

HOUSE OF REPRESENTATIVES

STATE OF HAWAII
STATE CAPITOL
HONOLULU, HAWAII 96813



2008 FEB 22 A 8 38

February 8, 2008

MEMORANDUM

TO: Representative Marcus Oshiro, Chair
Committee on Finance

Representative Marilyn Lee, Vice Chair
Committee on Finance

FROM: Representative Kirk Caldwell *YC*

RE: Request for Amendment to HB2302

I would like to request that you consider passing HB2302 with an amendment. It is scheduled to be heard today at 1 pm. After discussions with the Registrar of the Bureau of Conveyances, I think we should amend the language of Section 502-21 HRS to allow the Bureau to use electronic archiving to eliminate the costly, time-consuming, and archaic process of archiving documents on microfilm. I would suggest an amendment that reads as follows:

Section 502-21, Hawaii Revised Statute is amended as follows:
"/" §502-21 **Recording of plans unlawful.** It shall not be lawful for the registrar to accept for record any plan of land, whether attached to, made a part of, or independent of, any deed, certified copy of judgment of condemnation, or other instrument; to the end and purpose that there shall be no plans recorded in the record books, but in substitution therefor there shall be a single method of filing plans in the archives of the bureau of conveyances; provided that where sketches, blueprints, or plans of land of a size not larger than 8 1/2 inches by 14 inches which legibly reproduces under photographic, electronic, or electrostatic methods are attached to instruments and made a part thereof by reference to the same in the instrument, the registrar may record the same in the record books by means of the photographic recorder, on payment of the fee as provided in section 502-25."

This language is taken from Section 7 of HB3172, the Administration's bill, which is being heard today at noon. Thank you for your attention regarding this matter. Please contact my office at 586-8475 if you have any questions or concerns.



The Judiciary, State of Hawaii

Testimony to the Twenty-Fourth State Legislature, 2008 Session

House Committee on Finance
The Honorable Marcus R. Oshiro, Chair
The Honorable Marilyn B. Lee, Vice Chair

Friday, February 22, 2008, 1:00 p.m.
State Capitol, Conference Room 308

by
Russell Tellio
Court Administrator
First Circuit Court

WRITTEN TESTIMONY ONLY

Bill No. and Title: House Bill No. 2302, H.D. 1, Relating to Real Property

Judiciary's Position:

The Judiciary takes no position on this measure however submits the following comments for consideration by this committee.

House Bill No. 2302, H.D. 1 would permit the Registrar of the Bureau of Conveyances to accept electronic documents with electronic signatures for recording and would further require the Judiciary to study what effect electronic recording may have on the adjudication of land court applications, determine permissible uses for electronic recording, and report its findings to the legislature prior to its 2009 regular session.

While the Judiciary supports the concept of electronic filing for all legal documents, including the recordation of real estate documents, without more detailed information the Judiciary is unable to give its full support to any electronic filing system that may be proposed by this measure.

We respectfully submit that in consideration of the many questions that have been raised by the Joint Senate-House Investigative Committee on the Bureau of Conveyances with regards to the electronic record keeping system already installed at the Bureau of Conveyances, it is recommended that this measure be amended to provide for legislative and judicial oversight of the proposed system.



House Bill No. 2302, H.D. 1, Relating to Real Property
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We note the following statement in the report submitted by the legislative investigative committee:

“ . . . Despite the computer system’s extensive and integral role as the electronic repository of all recorded documents processed by the Bureau, the Bureau failed to exert the appropriate oversight with respect to the system’s installation, maintenance, and upgrading as well as subsequent installations and maintenance of computer servers and software. The Bureau’s lack of computer system oversight and management could ultimately affect the integrity of the Bureau’s operations, resulting in potentially enormous security ramifications.” Draft Report Joint Senate-House Investigative Committee on the Bureau of Conveyances, at page 39-40.

In view of the findings contained in that report and in consideration of the on-going investigations by the Office of the Attorney General and Ethics Commission, the Judiciary further recommends that problems that may be detailed in any report or investigation relating to the integrity of operations, data security, or internal controls in the current electronic data system be fully resolved prior to the implementation of any new electronic data systems that may be contemplated by this measure.

Thank you for the opportunity to comment on this measure.



