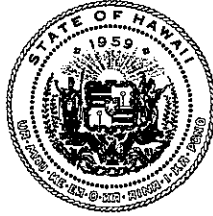


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KAIKOLOAWE ISLAND RESERVE COMMISSION  
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**TESTIMONY OF THE CHAIRPERSON  
OF THE BOARD OF LAND AND NATURAL RESOURCES**

**On House Bill 2302, House Draft 2, Senate Draft 1 – Relating To Real Property**

**BEFORE THE SENATE COMMITTEE ON  
WAYS and MEANS**

**March 28, 2008**

House Bill 2302, House Draft 2, Senate Draft 1 proposes to require the Department of Land and Natural Resources (Department) to conduct a feasibility study on the implementation and impact an electronic filing system may have at the Bureau of Conveyances (Bureau) and on its operations. The Department strongly opposes this measure and requests that the language in House Bill 2302, House Draft 2, with the exception of SECTION 3, be reinserted with amendments to effectively and efficiently address accepting electronic documents with electronic signatures for recording in the Bureau and the Office of the Assistant Registrar.

Presently, the Bureau and the Office of the Assistant Registrar accepts only original paper instruments with original signatures for recordation in the Regular System and the Land Court System. House Bill 2302, House Draft 2 will allow the Bureau and the Office of the Assistant Registrar to accept electronic documents for recordation once the Bureau and the Office of the Assistant Registrar have the capabilities to do so and the Department adopts rules specifying the format of acceptable electronic documents. An electronic cover sheet will be required to be filed together with the electronic document that will allow for faster indexing of documents.

Additionally, it is critical that the Bureau be authorized to archive documents in a digital format. Currently, the Bureau must scan the documents to a digital format as well as a microfilm format. The Department respectfully asks for the following amendment to be made to this measure:

**"§502-92 Copies of old records.** The registrar shall prepare photographic, electronic, or electrostatic copies of the records and record books in the bureau of conveyances which by reason of age, usage, or otherwise are in such condition that they can no longer be conveniently used or consulted without danger of destruction thereof, and certify to the correctness of such copies. The certified copies, and prints made from them and similarly certified, may be read in evidence with the same force and effect as the original instrument. The correctness of such copies is not conclusive but may be rebutted. All such records and record books from which the copies are made shall be deposited with the department of accounting and general services in its public archives.

The registrar may convert into electronic form, information or documents, before recording the electronic documents."

In order to accomplish the goal of electronic filing, the Department additionally respectfully requests amendments to this bill to indicate how the document will be stamped with the date, time, and document number and how endorsements or other notations can be made to documents filed electronically. These amendments are as follows:

**Section 501-20, Hawaii Revised Statutes**, be amended as follows:

“(1) By adding the new definition to be appropriately inserted and to read:  
“"Endorse", "endorsed", or "endorsing", or "indorse", "indorsed", or "indorsing" means to write or to electronically note title or memorandums.

"Endorsement" or "indorsement" means a written or electronic notation that is made upon, attached to, or logically associated with an instrument."

**Section 501-107, Hawaii Revised Statutes**, be amended as follows:

**"§501-107 Entry record; duplicates and certified copies.** The assistant registrar shall keep a record in which shall be entered all deeds and other voluntary instruments, and all copies of writs or other process filed or recorded with the assistant registrar relating to registered land. The assistant registrar shall note in the record the date of reception of all instruments. The instruments shall be stamped [~~with~~], have attached to, or have logically associated with the instrument the date, hour, and minute of reception and shall be regarded as registered from the date and time so noted, and the memorandum of each instrument when made on the certificate of title to which it refers shall bear the same date.”

**Section 501-108 (a), Hawaii Revised Statutes**, be amended as follows:

**"§501-108 Conveyance of fee; procedure.** (a) An owner desiring to convey in fee registered land or any portion thereof shall execute a deed of conveyance, which the grantor or the grantee may present to the assistant registrar in the bureau of conveyances; provided that no deed, mortgage, lease, or other voluntary instrument shall be accepted by the assistant registrar for registration unless a reference to the number of the certificate of title of the land affected by such instrument is incorporated in the body of the instrument tendered for registration. If the certificate reference in the instrument is not current, an endorsement of the current certificate of title shall be required.

The assistant registrar shall note upon, attach to, or logically associate with all instruments filed or recorded concurrently with the recorded instrument the document number and the certificate of title number [~~in the spaces provided therefor~~] wherever required.

The assistant registrar shall thereupon, in accordance with the rules and instructions of the court, make out in the registration book a new certificate of title to the grantee. The assistant registrar shall note upon the original certificate the date of transfer,

and a reference by number to the last prior certificate. The original certificate shall be stamped "canceled". The deed of conveyance shall be filed or recorded and endorsed with, have attached to, or have logically associated with the number and place of registration of the certificate of title of the land conveyed.

**Section 501-117, Hawaii Revised Statutes, be amended as follows:**

**"§501-117 Procedure.** Registration of a mortgage shall be made in the manner following: the mortgage shall be presented to the assistant registrar who shall enter upon the original certificate of title a memorandum of the purport of the mortgage, the time of filing or recording, the document number of the mortgage, and shall sign the memorandum. The assistant registrar shall also note upon the mortgage, attach to, or logically associate with the mortgage, the time of filing or recording, and a reference to the volume and page of the registration book where it is registered."

**Section 501-131, Hawaii Revised Statutes, be amended as follows:**

**"§501-131 Transfer in trust; procedure.** Whenever a deed or other instrument is filed or recorded for the purpose of transferring registered land in trust, or upon any equitable condition or limitation expressed therein, or for the purpose of creating or declaring a trust or other equitable interest in land without transfer, the particulars of the trust, condition, limitation, or other equitable interest shall not be entered on the certificate; but a memorandum thereon shall be entered by the words "in trust", or "upon condition", or other apt words, and by a reference by number to the instrument authorizing or creating the same. The assistant registrar shall note upon, attach to, or logically associate with the original instrument creating or declaring the trust or other equitable interest a reference by number of the certificate of title to which it relates. If the instrument creating or declaring a trust or other equitable interest is already recorded in the bureau of conveyances or admitted to probate, or any order of a federal court creating or declaring a trust in real property has been made, a certified copy may be filed or recorded by the assistant registrar and registered."

**Section 502-7, Hawaii Revised Statutes, be amended as follows:**

“(1) By adding the new definition to be appropriately inserted and to read:

""Endorse", "endorsed", or "endorsing", or "indorse", "indorsed", or "indorsing" means to write or to electronically note title or memorandums.

"Endorsement" or "indorsement" means a written or electronic notation that is made upon, attached to, or logically associated with an instrument."

The Department disagrees with SECTION 3 in the House Draft 2 of this measure which requests the Judiciary conduct a study on the effect of electronic recording. The Department is confident that it will be able to implement accepting documents in an electronic format. The Department does not feel there is a need to study this issue and report to the Legislature in 2009.