



OFFICE OF THE LIEUTENANT GOVERNOR  
STATE OF HAWAII  
STATE CAPITOL  
HONOLULU, HAWAII 96813

SHAN S. TSUTSUI  
LIEUTENANT GOVERNOR

**TESTIMONY OF  
THE OFFICE OF THE LIEUTENANT GOVERNOR  
TO THE  
SENATE COMMITTEE ON JUDICIARY AND LABOR**

**SENATE BILL NO. SB 1129  
Relating to Commissioners of Deeds**

Chair Keith-Agaran, Vice-Chair Shimabukuro and members of the Committee on Judiciary and Labor, the Office of the Lieutenant Governor ***supports*** Senate Bill No. 1129, relating to Commissioners of Deeds. This measure adds new sections to chapter 503B, Hawaii Revised Statutes to clarify the Lieutenant Governor's rulemaking authority, authority to assess and collect fees and administrative fines, and to establish a revolving fund into which the fees and administrative fines are to be deposited. It also amends chapter 503B, Hawaii Revised Statutes, to clarify that the Lieutenant Governor is responsible for the program and increases the surety bond requirement from \$1,000 to \$10,000.

Act 277, SLH 2013 (now codified as Chapter 503B, HRS) established the Time Share Commissioners of Deeds Program within the Office of the Lieutenant Governor. Act 277 requires the Office of the Lieutenant Governor to establish a process for the Governor to appoint individuals to serve as Commissioners of Deeds to administer oaths, take acknowledgements, and take proofs of execution outside of the United States in connection with the execution of conveyance documents relating to a time share interest, any property subject to a time share plan, or the operation of a time share plan covering any property located within Hawaii.

Preparing for the implementation of the law and to address concerns with the law, a working group consisting of the Office of the Lieutenant Governor, the Department of the Attorney General, the Department of Commerce and Consumer Affairs, the Bureau of Conveyances, and members of the time share industry was convened and met on multiple occasions over the course of several months to discuss and analyze the law. Although substantial progress has been made to draft proposed administrative rules for the program's implementation, throughout the process it was determined that additional legislation and authorization is necessary prior to implementation. This measure addresses those issues and will provide the Office of the Lieutenant Governor the necessary authority and clarification to properly implement the law effectively.

The Office of the Lieutenant Governor supports SB 1129 and respectfully urges the passage of this bill. Thank you for the opportunity to testify.

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February 7, 2015

Sen. Gilbert S.C. Keith-Agaran, Chair  
Sen. Maile S.L. Shimabukuro, Vice Chair  
Members of the Senate Committee on  
Judiciary and Labor  
Twenty-Eighth Legislature  
Regular Session, 2015

Re: S.B. 1129  
Hearing on February 9, 2015, 9:30 a.m.  
Conference Room 016

Dear Chair, Vice Chair and Members of the Committee:

My name is Charles Pear. I am appearing as legislative counsel for ARDA Hawaii.

ARDA Hawaii supports the bill with technical revisions.

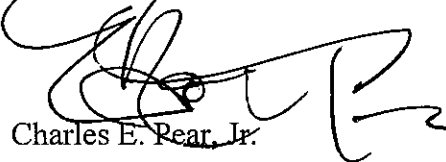
The bill is important to certain members of ARDA because it grants the Governor the authority to appoint Commissioners of Deeds who can acknowledge the execution of timeshare deeds and mortgages in other countries and on ships so that the documents can be recorded in Hawaii.

This bill proposes to vest the authority to appoint Commissioners of Deeds in the Office of the Lieutenant Governor, and to authorize the Lieutenant Governor to collect fees and adopt regulations implementing the program. These revisions, with some technical corrections, are acceptable to ARDA. In the spirit of collaboration, we support the bill with revisions.

Thank you for your kind consideration of this legislation. I would be happy to take any questions if you think that I may be of assistance.

