





The Senate

STATE CAPITOL
HONOLULU, HAWAII 96813

January 11, 2008

MEMORANDUM

TO: Bureau of Conveyances (BOC) Stakeholders & Subpoenaed Witnesses

FROM: Senator Jill N. Tokuda  and Representative Joseph M. Souki 
Co-Chairs of the Joint Senate-House Investigative Committee on the BOC

RE: Draft Report

Please find attached the draft report of the Joint Senate-House Investigative Committee on the Bureau of Conveyances (BOC). As specified in Senate Concurrent Resolution 226, which establishes the Joint Investigative Committee:

"Any person or entity to whom a draft report is made available shall be given a period of no less than fourteen days within which to make written responses to the draft findings or conclusions; and

The written responses, if any, shall be included as an appendix to the final report of the Joint Senate-House investigative committee."

As a BOC Stakeholder or subpoenaed witness, we invite you to provide a written response to the draft, which will be included as an attachment to the final report. All written responses must be received by close of business on January 24, 2008. You may send responses to:

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If you have any questions, please contact Kamakana Kaimulua at 587-7215.

**The Joint Senate-House Investigative Committee
on the Bureau of Conveyances**

January 2008

Draft

Prepared by the
Senate Majority Research Office

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PART I. INTRODUCTION

Background of the Bureau of Conveyances

1. General Background

The Bureau of Conveyances at the Department of Land and Natural Resources is responsible for maintaining a permanent record system for the receipt of deeds, plans, maps, and any and all instruments and documents that relate to or are connected with any interest in real property within the State of Hawaii. The Bureau of Conveyances annually examines, records, indexes, and microfilms over 344,000 Regular System and Land Court documents and maps that relate to real property ownership, encumbrances, easements, and any other interest in and to real property; maintains Land Court Certificates of Title; certifies copies of matters of record; and operates as the office that receives and keeps records of financing statements filed under the provisions of the Uniform Commercial Code (UCC). Hawaii is the only state in the nation with a statewide recording office, and maintains two separate, but inter-related systems for recording ownership of real property – the Regular System and the Land Court System (Torrens).

2. The Regular System

The Regular System of the Bureau of Conveyances serves as a recording system for all real property documents that affect real property including real property registered under the Land Court System (Torrens). The Regular System is governed by chapter 502, Hawaii Revised Statutes, and title 13, chapter 16, Hawaii Administrative Rules. The Registrar of the Bureau of Conveyances is an appointee of the Board of Land and Natural Resources and is also an Assistant Registrar of the Land Court. The Registrar's responsibility is to make and keep a permanent record of the receipt of every deed and instrument left for record, every copy as a caution, and every plan filed, and to maintain an index of all such recorded instrumentation together with sufficient descriptions to identify the document and the date and time of its receipt, particularly for public inspection. During the fiscal year 2005-2006, the Regular System recorded 259,000 documents and processed 248,000 requests. During fiscal year 2006-2007, the Regular System recorded 236,000 documents and processed 149,000 requests.

Although real property ownership, encumbrances, and any other interest affecting real property are required to be recorded to be effective as proof of such ownership and other interest in and to the real property, the State does not make any legal guarantees with respect to these recorded documents. Ownership and other interests in the real property are proven by reference to successive and consecutive changes in ownership and interests are filed and recorded in the Bureau of Conveyances from the original owner down to the present owner. These successive and consecutive changes are tracked through detailed examination of the documents recorded and filed at the Bureau of Conveyances. These chains of title are developed, used, and relied upon by title companies in issuing title insurance and in providing other related title services.

3. The Land Court

The Land Court is a court of law with exclusive jurisdiction over applications for the registration of title to land and easements in land and all other rights in fee simple land with the State of Hawaii, with power to determine all questions that are related to or connected with the application, and is governed by chapter 501, Hawaii Revised Statutes, and title 13, chapter 16, Hawaii Administrative Rules. The Registrar of Land Court is appointed by the Courts.

Ownership of registered land is guaranteed by the State and a Certificate of Title is prepared for each specific parcel of land showing the full names, all other names by which the owner is or was known, including maiden names, marital status, and if disabled, a description of the disability, together with a description of the land and all other incidents affecting the land, all of which are based on the decree of the Land Court, and maintained in an orderly manner in the Bureau of Conveyances. Except for the preparation of a new Certificate of Title for the new owner, a transfer of ownership in registered land is handled in the same manner as a transfer of ownership in unregistered land in the Bureau of Conveyances.