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION

AFSCME LOCAL 152, AFL-CIO
888 MILILANI STREET, SUITE 601 • HONOLULU, HAWAII 96813-2991



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The Twenty-Fourth Legislature, State of Hawaii
Hawaii State House of Representatives
Committee on Finance

Testimony by
Hawaii Government Employees Association – HGEA/AFSCME, Local 152
February 22, 2008

**H.B. 2302, HD1 – RELATING TO
REAL PROPERTY**

H.B. 2302, HD1 would (1) permit the Registrar of the Bureau of Conveyances to accept electronic documents with electronic signature for recording and, (2) require the Judiciary to study the impact of electronic recording on the adjudication of land court applications and determine the permissible uses for electronic recording.

While we can support the general intent of the proposed legislation, the Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO provides the following comments.

We agree that technological changes and innovations have created many opportunities to become more efficient in communication and the way government conducts business. It is no doubt that the use of electronic communications to conduct transactions in any work operation has the potential to increase the efficiency of the current operations. However, if the infrastructure and appropriate staffing to effectively implement such a system is not in place or not prepared, efficiency can actually decrease and the impact on the work unit and staff can be devastating.

If it hasn't already been done, we would recommend that the department clearly determine the infrastructure and staffing needs required to implement such a system before permitting the registrar to accept electronic documents with electronic signature for recording.

We are in agreement that a study should also be done to examine the effect electronic recording may have on the adjudication of land court applications, and permissible uses for electronic recording. However, we believe this study should also be done before the registrar is permitted to implement a system to accept such electronic documents with electronic signatures for recording.

The Twenty-Fourth Legislature, State of Hawaii
Hawaii State House of Representatives
Committee on Finance
Testimony by HGEA/AFSCME, Local 152
re: H.B. 2302, HD1 – Relating To Real Property
February 22, 2008
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Thank you for the opportunity to comment on H.B. 2302, HD1.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Nora A. Nomura". The signature is fluid and cursive, with the first name "Nora" being the most prominent.

Nora A. Nomura
Deputy Executive Director



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The Twenty-Fourth Legislature, State of Hawaii Hawaii State House of Representatives Committee on Finance

Testimony by
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H.B. 2302, HD1 – RELATING TO REAL PROPERTY

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The Twenty-Fourth Legislature, State of Hawaii
Hawaii State House of Representatives
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Testimony by HGEA/AFSCME, Local 152
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Page 2

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Respectfully submitted,

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Nora A. Nomura
Deputy Executive Director

**TESTIMONY OF THE
COMMISSION TO PROMOTE UNIFORM LEGISLATION**

**ON H.B. No. 2302, H.D.1
RELATING TO REAL PROPERTY.**

BEFORE THE HOUSE COMMITTEE ON FINANCE

DATE: Friday, February 22, 2008, at 1:00 p.m.
Conference Room 308, State Capitol

PERSON(S) TESTIFYING: PETER HAMASAKI
Commission to Promote Uniform Legislation

C:/CPUL2008/TES-HB 2302 HD1 Real Property 2/22/08

E-MAIL to FINtestimony@Capitol.hawaii.gov.

Chair Oshiro, Vice Chair Lee, and Members of the House Committee on Finance:

On behalf of the State of Hawai'i Commission to Promote Uniform Legislation (CPUL), thank you very much for this opportunity to testify in support of H.B. No. 2302, H.D. 1, relating to real property.

Section 2 of this bill enacts, with some modifications, the Uniform Real Property Electronic Recording Act (URPERA) that was developed by the National Conference of Commissioners on Uniform State Laws (NCCUSL) in 2004. A summary of the Uniform Real Property Electronic Recording Act prepared by the NCCUSL is appended to this testimony.

URPERA equates electronic documents and electronic signatures to original paper documents and manual signatures, so that any requirement for originality (paper document or manual signature) is satisfied by an electronic document and signature.

URPERA is designed to help state administrative agencies meet the demands of the public for quick identification of title ownership. It also should streamline the real estate transaction at a benefit to consumers and every facet of the real estate industry. URPERA is an essential complement to those states that have already adopted UETA (HRS chapter 489E), acting as an extension of that law's effectiveness.

The basic goal of URPERA is to create legislation authorizing land records officials to begin accepting records in electronic form, storing electronic records, and

setting up systems for searching for and retrieving these land records. The intent is only to authorize such activities, not to mandate them.

URPERA has been adopted in fifteen (15) states since it was approved by NCCUSL in 2004.¹ In addition, URPERA has been introduced in five (5) other states.²

Because it is a uniform act, we are hopeful that the rules, procedures, and systems adopted in other jurisdictions that have enacted URPERA can provide models for Hawai'i, and create a uniform system of registration amongst the different U.S. jurisdictions.

In summary, we support H.B. No. 2302, H.D. 1.

Thank you very much for this opportunity to testify.

