

JAN 21 2009

A BILL FOR AN ACT

RELATING TO REAL PROPERTY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that electronic
2 communications make it possible to conduct transactions in new
3 forms. Some of the earliest transactions governed by law are
4 real estate transactions. Deeds, mortgages, and leases were
5 memorialized by words on paper with manual signatures. However,
6 technology has advanced and electronic communications are
7 increasingly replacing paper documents. The law of real
8 property will need to transition to accommodate this change.
9 The efficiency of real estate markets makes this imminently
10 necessary.

11 The Uniform Electronic Transactions Act, as codified under
12 section 489E-5, Hawaii Revised Statutes, adjusted statute of
13 fraud provisions to enable electronic records and signatures for
14 the memorializing of a multitude of transactions, including
15 basic real estate transactions. The widespread enactment of the
16 Uniform Electronic Transactions Act and the federal Electronic
17 Signatures in Global and National Commerce Act made it possible
18 to treat sales contracts, mortgage instruments, and promissory



1 notes that are memorialized in electronic form, and with
2 electronic signatures, equal to the same paper documents that
3 have manual signatures. However, real estate documents must be
4 recorded on public record to be effective. This Act permits the
5 registrar of the bureau of conveyances to accept electronic
6 documents with electronic signatures for recording.

7 This Act is not intended to affect land court registration
8 pursuant to chapter 501, Hawaii Revised Statutes, except to
9 permit the registrar of the bureau of conveyances to accept,
10 make, keep, enter, file, index, store, archive, or convert any
11 document received by the registrar of the bureau of conveyances,
12 or filed at the bureau of conveyances, by the registrar of the
13 land court.

14 The purpose of this Act is to permit the registrar of the
15 bureau of conveyances to accept electronic documents with
16 electronic signatures for recording.

17 SECTION 2. Chapter 502, Hawaii Revised Statutes, is
18 amended as follows:

19 1. By adding a new part to read:

20 "PART XII. UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT

21 §502-A Definitions. As used in this part:



1 "Document" means information affecting title to real
2 property that is eligible to be entered into the public records,
3 including any plan of land prepared pursuant to section 502-17.

4 "Electronic" means relating to technology having
5 electronic, digital, magnetic, wireless, optical,
6 electromagnetic, or similar capabilities.

7 "Electronic document" means a document that is stored in an
8 electronic medium.

9 "Electronic signature" means an electronic sound, symbol,
10 or process attached to or logically associated with a document
11 and executed or adopted by a person with the intent of affixing
12 a signature on the document.

13 "Paper document" means a document that is inscribed on a
14 tangible medium such as paper.

15 "Person" means an individual, corporation, business trust,
16 estate, trust, partnership, limited liability company,
17 association, joint venture, public corporation, government, or
18 governmental subdivision, agency, or instrumentality, or any
19 other legal or commercial entity.

20 "State" means a state of the United States, the District of
21 Columbia, Puerto Rico, the United States Virgin Islands, or any



1 territory or insular possession subject to the jurisdiction of
2 the United States.

3 §502-B Electronic document and electronic signature;
4 validity. (a) The registrar may accept an electronic document
5 for recording. The electronic document shall be exempt from any
6 requirement under this chapter that a document or instrument be:

- 7 (1) Original;
- 8 (2) On paper, cloth, or other tangible medium; or
- 9 (3) In writing.

10 (b) When a law requires as a condition for recording, that
11 a document be signed, the requirement is satisfied by an
12 electronic signature.

13 (c) Any requirement that a document or a signature
14 associated with a document be notarized, acknowledged, verified,
15 witnessed, or made under oath shall be satisfied if the
16 electronic signature of the person authorized to perform that
17 act, and all other information required to be included, is
18 attached to or logically associated with the document or
19 signature. It shall not be necessary to accompany an electronic
20 signature with a physical or electronic image or a stamp,
21 impression, or seal.



1 (d) In a proceeding, evidence of a document or signature
2 shall not be excluded solely because it is in electronic form.

3 §502-C Recording of documents. (a) Notwithstanding any
4 other law to the contrary, and subject to any rules adopted by
5 the department of land and natural resources pursuant to chapter
6 91, the registrar may:

7 (1) Accept, make, keep, enter, file, index, store,
8 archive, and transmit electronic documents; provided
9 that the registrar shall continue to accept paper
10 documents for recording, as well, and shall place
11 entries for both types of documents in the same index;

12 (2) Convert or copy paper documents that are accepted for
13 recording into electronic form;

14 (3) Convert or copy prior records of documents made in the
15 bureau of conveyances into electronic form;

16 (4) Accept fees for services rendered under this chapter
17 electronically; and

18 (5) Enter into agreements with other officials of a state
19 or a political subdivision thereof, or of the United
20 States, on procedures or processes to facilitate the
21 electronic satisfaction of prior approvals and



1 conditions precedent to recording and the electronic
2 payment of fees.