The registration of title to land in Land Court can involve a lengthy and expensive process. With an owner's opportunity and ability to obtain title insurance on land ownership, Land Court registration has decreased over the years. During the fiscal year 2005-2006, the Land Court recorded 163,000 documents, processed 102,000 requests, and produced 33,000 Certificates of Title. During the fiscal year 2006-2007, the Land Court recorded 174,000 documents, processed 135,000 requests, and produced 34,000 Certificates of Title.

4. Revenues of the Bureau of Conveyances

The Bureau of Conveyances generates revenues from fees and collects and receives conveyance tax payments for the Department of Taxation. In fiscal year 2006-2007, approximately \$60,200,000 in conveyances taxes, fees, and other sources of revenue passed through the Bureau. On an average day, approximately \$60,000 is collected by the Bureau and up to approximately \$100,000 on a heavy transactional day.

The revenues of the Bureau of Conveyances primarily consist of fees from document recordings, document copying, and a small amount from information subscriptions. During fiscal year 2006-2007, the fees collected by the Bureau of Conveyances totaled approximately \$12,000,000. The fee for document recording begins at \$25 and increases in price depending upon the number of pages in the document to be recorded. The first \$18 is deposited into the State's general fund while the remainder is deposited into the Bureau of Conveyances Special Fund.

Section 502-8, Hawaii Revised Statutes, establishes the Bureau of Conveyances Special Fund into which revenues remitted, interest earnings, grants, donations, and appropriations from the Legislature are deposited. During fiscal years 2005-2006 and 2006-2007, \$3,724,000 and \$3,478,000, respectively, was appropriated and deposited

into the special fund. The moneys in the special fund are to be used for the necessary tools and equipment for the development of the recording system, the operation and maintenance of the recording system, permanent and temporary staff positions, and administrative costs. Under section 502-8(c), Hawaii Revised Statutes, all moneys in excess of \$500,000 remaining on balance in the special fund on June 30 of each year will lapse to the credit of the state general fund, which the Director of Finance is authorized to transfer on July 1 of each year.

Chapter 247, Hawaii Revised Statutes, establishes the imposition of a conveyance tax on all transfers or conveyances of real property or any interest therein. Section 18-247-4(b), Hawaii Administrative Rules, directs that the conveyance tax be paid at the Office of the Registrar of Conveyances. Although the Bureau of Conveyances collects conveyance tax payments, it only acts as a repository as the tax is administered and enforced by the Department of Taxation. During fiscal year 2005-2006, the conveyance tax collected by the Bureau of Conveyances totaled approximately \$59,200,000 and totaled approximately \$48,200,000 in fiscal year 2006-2007.

5. The Importance of the Conveyance and Recording Processes

Property usually represents the single largest asset for most individuals. The accurate recording of property rights and encumbrances, and the transfer of those rights are dependent upon the Bureau of Conveyances operating in a smooth and efficient manner. The validity of recorded documents is also essential to property rights as the loss of confidence in the system results in property ownership questions and disputes.

Many stakeholders rely upon an accurate, timely, and secure property recording process, from property owners, real estate developers, mortgage lenders, and real estate vendors (agents, mortgage brokers, appraisers, title insurance companies, attorneys, construction companies, suppliers, etc.) to federal, state, and county governments, and other lien holders.

The conveyance process makes possible the timely and efficient transfer of property. When the conveyance process works efficiently, it can be taken for granted. However, when the process is somehow disrupted, there are severe economic impacts, such as property cannot be sold or bought, stakeholders cannot be paid, taxes cannot be collected, or lien judgments cannot be satisfied. Therefore, it is essential that the foundation of trust in the recording process at the Bureau of Conveyances be built upon the commitment and consideration to time and accuracy, and the assurance that documents are recorded fairly and without any artificial assistance.

Events That Lead Up to and the Establishment of the Committee

In recent years, the problems at the Bureau of Conveyances have frequently been documented and have been the subject of news reports and studies. Despite these reports and the identification of the various problems at the Bureau, it appears

that no effective solutions were implemented or substantial changes were made at the Bureau.

1. News Reports

In 2006, the *Pacific Business News* reported that there was a growing backlog in the processing of property titles and land transactions at the Bureau of Conveyances. Property owners were waiting up to eighteen months for documents affirming their ownership in real property. The newspaper reported that long-simmering disputes, personality clashes, and conflicts over how work was done at the Bureau of Conveyances was the main reason for the substantial backlog in the processing of documents. Part of the backlog in early 2006 included work that dated back to 2004 and forty boxes of unopened mail submissions dating back to August 2005. It was reported that despite a number of Bureau employees logging in twelve hour days, six days a week, the long standing disputes and personality clashes among the employees impeded any substantial changes or improvements in the Bureau's operations.