Very truly yours,

McCORRISTON MILLER MUKAI MACKINNON LLP



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## A BILL FOR AN ACT

RELATING TO COMMISSIONERS OF DEEDS.

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

SECTION 1. Chapter 503B, Hawaii Revised Statutes, is amended by adding four new sections to be appropriately designated and to read as follows:

"§503B-[A] Rules. The lieutenant governor, subject to chapter 91, may prescribe such rules as the lieutenant governor deems advisable concerning the administration of this chapter, the appointment and duties of commissioners of deeds and such other measures as may be necessary to prevent the fraudulent use of a document after placement of the commissioner of deeds' seal. The rules shall have the force and effect of law.

§503B-[B] Fees and administrative fines. (a) The lieutenant governor shall charge and collect the following fees, which amounts may be adjusted by adopting rules pursuant to chapter 91, for:

- (1) Application for commissioner of deeds commission, \$10;

- (2) Application for renewal of commissioner of deeds commission, \$10;
- (3) Application for restoration of forfeited commission, \$10;
- (4) Application for reinstatement of suspended commission, \$10;
- (5) Issuing the original commission, \$40;
- (6) Renewing the commission, \$40;
- (7) Restoration of forfeited commission, \$60;
- (8) Reinstatement of suspended commission, \$40; and
- (9) Commission name change, \$10.

(b) The lieutenant governor may impose and collect the following administrative fines for the commissioner of deeds' failure to do the following, which amounts may be adjusted by adopting rules pursuant to chapter 91:

- (1) Maintain an official seal in accordance with section 503B-2(a)(1) and any rule adopted pursuant to chapter 91;
- (2) Surrender the commissioner of deeds' seal and certificate to the lieutenant governor within ninety days of resignation, removal from office, or the expiration of a term without renewal, \$200;
- (3) Authenticate every acknowledgment or jurat with a certificate that shall be signed and dated by a

commissioner and in a form prescribed by

the lieutenant governor, \$500;

- (4) Record all of the commissioner of deeds' transactions as prescribed by section 503B-4 and any rule adopted pursuant to chapter 91, \$200;
- (5) Surrender the commissioner of deeds' record books to the lieutenant governor within ninety days of the expiration of the commission without renewal, resignation, or removal from office, \$500; and
- (6) Notify the lieutenant governor within ten days after loss or misplacement of the commissioner's seal, record book, or both, \$20.
- (7) In case of a theft of the commissioner's seal, record book, or both, (i) notify the lieutenant governor within ten days of the theft, (ii) inform the appropriate local law enforcement agency of the theft within ten days of its discovery or, if the theft occurs on a vessel, inform the captain of the theft within ten days of its discovery, (iii) use reasonable efforts to obtain a copy of a report of the theft from the law enforcement agency or, if the theft occurs on a vessel, the ship's captain or other officer, or (iv) deliver a copy of any such report of the theft to the

lieutenant governor within ten days after receipt thereof, \$20.

The foregoing moneys collected by the lieutenant governor pursuant to this section shall be deposited into the commissioner of deeds revolving fund established by section 503B- , except that if that fund is terminated, the foregoing moneys shall thereafter be deposited with the director of finance to the credit of the general fund.

**§503B-[C] Commissioner of deeds revolving**

**fund.** (a) There is established in the state treasury the commissioner of deeds special revolving fund into which shall be deposited:

- (1) All fees, administrative fines, charges, or other payments received pursuant to section 503B-[B](a);
- (2) Penalties and fines for violations of section 503B-[B](b);
- (3) Appropriations made for deposit into the commissioner of deeds revolving fund; and
- (4) Interest earned on money in the commissioner of deeds revolving fund.

(b) The commissioner of deeds revolving fund shall be administered by the office of the lieutenant governor. Notwithstanding any law to the contrary, moneys in the commissioner of deeds revolving fund shall be used for

personnel costs, the acquisition of equipment, and operating and administrative costs deemed necessary by the office of the lieutenant governor to administer this chapter. The moneys in the fund may also be used to train personnel as the lieutenant governor deems necessary, and for any other activity related to commissioners of deeds.