3 (b) This part shall also apply to any document that is
4 received by the registrar of the bureau of conveyances, or filed
5 at the bureau of conveyances, by the registrar of the land court
6 pursuant to chapter 501.

7 (c) The department of land and natural resources shall
8 adopt rules pursuant to chapter 91 necessary for the purposes of
9 this part, including when an electronic document shall be
10 considered delivered to the registrar pursuant to section
11 502-32.

12 (d) To keep the standards and practices of recording in
13 the State in harmony with the standards and practices of
14 recording offices in other jurisdictions that enact
15 substantially this part and to keep the technology used by the
16 registrar compatible with technology used by recording offices
17 in other jurisdictions that enact substantially this part, the
18 department of land and natural resources, so far as is
19 consistent with the provisions of this part, in adopting rules
20 under chapter 91, shall consider:

21 (1) The standards and practices of other jurisdictions;



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- 1 (2) The most recent standards adopted by national standard
- 2 setting bodies such as the Property Records Industry
- 3 Association;
- 4 (3) The views of interested persons and governmental
- 5 officials and entities;
- 6 (4) The needs of jurisdictions of varying size,
- 7 population, and resources; and
- 8 (5) Standards requiring adequate information security
- 9 protection to ensure that electronic documents are
- 10 accurate, authentic, adequately preserved, and
- 11 resistant to tampering.

12 **§502-D Uniformity of application and construction.** In

13 applying and construing this uniform Act, consideration shall be

14 given to the need to promote uniformity of the law with respect

15 to its subject matter among states that enact it.

16 **§502-E Relation to federal Electronic Signatures in Global**

17 **and National Commerce Act.** This part modifies, limits, and

18 supersedes the federal Electronic Signatures in Global and

19 National Commerce Act, 15 United States Code Section 7001, et

20 seq., but does not modify, limit, or supersede Section 101(c) of

21 the federal Electronic Signatures in Global and National

22 Commerce Act, 15 United States Code Section 7001(c), or



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1 authorize electronic delivery of any of the notices described in
2 Section 103(b) of the federal Electronic Signatures in Global
3 and National Commerce Act, 15 United States Code Section
4 7003(b)."

5 2. By designating sections 502-1 to 502-4 as part I and
6 amending the title before section 502-1 to read:

7 "PART I. REGISTRAR, DEPUTY"

8 3. By designating sections 502-7 to 502-8 as part II and
9 amending the title before section 502-7 to read:

10 "PART II. [{}GENERAL PROVISIONS[{}]"

11 4. By designating sections 502-11 to 502-27 as part III
12 and amending the title before section 502-11 to read:

13 "PART III. INDEXING OF RECORDS"

14 5. By designating sections 502-31 to 502-34 as part IV and
15 amending the title before section 502-31 to read:

16 "PART IV. RECORDING"

17 6. By designating sections 502-41 to 502-54 as part V and
18 amending the title before section 502-41 to read:

19 "PART V. ACKNOWLEDGMENTS; PROOF OF INSTRUMENTS"

20 7. By designating sections 502-61 to 502-64 as part VI and
21 amending the title before section 502-61 to read:

22 "PART VI. INTERLINEATIONS, ERASURES, ETC."



1 recorded in the record books, but in substitution therefor there
2 shall be a single method of filing plans in the archives of the
3 bureau of conveyances; provided that where sketches, blueprints,
4 or plans of land of a size not larger than 8 1/2 inches by 14
5 inches which legibly reproduces under photographic, electronic,
6 or electrostatic methods are attached to instruments and made a
7 part thereof by reference to the same in the instrument, the
8 registrar may record the same in the record books by means of
9 the photographic recorder, on payment of the fee as provided in
10 section 502-25."

11 14. By amending section 502-41 to read:

12 "§502-41 Certificate of acknowledgment; natural persons,
13 corporations. Except as otherwise provided by [~~sections 502-50~~
14 ~~to 502-52,~~] law, to entitle any conveyance or other instrument
15 to be recorded there shall be endorsed, subjoined, or attached
16 thereto an acknowledgment in the form provided or authorized in
17 any of [~~sections~~] section 502-42, 502-43, or 502-45, or in
18 substantially the following form:

19 (Begin in all cases by a caption specifying the state or
20 territory and the place where the acknowledgment is taken.)

21 1. In the case of natural persons acting in their own
22 right:



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1 On(insert date), before me personally appeared
 2 A.B. (or A.B. and C.D.), to me known to be the person or persons
 3 described in and who executed the foregoing instrument, and
 4 acknowledged that the person or persons executed the same as the
 5 person's or persons' free act and deed.