2. Studies

In June 2005, Hoike Consulting, LLC submitted to the Bureau of Conveyances a report titled, *Operations Review Project: Findings and Recommendation Report* (Hoike Report). This report was done in response to section 61, Act 200, Session Laws of Hawaii 2003, which requested the Bureau of Conveyances to contract for a workflow study to encompass a review of all areas of the operation of the Bureau, including the evaluation of the recording procedures, staffing, and performance in order to streamline the work process and create efficiencies within the Bureau. Act 200 also requested that the workflow study include recommendations for any changes to current job descriptions, and identify any operational delays. The Hoike Report listed ten major findings, including staff shortages, inadequate service levels, lack of teamwork between the receiving sections of the Regular System and Land Court, and staff resistance to change, and provided several recommendations. The Department of Land and Natural Resources accepted the report without reservations and expressed its commitment to the implementation of the report's recommendations; however, the Bureau failed to implement any of the recommendations from the report.

In June 2006, the Office of the Auditor submitted to the Legislature a report titled, *Financial Audit of the Department of Land and Natural Resources*, Report No. 06-04. This audit was conducted pursuant to section 23-4, Hawaii Revised Statutes, which requires the Auditor to conduct post-audits of the transactions, accounts, programs, and performance of all departments, offices, and agencies in the State and its political subdivisions. With respect to the Bureau of Conveyances, the Auditor's Report found that the Land Court was facing significant challenges in managing its staff resources and meeting customer service requirements, resulting in a significant backlog in the processing of documents and the opening of mail. The report found that over the same period of time, while there was an increase in overtime performed by Bureau employees to address the backlog, the amount of documents processed actually decreased. Furthermore, the report indicated that there was a significantly high degree of animosity

and lack of cooperation between the Land Court and Regular System staffs, which also contributed to the backlog.

3. The Re-appointment Confirmation Hearing for the Chairperson of the Board of Land and Natural Resources

In preparation for and in the course of the confirmation hearing of the Chairperson-nominee of the Board of Land and Natural Resources in April 2007, several concerns regarding the Bureau of Conveyances were brought to the attention of the Senate Committee on Water, Land, Agriculture, and Hawaiian Affairs. The Senate Committee obtained testimony from several concerned individuals who were required to testify in executive session by the request of Department of the Attorney General. The testimony of these individuals indicated to the Senate Committee a long history of factionalism, low employee morale, and personnel mismanagement within the Bureau. The testimony also indicated that there was a lack of written contracts for the sharing of Bureau information, inadequate information sharing service subscription records, lack of updated user fee schedules, and lack of established rules and procedures for the use of this information sharing service.

Furthermore, the Senate Committee was informed of an ongoing criminal investigation conducted by the Department of the Attorney General and an ethics probe conducted by the State Ethics Commission, both focusing on the Bureau of Conveyances. Both of these investigations centered on several concerns involving the security of recorded documents, private computer access with the potential for tampering of these documents, questionable personnel conduct and management, and general lack of accountability at the Bureau of Conveyances. It was also indicated to the Senate Committee that these investigations were focused on the information sharing agreements between the Bureau of Conveyances with private title companies, and allegations of preferential treatment among certain private title companies.

It was also revealed to the Senate Committee that the Department of Land and Natural Resources Fiscal Office had conducted its own investigation on certain procurement transactions involving the Bureau of Conveyances and access to the computer data of the Bureau and the fees collected for that access. This investigation resulted in a discussion paper that was drafted by a department auditor in October 2006, which included several follow-up recommendations relating to the updating of administrative rules and fee schedules, the accountability of written contracts, and the security of the Bureau's computer system.

The problems existing at the Bureau of Conveyances was a paramount concern of the Senate Committee. Despite the previous *Pacific Business News* reports, the Hoike Report, and the Auditor's financial audit of the Department of Land and Natural Resources, no effective solutions were created or implemented. The Senate Committee was highly concerned about the security of recorded documents as well as the overall personnel, operational, and fiscal management of the Bureau of Conveyances.

4. The Adoption of Senate Concurrent Resolution No. 226 (2007)

In light of the published news reports, studies, and Senate hearings regarding the problems at the Bureau of Conveyances, the ongoing investigations by the Department of the Attorney General and the State Ethics Commission, and the lack of any effective solutions being created or implemented at the Bureau of Conveyances, the Legislature adopted Senate Concurrent Resolution No. 226 during the 2007 Regular Session. It was clear to the Legislature that further action was required to address the concerns regarding the personnel, operational, and fiscal management of the Bureau of Conveyances as it serves an important public service as the repository of information relating to the title to land upon which homes and businesses are situated within the State. If the information in this repository is compromised, it could result in enormous potential legal and economic problems for the public.

