

STAND. COM. REP. NO. 3084

Honolulu, Hawaii

MAR 20 2008

RE: H.B. No. 2302
H.D. 2
S.D. 1

Honorable Colleen Hanabusa
President of the Senate
Twenty-Fourth State Legislature
Regular Session of 2008
State of Hawaii

Madam:

Your Committees on Commerce, Consumer Protection, and Affordable Housing and Judiciary and Labor, to which was referred H.B. No. 2302, H.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO REAL PROPERTY,"

beg leave to report as follows:

The purpose of this measure is to modernize certain functions of the Bureau of Conveyances by amending chapter 502, Hawaii Revised Statutes, to enable the Bureau of Conveyances to accept and use electronic records and signatures.

Specifically, this measure:

- (1) Permits the Registrar of the Bureau of Conveyances to accept electronic documents with electronic signatures for recording; and
- (2) Requires the Judiciary to study the effects that electronic recording may have on the adjudication of Land Court applications, and the permissible uses for electronic recording.

Testimony in support of this measure was submitted by the Department of Land and Natural Resources, the Hawaii Association of Realtors, Wyndham Worldwide, the Commission to Promote Uniform Legislation, the American Resort Development Association, Hilton



Grand Vacations Club, and the Hawaii Land Title Association. The Judiciary submitted comments.

Your Committees find that the widespread enactment of the Uniform Electronic Transactions Act and the federal Electronic Signatures in Global and National Commerce Act has made it possible to treat sales contracts, mortgage instruments, and promissory notes that are memorialized in electronic form with electronic signatures to be equivalent to paper documents with manual signatures. Currently, the Registrar at the Bureau of Conveyances is required to accept only original paper instruments with original signatures for recordation in the Regular System and the Land Court system, and changes in statute are necessary in order for the Registrar to accept documents electronically.

Although there is a need to modernize certain functions at the Bureau of Conveyances, your Committees have concerns that amending the statute to allow electronic filing and use of documents may be premature, especially in light of the concerns raised by the Judiciary as well as the findings in the draft report submitted by Joint Senate-House Investigative Committee on the Bureau of Conveyances established under S.C.R. No. 226 (2007). Your Committees note the numerous questions and concerns that have been raised relating to the electronic record keeping system already installed at the Bureau of Conveyances, especially with respect to the oversight and maintenance of the current system and the security of the documents electronically deposited and archived in the system. Although testimony indicated that a working group established by the Department of Land and Natural Resources has strongly recommended automating the filing and recordation of Bureau documents, more information regarding feasibility, cost, and impact is needed before a new electronic filing system is installed at the Bureau of Conveyances.

Accordingly, your Committees have amended this measure by:

- (1) Deleting any language that amends chapter 502, Hawaii Revised Statutes, that permits the Registrar of the Bureau of Conveyances to accept electronic documents with electronic signatures for recording;
- (2) Adding language that requires the Department of Land and Natural Resources to conduct a feasibility study to include:



- (A) Making an assessment of the current electronic record keeping system at the Bureau of Conveyances;
 - (B) Determining how a new electronic filing system will be implemented at the Bureau of Conveyances;
 - (C) Determining the impact that electronic filing will have on the Bureau of Conveyances, its operations, and to the public;
 - (D) Determining the cost of installation and maintenance of a new electronic filing system;
 - (E) Establishing a time frame for procuring, implementing, and getting a new electronic filing system up and running at the Bureau of Conveyances;
 - (F) Exploring the electronic filing systems in other jurisdictions and the impact the electronic filing has on that jurisdiction; and
 - (G) Addressing any concerns raised with respect to the current computer system at the Bureau of Conveyances in the Joint Senate-House Investigative Committee report as well as the investigation by the Department of the Attorney General and the ethics probe by the Hawaii State Ethics Commission, if those reports are released during the study;
- (3) Adding language that requires the Department of Land and Natural Resources to submit a written report of its findings and recommendations prior to the 2009 Regular Session;
- (4) Inserting an effective date of July 1, 2050, to ensure further discussion on this matter; and
- (5) Making technical, nonsubstantive or conforming amendments for the purposes of clarity and style.

As affirmed by the records of votes of the members of your Committees on Commerce, Consumer Protection, and Affordable Housing and Judiciary and Labor that are attached to this report, your Committees are in accord with the intent and purpose of H.B. No. 2302, H.D. 2, as amended herein, and recommend that it pass



Second Reading in the form attached hereto as H.B. No. 2302, H.D. 2, S.D. 1, and be referred to the Committee on Ways and Means.

Respectfully submitted on behalf of the members of the Committees on Commerce, Consumer Protection, and Affordable Housing and Judiciary and Labor,


BRIAN T. TANIGUCHI, Chair


RUSSELL S. KOKUBUN, Chair