6 2. In the case of natural persons acting by attorney:

7 On(insert date), before me personally appeared
 8 A.B., to me known to be the person who executed the foregoing
 9 instrument in behalf of C.D. and acknowledged that the person
 10 executed the same as the free act and deed of said C.D.

11 3. In the case of corporations or partnerships:

12 On(insert date), before me appeared A.B., to
 13 me personally known, who, being by me duly sworn (or affirmed),
 14 did say that the person is the president (or other officer,
 15 partner, or agent of the corporation, or partnership) of
 16 (describing the corporation or partnership), and that the
 17 instrument was signed in behalf of the corporation (or
 18 partnership) by authority of its board of directors (partners or
 19 trustees), and A.B. acknowledged the instrument to be the free
 20 act and deed of the corporation (or partnership).

21 4. In the case of a corporation acknowledging by an
 22 individual as its attorney, where the enabling power of attorney



1 has previously been recorded, the acknowledgment of the
2 instrument executed under the power of attorney shall be
3 substantially in the following form:

4 On(insert date), before me personally appeared
5 A.B., to me personally known, who being by me duly sworn (or
6 affirmed), did say that the person is the attorney-in-fact of
7 C.D. (here name the corporation) duly appointed under power of
8 attorney dated, recorded in book...., at
9 page.../as document no.; and that the foregoing instrument
10 was executed in the name and behalf of said C.D. by A.B. as its
11 attorney-in-fact; and A.B. acknowledged the instrument to be the
12 free act and deed of C.D.

13 In case the enabling power of attorney has not previously
14 been recorded, omit the reference to its place of record and
15 insert in lieu thereof the words "which power of attorney is now
16 in full force and effect".

17 5. In the case of a corporation acknowledging by another
18 corporation as its attorney, where the enabling power of
19 attorney has previously been recorded, the acknowledgment of the
20 instrument executed under the power of attorney shall be
21 substantially in the following form:



S.B. NO. 6

1 On(insert date), before me personally appeared
2 A.B., to me personally known, who, being by me duly sworn (or
3 affirmed), did say that the person is the president (or other
4 officer or agent of the corporation acting as attorney) of C.D.
5 (here name the corporation acting as attorney) and that C.D. is
6 the attorney-in-fact of E.F. (here name the corporation in whose
7 behalf the attorney is acting) duly appointed under power of
8 attorney dated, recorded in book...., at
9 page.../as document no.; that the foregoing instrument was
10 executed in the name and behalf of E.F. by C.D. as its attorney-
11 in-fact; that the instrument was so executed by C.D. by
12 authority of its board of directors; and A.B. acknowledged the
13 instrument to be the free act and deed of E.F.

14 In case the enabling power of attorney has not previously
15 been recorded, omit the reference to its place of record and
16 insert in lieu thereof the words "which power of attorney is now
17 in full force and effect".

18 6. The following form may be used in lieu of any of the
19 foregoing forms:

20 On(insert date), before me personally appeared
21 A.B. (or A.B. and C.D.), to me personally known, who, being by
22 me duly sworn (or affirmed), did say that such person executed



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1 the foregoing instrument as the free act and deed of such
2 person, and if applicable in the capacity shown, having been
3 duly authorized to execute such instrument in such capacity.

4 In all cases add signature and title of the officer taking
5 the acknowledgment."

6 SECTION 3. This Act does not affect rights and duties that
7 matured, penalties that were incurred, and proceedings that were
8 begun, before its effective date.

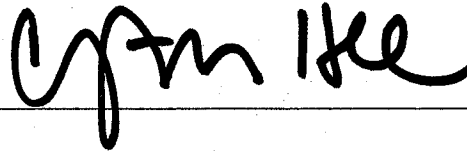
9 SECTION 4. In codifying the new sections added by section
10 2 of this Act, the revisor of statutes shall substitute
11 appropriate section numbers for the letters used in designating
12 the new sections in this Act.

13 SECTION 5. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 6. This Act shall take effect upon its approval.

16

INTRODUCED BY:





Report Title:

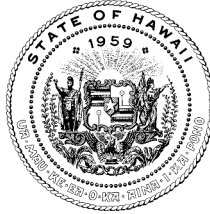
Uniform Real Property Electronic Recording Act

Description:

Permits the registrar of the bureau of conveyances to accept electronic documents with electronic signatures for recording.