The Concurrent Resolution established a Joint Senate-House Investigative Committee to investigate the personnel, operational, and fiscal management of the Bureau of Conveyances to ensure that the Bureau of Conveyances serves the public at its most optimal level. The Committee was required to submit its findings and recommendations to the Legislature prior to the convening of the 2008 Regular Session.

The Joint Senate-House Investigative Committee on the Bureau of Conveyances

1. Members of the Committee, Investigative Team, and Staff

The Committee was established under Senate Concurrent Resolution No. 226, pursuant to chapter 21, Hawaii Revised Statutes, which authorizes the Committee to subpoena records and the attendance of witnesses, and take testimony of witnesses under oath. Senator Jill N. Tokuda and Speaker Emeritus Joseph M. Souki served as co-chairs of the Committee and presided over the hearings. In addition to the two co-chairs, the Committee consisted of members who represented both houses of the Legislature. Members from the Senate included Senators Carol Fukunaga, Mike Gabbard (served June to September), Fred Hemmings (served September to present), David Y. Ige, and Russell S. Kokubun. Members from the House of Representatives included Representatives Sharon E. Har, Karl Rhoads, Cynthia Thielen, and James Kunane Tokioka.

The Committee received assistance from various legislative offices and agencies. The Office of the Auditor was designated as staff personnel to the Committee, provided the Committee with investigative services, updates, and informational briefings, and served as a valuable resource for the Committee. The Senate Sergeant-at-Arms acted as a process server for the Committee, and secured and transported any documents submitted to the Committee pursuant to a subpoena duces tecum. The Senate Clerk's Office received, maintained, secured, and Bates-stamped all documents and records submitted to the Committee pursuant to a subpoena duces tecum as well as kept records of the hearings, including vote sheets, copies of subpoenas and service of process receipts, DVDs, and hearing notices. The Senate Majority Research Office provided report drafting and clerical services, and the

Senate Majority Attorney acted as legal counsel for the Committee. The House Sergeant-at-Arms coordinated hearing rooms for the Committee and the House Majority Attorneys assisted in legal counseling on certain matters.

2. Committee Rules and Process of Hearings

The Committee held a series of duly noticed public hearings from June to November 2007, and adopted rules for the conduct of its proceedings. Capitol TV was authorized by the Committee to film and broadcast the committee hearings and to act as the official recorder of the hearings. The Committee was authorized to issue subpoenas requiring the attendance and testimony of witnesses and subpoena duces tecum requiring the production of books, documents, records, papers, or other evidence in any matter pending before the Committee; hold hearings; administer oaths and affirmations to witnesses at hearings; report or certify instances of contempt; employ professional, technical, clerical, or other staff and expend funds for the proper performance of its duties; and exercise all other powers specified under chapter 21, Hawaii Revised Statutes, with respect to investigative committees.

Witnesses appearing before the Committee pursuant to a written subpoena or subpoena duces tecum were given ten-day notice of the date and time of the witness's appearance, a short plain statement of the areas to be inquired, and a list of the principal documents about which the witness could be questioned. Witnesses were allowed to retain their own counsel. A draft report of the Committee's findings and recommendations was required to be made available to any individuals or entities who were the subject of or who were witnesses who testified at any hearing, and allowed the opportunity to submit written responses to the draft findings or conclusions.

Hearing notices were submitted and uploaded on to the Committee's webpage for all hearings at least seven days prior to each hearing with the date, time, and location. All hearings were open to the public unless it was necessary for the Committee to meet in executive session to confer with counsel. Capitol TV telecasted all of the hearings live with some of the hearings re-televised at later dates and times. Non-confidential materials submitted to the Committee pursuant to a subpoena duces tecum were uploaded on to the Committee's webpage for public viewing after all the records were Bates-stamped for security and accountability.