1 Arizona, Arkansas, Delaware, District of Columbia, Florida, Idaho, Illinois, Kansas, Nevada, New Mexico, North Carolina, Tennessee, Texas, Virginia and Wisconsin. See http://www.nccusl.org/Update/uniformact_factsheets/uniformacts-fs-urpera.asp

2 Kentucky, Massachusetts, Oklahoma, South Carolina, and Washington. See id.



Uniform Law Commissioners

The National Conference of Commissioners on Uniform State Laws

SUMMARY

Uniform Real Property Electronic Recording Act

Electronic communications make it possible to conduct old transactions in new forms. Some of the oldest kinds of transactions governed by law are transactions in real estate: for example, sales, leases and mortgages. In the Middle Ages transactions in real estate were conducted symbolically, without paper or signatures. Most people were illiterate. Writing, printing and more universal literacy brought paper deeds, mortgages and leases, memorialized by words on paper with manual signatures. These were filed in public records to establish who had rightful title to any piece of land. Several centuries have gone by since that initial migration to the then new technology of paper documents and manual signatures. A new technology of computers, software to run them and electronic communications have come to replace paper. The law of real property must now make a transition to accommodate the new technology. The efficiency of real estate markets make this imminently necessary.

This long dependence on paper, however, casts up certain barriers to using electronic communications to carry on real estate transactions. The law of the states of the United States has many "statute of fraud" requirements that inhibit the use of electronic communications. Statute of fraud requirements put total and express reliance upon paper documents and manual signatures to make transactions enforceable. No paper, no enforcement. These same requirements have also made it more difficult to develop electronic analogues to transactions in paper that are equally enforceable.

The first step to remedy the problem took place in 1999 when the Uniform Law Commissioners promulgated the Uniform Electronic Transactions Act (UETA). This act adjusted statute of fraud provisions to include electronic "records" and "signatures" for the memorialization of all kinds of transactions, including basic transactions in real estate. It is possible to have sale contracts, mortgage instruments (in whatever form a jurisdiction uses) and promissory notes memorialized in electronic form with electronic signatures that will now be treated the equal of the same paper documents with manual signatures. This is the result of the wide-spread enactment of UETA and of the subsequent enactment of the Electronic Signatures in Global and National Commerce Act (E-Sign) by Congress.

Real estate transactions, however, require another step not addressed by either UETA or E-Sign. Real estate documents must be recorded on public records to be effective. Recording takes place in most states in a county office devoted to keeping these records. Recording protects current interests in real estate by clarifying who holds those interests. The chain of title leading to the current title-holder, meaning the historic record of documents relating to transactions for a specific piece of real estate, establishes the marketability of that piece of real estate by the current owner of interests in it. The real estate records establish this chain of title. State law governs these local recording offices, and there are requirements in the law of every state relating to the originality and authenticity of paper documents that are presented for recording. These are themselves "statute of fraud" provisions that must be specifically adjusted before electronic recording may take place. Neither UETA nor E-Sign help.

There must be an orderly conversion of every recording office in the United States for electronic recording to become accepted universally. That will be a complex process, but it needs a starting point in the law. The **Uniform Real Property Electronic Recording Act (URPERA)**, promulgated by the Uniform Law Commissioners in 2004, is that essential start.

The act does three fairly simple things that will have monumental effect. First, it establishes that

any requirement for originality, for a paper document or for a writing manually signed before it may be recorded, is satisfied by an electronic document and signature. This is essentially an extension of the principles of UETA and E-Sign to the specific requirements for recording documents relating to real estate transactions in any state. Second, it establishes what standards a recording office must follow and what it must do to make electronic recording effective. For example, the office must comply with standards set by the board established in a state to set them. It must set up a system for searching and retrieving electronic documents. There are a minimum group of requirements established in URPERA. Third, URPERA establishes the board that sets state-wide standards and requires it to set uniform standards that must be implemented in every recording office.

These may be simple steps in the law, but the entire process of implementing electronic recording of electronic real estate documents will be complex from state to state. Inserting URPERA in the law of a state requires careful scrutiny of its real estate law. If paper documents are effective, for example, when they are time-stamped when delivered to a recording office, when should electronic documents that may be delivered electronically when an office is closed be considered effective? Answers to questions like this one will take some work and some complex decisions as URPERA is considered for enactment in any state.

Notwithstanding this need for careful effort, it is important to make the start on electronic recording of real estate documents. Real estate transactions involve billions of dollars in the United States. The efficiency of real estate markets depends upon the adoption of technology to make them faster and more competitive. After UETA and E-Sign, the key is URPERA. Every state needs to consider it as soon as possible.