LINDA LINGLE
GOVERNOR OF HAWAII



LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
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RUSSELL Y. TSUJI
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CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
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**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

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**Testimony of
LAURA H. THIELEN
Chairperson**

**Before the Senate Committees on
COMMERCE AND CONSUMER PROTECTION
and
ECONOMIC DEVELOPMENT AND TECHNOLOGY**

**Wednesday, February 18, 2009
10:00 AM
State Capitol, Conference Room 229**

**In consideration of
SENATE BILL 6
RELATING TO REAL PROPERTY**

Senate Bill 6 proposes to permit the Registrar of the Bureau of Conveyances (Bureau) of the Department of Land and Natural Resources (Department) to accept electronic documents with electronic signatures for recording. While the Department recognizes that this bill has merit, the Department nonetheless prefers the Administration's Senate Bill 955 (RELATING TO FILINGS IN THE BUREAU OF CONVEYANCES) to effectively 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 accept only original paper instruments with original signatures for recordation in the Regular System and the Land Court System. This bill 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.

The Department notes that the Administration proposal (Senate Bill 955) allows for the acceptance of electronic documents through amendment to Chapters 501 and 502, Hawaii Revised Statutes, without the necessity of adding an entirely new section to the statutes.

In addition to this legislation, the Administration has proposed Senate Bill 956 (RELATING TO COPIES IN THE BUREAU OF CONVEYANCES) and Senate Bill 957 (RELATING TO LAND COURT SYSTEM). Senate Bill 956 proposes to allow the Bureau to archive the documents in digital format. Senate Bill 957 would remove time share interests from Land Court registration and allows landowners to opt out of Land Court and register their properties in the

Regular System at the Bureau. Both of these proposals will assist the Bureau in becoming more efficient and up to date with the functions of the Bureau.

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

**ON S.B. No. 6
RELATING TO REAL PROPERTY.**

**BEFORE THE SENATE COMMITTEES ON COMMERCE AND CONSUMER
PROTECTION AND ECONOMIC DEVELOPMENT AND TECHNOLOGY**

DATE: Wednesday, February 18, 2009, at 10:00 a.m.
Conference Room 229, State Capitol

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

E-MAIL to CPNTestimony@Capitol.hawaii.gov

Chairs Baker and Fukunaga and Members of the Committees on Commerce and Consumer Protection and the Economic Development and Technology:

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 S.B. No. 6, 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 URPERA 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 eighteen (18) states (Arizona, Arkansas, Connecticut, Delaware, Florida, Idaho, Illinois, Kansas, Minnesota, Nevada, New Mexico, North Carolina, South Carolina, Tennessee, Texas, Virginia, Washington, and Wisconsin), as well as the District of Columbia, since it was approved by NCCUSL in 2004. See http://www.nccusl.org/Update/uniformact_factsheets/uniformacts-fs-urpera.asp.

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 S.B. No. 6.

Thank you very much for this opportunity to testify.



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 17, 2009

The Honorable Rosalyn H. Baker, Chair

Senate Committee on Commerce & Consumer Protection

The Honorable Carol Fukunaga, Chair

Senate Committee on Economic Development & Technology

State Capitol, Room 229

Honolulu, Hawaii 96813

RE: S.B. 6 Relating to Real Property

Hearing date: Wednesday, February 18, 2009 @ 10:00 a.m.

Aloha Chair Baker, Chair Fukunaga and Members of the Joint Committees:

I am Myoung Oh, here to testify on behalf of the Hawai'i Association of REALTORS® (HAR) and its 9,600 members in Hawai'i. HAR **supports S.B. 6**, which permits the registrar of the Bureau of Conveyances to accept electronic documents with electronic signatures.

The Bureau of Conveyances accepts only original paper instruments with original signatures for recordation in the Regular and Land Court systems. S.B. 6 will allow the Bureau to accept electronic documents for recordation.

HAR supports efforts to allow for faster and better processing of documents. Electronic recording will also allow neighbor island residents and businesses to save costs by eliminating the need to mail or courier documents. Acceptance of electronic files will make the Bureau of Conveyances more efficient, and ultimately, benefit the real estate industry and consumers.

Mahalo for the opportunity to testify.



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION

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The Twenty-Fifth Legislature, State of Hawaii Hawaii State Senate

Committee on Commerce and Consumer Protection Committee on Economic Development and Technology

Testimony by
Hawaii Government Employees Association
February 18, 2009

S.B. 6 – RELATING TO REAL PROPERTY

The purpose of S.B. 6 is to permit the registrar of the Bureau of Conveyances to accept electronic documents with electronic signatures for recording.


While we do not oppose more efficient state government operations, the Hawaii Government Employees Association provides the following comments.

We agree that technological changes and innovations create many opportunities to become more efficient in 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 any system is not in place, efficiency of service to the public can actually decrease.

We request that as the department moves forward to take advantage of technology to improve the services provided by Bureau of Conveyances, they make sure to have the appropriate infrastructure, staffing and training in place to implement and maintain any changes made in the Bureau of Conveyances' operations.

Thank you for the opportunity to comment on S.B. 6.

Respectfully submitted,


for Nora A. Nomura
Deputy Executive Director