The Scope and Objectives of the Joint Senate-House Investigative Committee

1. The Scope of the Committee's Investigation

The scope of the Committee's investigation of the Bureau of Conveyances was to complement rather than duplicate, impede, or jeopardize the ongoing investigations conducted by the Department of the Attorney General and the State Ethics Commission. While the Attorney General's investigation centered on illegal acts and the State Ethics Commission's investigation focused on unethical acts, only the Committee's investigation had a broad enough scope to address the fundamental issues of management effectiveness, operational efficiency, customer satisfaction and

fairness, and personnel at the Bureau. The Committee made clear during its first public hearing that the Attorney General or the State Ethics Commission would be notified and forwarded any relevant materials if the Committee discovered any criminal activity or ethical violations during the course of its investigation. It was the goal of the Committee to develop methods, and short and long-term solutions on how the Legislature can assist the Bureau of Conveyances in becoming a more efficient, effective, and accountable operation rather than pinpoint blame for the existing problems at the Bureau.

2. The Objectives of the Committee's Investigation

Pursuant to Senate Concurrent Resolution No. 226 (2007), the objectives of the Committee were to investigate, gather information, assess, and make recommendations concerning:

- (1) The management of the employees and administrators of the Bureau of Conveyances;
- (2) The fiscal management and accountability of the Bureau of Conveyances;
- (3) The rules, procedures, and fee schedules relating to information sharing between the Bureau of Conveyances and private title companies and individual users or subscribers, and
- (4) The security of recorded documents, access to these documents from private computers, and the potential for tampering with these documents.

PART II. OBSTACLES THE COMMITTEE FACED

The Committee faced several obstacles during the course of its investigation of the Bureau of Conveyances, which made it difficult for the Committee to obtain full access to relevant records or perform a more in-depth investigation.

Delays

Pursuant to Senate Concurrent Resolution No. 226 (2007), the Committee was required to perform an investigation of the Bureau of Conveyances, hold a series of public hearings, and submit a written report of its findings and recommendations within a six-month period, which is a relatively short time frame. Thus, it was important for the Committee to work in a highly organized and concentrated manner to achieve its goals and objectives, and formulate appropriate recommendations. However, unexpected events occurred that resulted in delays in the Committee's investigation and hearing schedule.

During the Committee's first scheduled hearing in June, an investigator, Hilton J. Lui was contracted to perform professional investigative and consultative services for the Committee. Mr. Lui had previously completed and provided investigative services for the State Ethics Commission's probe on possible ethical violations at the Bureau of Conveyances. Upon receipt of a subpoena duces tecum, the Executive Director of the State Ethics Commission expressed his concerns to the Committee in July over his ability to produce usable information in light of the reservations over the records relating to the ethics probe, especially those records that were a product of Mr. Lui's work. Although he clearly expressed in his resignation letter to the Committee that he believed the allegations against him were false, Mr. Lui resigned as the Committee's investigator because he did not want any of the allegations against him to affect the important work of the Committee. Mr. Lui's resignation required the Committee to reassess the resources needed to continue and complete its investigation of the Bureau of Conveyances. It was fortuitous for the Committee that the Office of the State Auditor was available and willing to serve as staff to the Committee and to provide investigative and consultative services after Mr. Lui's departure.

The Committee's investigation and hearing schedule was further delayed by the unexpected convening of three Special Sessions during the legislative interim. Most notably, in October, the Legislature reconvened to address the issues regarding the operation of an inter-island ferry service, and for the Senate to hold confirmation hearings and advise and consent on several interim nominations for cabinet members, for a judicial position, and to a variety of state boards and commissions.

Issues Relating to Obtaining Information

The Committee also experienced difficulties in obtaining or being granted access to relevant documents pertaining to its investigation. The Office of the Auditor indicated to the Committee that the Office encountered difficulties in gaining access to relevant

documents pertaining to the Bureau of Conveyances at the Department of Land and Natural Resources. The Auditor indicated to the Committee that these problems had never occurred in the past when using its audit powers under section 23-5, Hawaii Revised Statutes, which authorizes the Auditor to examine and inspect all accounts, books, records, files, papers, and documents, and all financial affairs of every department, office, agency, and political subdivisions. The Auditor was unable to receive complete records pertaining to the fiscal management of the Bureau of Conveyances, encountered issues relating to privileged or confidential materials, and was instructed to contact the Chairperson's Office prior to obtaining documents and records. Furthermore, the Registrar of the Bureau of Conveyances testified to the Committee that he was instructed to submit to the Chairperson's Office any materials requested by the Committee or the Office of the Auditor for purposes of the Committee's investigation. The Auditor noted that her office was experiencing problems with obtaining these documents from the Chairperson's Office.