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February 22, 2008

The Honorable Marcus R. Oshiro, Chair
House Committee on Finance
State Capitol, Room 308
Honolulu, Hawaii 96813

RE: H.B. 2302, HD1 Relating to Real Property
Hearing Date: Friday, February 22, 2008 @ 1:00 p.m., Room 308

Dear Chair Oshiro and Members of the House Committee on Finance:

On behalf of our 10,000 members in Hawaii, the Hawaii Association of REALTORS® (HAR) **supports the intent of H.B 2302, HD1.**

H.B. 2302, HD1 proposes to permit the registrar of the Bureau of Conveyances to accept electronic documents with electronic signatures for recording. HAR supports the streamlining of the process to record real estate documents at the Bureau of Conveyances.

Mahalo for the opportunity to testify.

GOODSILL ANDERSON QUINN & STIFEL

A LIMITED LIABILITY LAW PARTNERSHIP LLP

GOVERNMENT RELATIONS TEAM:

GARY M. SLOVIN, ESQ.
CHRISTOPHER G. PABLO, ESQ.
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February 20, 2008

TO: The Honorable Marcus R. Oshiro, Chair
House Committee on Finance
State Capitol, Room 308
Honolulu, Hawaii 96813

Via Email: FINtestimony@Capitol.hawaii.gov

FROM: Joanna Markle
RE H.B. 2302, HD1 Relating to Real Property
Hearing Date: Friday, February 22, 2008 @ 1:00 p.m., Room 308

Dear Chair Oshiro and Members of the House Committee on Finance:

I am Joanna Markle testifying on behalf of Wyndham Worldwide. Wyndham Worldwide has substantial interests in Hawaii that include Wyndham Vacation Ownership, with its new resort at Waikiki Beach Walk.

Wyndham Worldwide strongly supports H.B. 2302, HD1 to permit the registrar of the Bureau of Conveyances to accept electronic documents with electronic signatures for recording. This measure will allow for increased efficiency of the recording of documents.

Thank you very much for your consideration and for this opportunity to submit testimony.



American Resort Development Association
c/o PMCI Hawaii 84 N. King Street Honolulu, HI 96817 (808) 536-5688

February 22, 2008

TO: Representative Marcus Oshiro, Chair
Representative Marilyn Lee, Vice Chair
House Committee on Finance

FROM: ARDA-Hawaii
Contact: Donalyn Dela Cruz, PMCI Hawaii

RE: **FIN Hearing**
Friday, February 22, 2008
Room 308, 1:00 p.m.
House Bill 2302, HD1; Relating to Real Property

Dear Chair Oshiro, Vice Chair Lee, and members of the committee:

ARDA-Hawaii is the local chapter of the national timeshare trade association. Hawaii's timeshare industry currently accounts for over eight percent of the State's lodging inventory.

ARDA-Hawaii **supports** HB 2302, HD1 which would permit the bureau of conveyances to accept electronic documents with electronic signatures for recording. This measure also takes into account the effects that electronic recording may have on the adjudication of land court applications.

Passage of this measure would help the Bureau become more efficient in its recording process. Thank you very much for the opportunity to offer testimony on this measure.



Hilton Grand Vacations Club®

Written Testimony on:
HB 2302 HD1 "RELATING TO REAL PROPERTY."

Friday, February 22, 2008
1:00 p.m.
Conference Room 308 – State Capitol

Aloha, Chair Oshiro, Vice Chair Lee, and Members of the House Committee on Finance. I am Mark Wang, Executive Vice President of Hilton Grand Vacations, Hawaii-Asia Region.

We are in support of this measure that permits the registrar of the Bureau of Conveyances to accept electronic documents with electronic signatures for recording and requires a study as to effect electronic recording may have on the adjudication of land court applications, determine permissible uses for electronic recording.

Not only are we confident that the acceptance of electronic documents/signatures will make the Bureau more efficient for the public and its workers, we are confident that the Judiciary in its report, due prior to 2009 regular session, will find that jurisdictions around the United States have successfully implemented such programs without ill effect.

It is fitting to move this bill forward to the full House and crossover to the Senate because the public's interest over the Bureau of Conveyances has been heighten over the past year. The Joint State Senate-House Investigative Committee on the Bureau of Conveyances as well as a Department of Land and Natural Resources' working group of Bureau of Conveyance, real estate, title insurance, legal and labor professionals have both identified opportunities for improvement. We hope to see progress this session on moving these ideas forward.

Mahalo.