§503B-[D] Immunity. (a) The lieutenant governor and employees of the office of the lieutenant governor shall be immune from liability for good faith conduct under this chapter.

(b) Any law to the contrary notwithstanding, nothing contained in this chapter shall be construed to constitute a waiver of any immunity of the State and no action or failure to act under this chapter shall be construed to create any liability on the State, its officers or employees for the recovery of any damages caused by any action or failure to act."

SECTION 3. Section 36-27, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Except as provided in this section, and notwithstanding any other law to the contrary, from time to time, the director of finance, for the purpose of defraying the prorated estimate of central service expenses of government in relation to all special funds, except the:

- (1) Special out-of-school time instructional program fund under section 302A-1310;

- (2) School cafeteria special funds of the department of education
- (3) Special funds of the University of Hawaii;
- (4) State educational facilities improvement special fund;
- (5) Convention center enterprise special fund under section 201B-8;
- (6) Special funds established by section 206E-6;
- (7) Housing loan program revenue bond special fund;
- (8) Housing program bond special fund;
- (9) Aloha Tower fund created by section 206J-17;
- (10) Funds of the employees' retirement system created by section 88-109;
- (11) Hawaii hurricane relief fund established under chapter 431P;
- (12) Hawaii health systems corporation special funds and the subaccounts of its regional system boards;
- (13) Tourism special fund established under section 201B-11;
- (14) Universal service fund established under section 269-42;
- (15) Emergency and budget reserve fund under section 328L-3;
- (16) Public schools special fees and charges fund under section 302A-1130;



- (17) Sport fish special fund under section 187A-9.5;
- (18) Glass advance disposal fee established by section 342G-82;
- (19) Center for nursing special fund under section 304A-2163;
- (20) Passenger facility charge special fund established by section 261-5.5;
- (21) Court interpreting services revolving fund under section 607-1.5;
- (22) Hawaii cancer research special fund;
- (23) Community health centers special fund;
- (24) Emergency medical services special fund;
- (25) Rental motor vehicle customer facility charge special fund established under section 261-5.6;
- (26) Shared services technology special fund under section 27-43;
- (27) Automated victim information and notification system special fund established under section 353-136; [~~and~~]
- [+] (28) [+] Deposit beverage container deposit special fund under section 342G-104[~~7~~]; and
- (29) Commissioner of deeds revolving fund under section 503B-[C];

shall deduct five per cent of all receipts of all special funds, which deduction shall be transferred to the general fund of the

State and become general realizations of the State. All officers of the State and other persons having power to allocate or disburse any special funds shall cooperate with the director in effecting these transfers. To determine the proper revenue base upon which the central service assessment is to be calculated, the director shall adopt rules pursuant to chapter 91 for the purpose of suspending or limiting the application of the central service assessment of any fund. No later than twenty days prior to the convening of each regular session of the legislature, the director shall report all central service assessments made during the preceding fiscal year."

SECTION 5. Section 36-30, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- "(a) Each special fund, except the:
- (1) Transportation use special fund established by section 261D-1;
  - (2) Special out-of-school time instructional program fund under section 302A-1310;
  - (3) School cafeteria special funds of the department of education;
  - (4) Special funds of the University of Hawaii;
  - (5) State educational facilities improvement special fund;
  - (6) Special funds established by section 206E-6;
  - (7) Aloha Tower fund created by section 206J-17;