On more than one occasion during the hearings, the Committee received oral testimony under oath that was later determined not to be completely truthful or conflicted with other pieces of information or documents submitted to or in possession of the Committee. The Committee took note of these discrepancies and had the unfortunate task to consider whether to pursue legal action. Witnesses were given the opportunity to supplement or amend their previous testimony to ensure that their statements were truthful and complete. It was disappointing for the Committee to receive information by individuals who did not hold the mission of the investigation at the same level of seriousness as the Committee.

It is important to note that the Committee obtained and was granted access to large amounts of information during the course of its investigation, but it was forced at times to draw some of its conclusions from an incomplete picture. These pieces, however, were enough for the Committee to draw reasonable and sound findings and conclusions. The ability to obtain and gain full access to all of the pieces would have expedited the Committee's investigation and allowed for a more in-depth analysis.

Issues Relating to Serving Subpoenas and Compelling Documents Pursuant to Subpoenas Duces Tecum

Pursuant to Senate Concurrent Resolution No. 226 (2007), the Committee was authorized to issue subpoenas to individuals, which require them to personally appear before the Committee to testify under oath and answer any questions relevant to the purpose, subject matter, and scope of the Committee's investigation. The Committee encountered problems in serving subpoenas to certain individuals due to these individuals being on vacation or unavailable at the time of service of process. Furthermore, certain individuals were not able to appear in front of the Committee at the date and time stated on the subpoena and alternate dates and plans needed to be arranged to accommodate these individuals.

The Committee was also authorized to issue subpoenas duces tecum for the limited purpose of producing subpoenaed records and documents to the Committee.

Attached to each subpoena duces tecum was a description of the requested documents to be produced and submitted to the Committee. The Committee encountered problems in receiving all of the requested documents pursuant to subpoenas duces tecum because the documents could not be found, did not exist, were not under the control or possession of the Custodian of Records, were already destroyed, or were submitted, but were not what was requested.

Despite these obstacles, the Committee was able to review a number of matters relating to the Bureau of Conveyances in detail and took its task seriously by conducting a fair and balanced investigation with the materials and information received and submitted. The findings and recommendations relating to these issues are presented in the following sections.

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PART III. FINDINGS OF THE COMMITTEE

During the six months of public hearings and intense investigative work, the Committee uncovered several and sometimes troubling findings relating to the voluminous and escalating problems at the Bureau of Conveyances. The Committee heard testimony and received documents regarding the Bureau's computer system and information sharing service, including the acquisition of the computer system and software; the management of the Bureau's fiscal matters, including contracts and agreements; the Bureau's relationship and business interactions with private title companies or other entities in the title industry; and the personnel and operational management of the Bureau.

In the course of its discussion and assessment of the information and testimony it received, the Committee concluded that there existed three prevailing and interlocking conclusions amongst the Committee's findings. These conclusions are:

1. Severe mismanagement of the employees and operations of the Bureau of Conveyances that hampers effective and efficient property recordings;
2. There is a lack of fiscal management and accountability at the Bureau of Conveyances that has led to a loss of revenue for the State; and
3. The employee and operational mismanagement and the lack of fiscal accountability results in the operations of the Bureau of Conveyances to be vulnerable to abuse.

These conclusions and related findings are discussed in following sections.

THEME 1: Severe Mismanagement of the Employees and Operations of the Bureau of Conveyances Hampers Effective and Efficient Property Recordings

1. High Level of Factionalism and Animosity among the Staff Distracts From Serving the Public

Employees have been embroiled in long simmering disputes, personality clashes, and conflicts against each other and over how work should be done at the Bureau. The Committee found that Bureau employees work in an environment with a high level of factionalism and animosity.

Factionalism between the Land Court employees and the Regular System employees (of the same Hawaii Government Employee Association's (HGEA) Bargaining Unit 3) has escalated throughout the years despite both sections being placed within the same office space at the Department of Land and Natural Resources. Although the work of both sections appear to be similar to the each other on the surface, the Registrar explained to the Committee that the work done at the Land Court requires more technical and tedious analysis and verification to issue Certificates of Title and Transfer Certificates of Title since title ownership is guaranteed by the State. The Registrar further explained that the employees of the Regular System tend to complete their work earlier or faster on a daily-basis, and are unable to assist employees at the Land Court due to their current job descriptions and training or union rules and collective bargaining agreements. Additionally, separate chapters in the Hawaii Revised Statutes for the Land Court and Regular System have been cited as a reason why the work at the Bureau must be kept separate. The inability of both sections to work together and the apparent feelings and expressions of superiority of one section over another that occurs between the employees of the two sections have only added to the factionalism and animosity at the Bureau, and have resulted in feelings of resentment and jealousy. Previous attempts to combine Land Court and Regular System work, such as the consolidation of cashiering functions, has resulted in the filing of grievances, although the cashiering functions were ultimately combined.

