage for many years - in some cases, for decades, and liability for damages arising from defective workmanship had been routinely covered prior to the *Group Builders* decision.

In addition to the information requested by the resolutions, we believe it would be instructive to have the following information:

- 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.

HCR 285 and HR 252 express legislative intent to ascertain important information on the magnitude of the problem created by the *Group Builders* decision. The adoption of these resolutions is important to finding an equitable resolution to the problems facing our industry.

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

Karen I. Nakamura

Executive Vice President/Chief Executive Officer, BIA-Hawaii

The House of Representatives
Committee on Economic Revitalization and Business
April 5, 2011
10:20 a.m., Room 312

Statement of the Hawaii Carpenters Union on HCR 285,
Requesting Insurance Premium Information

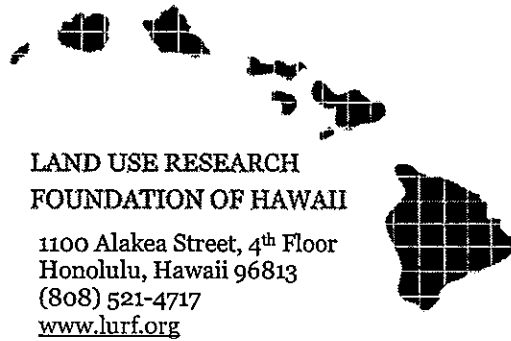
The Hawaii Carpenters Union supports HCR 285, with comments. Our members, and all residents working in the construction industry, are affected by destabilization of the industry, including the potential loss of employers bankrupted by the withdrawal of insurance coverage.

HCR 285 can help provide an understanding of the situation, and to prevent catastrophic results.

While information on the total premiums from commercial general liability policies is requested in the resolution, the amount of premiums affected by the "Group Builders, Inc. vs. Admiral Insurance Company" case are of most direct interest, and should be noted.

It would also be useful to know how insurance companies allowed for coverage of the relevant risk prior to the court decision.

Thank you for considering our testimony in support of HCR 285.



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April 1, 2011

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

Support for HR 252 and HCR 285, Relating to Insurance; Requesting Commercial General Liability Insurers to Submit Premium Information to the Legislature.

Tuesday, April 5, 2011 at 10:20 a.m. in CR 312

My name is Dave Arakawa, and I am the Executive Director of the Land Use Research Foundation of Hawaii (LURF), a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. One of LURF's missions is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii's significant natural and cultural resources and public health and safety.

LURF appreciates the opportunity to provide our testimony **in support of HR 252 and HCR 285**, which request that every domestic and foreign insurance company that has ever issued commercial general liability policies in the State of Hawaii submit information to the Legislature by May 3, 2011, regarding the total premiums each company has received for its commercial general liability policies during the past ten years.

Background. The requests for information made by HR 252 and HCR 285 arise in connection with the issue raised by currently pending HB 924, which proposes to add new sections to Article 1 of the Insurance Code, Chapter 431, Hawaii Revised Statutes (HRS), 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.

LURF's Position. LURF strongly supports HR 252 and HCR 285, and the amendments proposed to be made to HRS Chapter 431 by HB 924, based on the following:

- The *Group Builders* decision has, and will continue to negatively impact the development and construction industries in Hawaii. Contractors and other construction professionals cannot afford the expense of questionable insurance coverage. Commercial liability policies are a significant cost in the construction industry, and can cost contractors hundreds of thousands, if not millions of dollars for large construction projects. Smaller contractors may be forced to close their businesses in lieu of risking their equity.

- Proponents of HB 924 believe that the *Group Builders* decision has created a windfall for insurance carriers at the expense of construction-related companies such as developers, contractors, sub-contractors, and sureties. LURF understands that insurance carriers have, over time, calculated the risk of liability arising from construction defects into the premiums charged to their insured. Construction professionals report that they have paid these commercial general liability insurance premiums for such coverage for many years - in some cases, for decades, and liability for damages arising from defective workmanship had been routinely covered prior to the *Group Builders* decision.
- Under Hawaii law, contractors are subject to claims for construction defects for ten years after performance of the allegedly defective work. As a result of the *Group Builders* decision, contractors are left exposed to liability not only for alleged construction defects which may now occur, but which may have occurred in connection with projects already completed within the past ten year period for which coverage has already been paid.

LURF believes 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.

Conclusion. The commercial general liability premium information requested by HR 252 and HCR 285, as well as other coverage and premium-related information such as described above, is necessary to support Legislative clarification of the insurance laws as proposed by HB 924, which is intended to help alleviate the severe negative impact of the *Group Builders* decision on the local construction industry and economy. Based on the above, LURF respectfully requests that these resolutions be **favorably considered and passed by your Committees.**

Thank you for the opportunity to express our **support for HR 252 and HCR 285.**

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GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

April 5, 2011

TO: THE HONORABLE REPRESENTATIVE ANGUS L.K. McKELVEY, CHAIR
AND MEMBERS OF COMMITTEE ON ECONOMIC REVITALIZATION &
BUSINESS

SUBJECT: HCR285/HR252 REQUESTING COMMERCIAL GENERAL LIABILITY
INSURERS TO SUBMIT PREMIUM INFORMATION TO THE
LEGISLATURE.

NOTICE OF HEARING

DATE: Tuesday, April 05, 2011
TIME: 10:20 AM
PLACE: Conference Room 312

Dear Chair McKelvey and Members of the Committee,

The General Contractors Association (GCA), an organization comprised of over five hundred and eighty (580) general contractors, subcontractors, and construction related firms, **strongly supports** the passage of HCR 285 and HR252. These Resolutions request information on the total premiums received on commercial general liability policies during the past ten (10) years by insurance carriers doing business in the state of Hawaii.

This information will greatly assist the legislature to understand the full extent of the financial situation as it relates to the Group Builders decision on the construction industry. This decision held that claims for property damage and bodily injury arising from construction defects may not be covered under commercial general liability insurance although Contractors had paid substantial amounts in premiums for such coverage.

This decision will have severe negative ramifications for the entire construction industry unless the coverage paid for is restored.

The GCA urges you to pass the two (2) resolutions.

Thank you for the opportunity to testify on this important matter.