- (8) Funds of the employees' retirement system created by section 88-109;
- (9) Hawaii hurricane relief fund established under section 431P-2;
- (10) Convention center enterprise special fund established under section 201B-8;
- (11) Hawaii health systems corporation special funds and the subaccounts of its regional system boards;
- (12) Tourism special fund established under section 201B-11;
- (13) Universal service fund established under section 269-42;
- (14) Emergency and budget reserve fund under section 328L-3;
- (15) Public schools special fees and charges fund under section 302A-1130;
- (16) Sport fish special fund under section 187A-9.5;
- (17) Center for nursing special fund under section 304A-2163;
- (18) Passenger facility charge special fund established in section 261-5.5;
- (19) Court interpreting services revolving fund under section 607-1.5;
- (20) Hawaii cancer research special fund;

- (21) Community health centers special fund;
- (22) Emergency medical services special fund;
- (23) Rental motor vehicle customer facility charge special fund established under section 261-5.6;
- (24) Shared services technology special fund under section 27-4.3;
- (25) Nursing facility sustainability program special fund, under Act 156, Session Laws of Hawaii 2012;
- (26) Automated victim information and notification system special fund established under section 353-136; ~~[and]~~
- (27) Hospital sustainability program special fund under Act 217, Session Laws of Hawaii 2012~~[7]~~; and
- (28) Commissioner of deeds revolving fund under section 503B-[C],

shall be responsible for its pro rata share of the administrative expenses incurred by the department responsible for the operations supported by the special fund concerned."

SECTION 4. Section 503B-1, Hawaii Revised Statutes, is amended to read as follows:

"~~[1]~~**§503B-1**~~[1]~~ **Commissioners; appointment.** The lieutenant governor may appoint commissioners who shall serve for four years from the date of the individual commissioner's respective appointment, unless removed by the lieutenant governor."

SECTION 5. Section 503B-8, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Each commissioner forthwith and before entering upon the duties of the commissioner's office shall execute at the commissioner's own expense an official surety bond or deposit with the lieutenant governor a cash bond, which in either case shall be in the sum of [~~\$1,000~~] \$10,000. Each bond shall be approved by the office of the lieutenant governor."

SECTION 6. Section 503B-3, Hawaii Revised Statutes, is amended to read as follows:

"~~[§]~~**503B-3**~~[§]~~ **Powers; charges.** A commissioner, in any foreign country; in international waters; and in any possession, territory, or commonwealth of the United States, including but not limited to the United States territorial sea;~~[§]~~ may administer oaths and take acknowledgements and proofs of execution of any deed, assignment of lease, apartment deed and ground lease, condominium conveyance document, mortgage, deed of trust, contract, power of attorney, or any other instrument or writing to be used or recorded in the State in connection with:

- (1). A time share interest;
- (2). Any property subject to a time share plan; or
- (3). The operation of a time share plan that includes any property located within the State;

provided that the instrument or writing is executed either (i) in international waters or in the United States territorial sea, or (ii) outside of the fifty states and the District of Columbia. Oaths, acknowledgements, and proofs of execution shall be taken or made in the manner provided by the laws of the State, including but not limited to sections 502-42, 502-43, 502-48, 502-61, 502-62, and 502-63, and shall be certified by the commissioner under the commissioner's official seal. The certification shall be endorsed on or attached to the instrument or writing and shall have the same effect as if made or taken in the State by a notary public commissioned in the State. Charges made by commissioners for services rendered shall be no higher than the rates authorized by any law governing similar services rendered by notaries within the jurisdictions in which the services are performed."

SECTION 7. In codifying the new sections added by this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act or in cross-referring to the new sections.

SECTION 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 9. This Act shall take effect upon its approval.

INTRODUCED BY: \_\_\_\_\_

BY REQUEST

**Report Title:**

Commissioners of Deeds; Rules; Fees

**Description:**

Adds new sections to chapter 503B, Hawaii Revised Statutes to clarify the Lieutenant Governor's rulemaking authority, authority to assess and collect fees and administrative fines, and to establish a revolving fund into which the fees and administrative fines are to be deposited. Amends chapter 503B, Hawaii Revised Statutes, to clarify that the Lieutenant Governor is responsible for the program and increases the surety bond requirement from \$1,000 to \$10,000.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*