There was an excessive filing of grievances by Bureau employees against each other or filed against individuals who held supervisory positions, especially the Registrar. According to the State Auditor's analysis of the Department of Land and Natural Resources' human resources grievances, the employees at the Bureau of Conveyances from fiscal year 2003 to 2007 were responsible for 50 individual and class grievances out of a total of 98 for the entire Department. The employees of the Bureau of Conveyances make up approximately seven percent of the total employees of the Department of Land and Natural Resources, yet over fifty percent of the grievances filed for the entire Department were filed by Bureau employees.

In addition to the high number of grievances filed, there were numerous ensuing complaints and disputes between Bureau employees of which some appeared to be petty or retaliatory. Some of the complaints and disputes involved trivial matters, including the coffee brewed at the office, which doors employees could use to enter and exit the office, the use and display of bumper stickers and posters at employees' desks,

and a controversy over boiling peanuts during an employee's lunch hour. Furthermore, intra-office disputes have escalated to employees filing temporary restraining orders against each other and the sheriffs being called in for their assistance when disputes have gotten out of hand. The union has made several attempts over the years to address the intra-office fighting and animosity at the Bureau, but problems have developed among union leadership, representatives, and stewards, which have impeded change and further inflamed the antagonistic work environment.

Some of the grievances are the result of having unclear work practices, which has allowed Bureau employees to freely select guidelines to suit or support their particular position. The Bureau continues to operate officially under a Policies and Procedures Manual from 1997, despite significant changes to its operations since that time. The failure of management to provide an updated Policies and Procedures Manual will be discussed in a following section.

As a result, the Registrar classified the Bureau of Conveyances in his testimony as dysfunctional. The factionalism between the two branches at the Bureau and the antagonistic work environment has consumed the employees and resulted in a detrimental effect on their work productivity and distracts them from serving the public in an effective and efficient manner.

2. Low Employee Productivity Wastes Taxpayer Resources

A significant backlog in work at the Bureau of Conveyances was reported in 2006, including that Bureau employees were doing work that dated back to 2004 and were faced with 40 boxes of unopened mail submissions that dated back to August 2005. The Auditor's 2005 report found that, despite the significant increase in overtime hours to address the work backlog, employee productivity decreased.

For fiscal years 2005-2006 and 2006-2007, the Bureau consisted of 45 and 49 employees, respectively. The 9% increase in staff was to address an unexpected increase in document filings. Yet, a comparison of the number of documents processed indicates that the Bureau required more workers to perform less work. The table below shows that 9.6% less total documents were processed in fiscal year 2006-2007 compared to fiscal year 2005-2006 by 8.9% more employees.

Data	FY 2005-2006	FY 2006-2007	Percent Change
Regular System:			
Documents Recorded	259,000	236,000	(8.9%)
Requests Processed	248,000	149,000	(39.9%)
Land Court:			
Documents Recorded	163,000	174,000	6.7%
Requests Processed	102,000	135,000	32.4%
Certificates of Title Produced	33,000	34,000	3.0%
Total Documents	805,000	728,000	(9.6%)
Total Employees	45	49	8.9%

Records show that a work backlog continues to exist, indicating that low employee productivity still exists at the Bureau of Conveyances. The Committee found several factors that have contributed to the low employee productivity at the Bureau.

The overwhelming intra-office turmoil and level of animosity at the Bureau of Conveyances has distracted the staff. The Auditor reported that employees spend significant amounts of time during regular work hours e-mailing, spying, and tattling on each other rather than processing documents. This type of behavior coupled with the filing of grievances is a daily distraction for the employees, and has significantly preoccupied their time and prevented them from doing their work in a timely and efficient manner. The constant e-mailing, spying, and tattling on each other have resulted in unfounded rumors, allegations, and accusations, which only adds to the factionalism and high level of animosity in the office. The inability and unwillingness to work together combined with the infighting has a detrimental effect on serving the public's property recording needs and ultimately wastes taxpayer dollars.

The Department's Human Resources records show that a number of employees are on sick leave or claiming workers compensation resulting from the stress of infighting, which leaves fewer employees available to complete the daily work that comes into the Bureau as well as address the backlog that has accumulated. The Committee learned that both the Deputy Registrar and the Land Court Branch Chief have been away from work on extended leave. The Committee was particularly concerned with the length of absence of these employees who hold supervisory positions, as these absences leave the Bureau without experienced leadership or authorized individuals to guide the daily operations or manage the employees who are already preoccupied in dealing with the intra-office turmoil.

The low productivity helps explain the long history of and current work backlog at the Bureau of Conveyances.

3. The Growing Work Backlog Delays Property Recordings

While Bureau employees deal with the intra-office disputes, grievance filings, and employee absences, the work backlog continues to grow at the Bureau of Conveyances. The work backlog has been widely known throughout the title industry and been the focus of news articles and reports for several years without any substantial changes that effectively address or mitigate the backlog. Currently, the Regular System is three months behind in document indexing, although the document imaging is up to date due to the daily scanning of the received documents. The Land Court is approximately a year-and-a-half behind in providing current and updated Certificates of Title. The Committee found that the work backlog, especially with respect to the indexing of documents and the opening of Land Court mail, is a long-standing problem at the Bureau.

The backlog in the indexing of documents received at the Bureau of Conveyances can have a detrimental effect on the course of business for many government agencies and businesses in the title industry. A Vice President from Title Guaranty of Hawaii, Ltd., testified that a backlog in the indexing of recorded documents

can cause serious problems for businesses in the title industry because it forces these companies to record subsequent documents based on their own informal indexing system and not on the Bureau's official indexing system.

In March 2003, title companies and other authorized entities received daily indexes from the Bureau of Conveyances by gaining access to the Bureau's file transfer protocol (FTP) server and downloading the indexes for business use. These companies could also receive scanned images of the recorded documents from the FTP server. During this period, it was the Bureau's opinion that a document was considered filed or recorded only after it had also been indexed. In August 2004, the Bureau of Conveyances Information System (BCIS) computer was having difficulty in timely processing all the indexing and scanning, which meant that the previous day's input of scanned documents would process overnight and still not be completed by the next day because of delays in the indexing of these documents. Because the indexing was delayed, the availability of the scanned images was also delayed, causing a backlog of document availability from the FTP server for public use.

To eliminate the indexing from delaying the availability of scanned images, the Bureau obtained an opinion from the Attorney General stating that a document is recorded when it is received by the Bureau, not when it is indexed. The Attorney General's opinion allowed scanned images to be available to FTP server subscribers much quicker, and the title industry to have access to and use the scanned documents with the document number, date, and time of recording, and to maintain an unofficial record of all documents recorded at the Bureau of Conveyances.

To facilitate access to the scanned images, a verbal agreement was formed between the Bureau of Conveyances and Title Guaranty of Hawaii, Ltd. where Title Guaranty would develop and install software that would enable a copy of the scanned documents from the microfilm server (not the BCIS computer) that is used for archiving microfilm to be read and then written to the FTP server. The software, which was installed on a desktop computer owned by the Bureau in September 2004, would flip the original scanned images by 90 degrees to make these images more useful to the FTP server subscribers. The software enabled title companies to have real time access via the FTP server to the scanned documents, their document numbers, the date and time of recording, but without the official index. These raw images provided title companies with copies of the documents recorded at the Bureau that provided these companies with information that would enable them to handle subsequent transactions of prior related transactions.

By splitting the document scan processing from the index processing, the Title Guaranty software assisted in temporarily addressing the backlog problems. It is important to note, however, that while the software enabled these companies real time access to the scanned images, for assurance of certainty, they still needed to wait for the official indexing of these documents. As stated before, the indexing of documents at the Regular System is currently three months behind; thus, title companies are forced to rely on their own databases of indexes that they created from the scanned images.

Large amounts of mail are received daily at the Bureau of Conveyances, but when the mail is not timely processed, this causes a work backlog. The backlog in the opening of mail was a particular concern for the Committee as payment checks for recording fees or information sharing subscription fees are received through the mail. The Auditor noted in its 2005 report that some of the checks received in the mail were stale dated when finally opened, which causes fiscal inconveniences for the payors as well as processing problems for the Bureau as the payee. The causes of why Land Court mail was allowed to accumulate unopened were never made clear to the Committee. In his testimony, the Registrar cited the separation of and the lack of cooperation between the two receiving sections at the Bureau as possibilities for the delay.

In June 2006, the Registrar was assigned to a special project by the Deputy Director of the Department of Land and Natural Resources to specifically address the growing mail backlog. During the approximately twelve months he was assigned to the special project, the Registrar testified that he was prohibited from interacting with Bureau employees other than the employees assigned to his special project team. Intermittently during the time that the Registrar was reassigned to this special project, the Deputy Registrar was not working full days due to an ongoing illness. Thus, the Deputy Director at the time was forced to manage the Bureau of Conveyances without both the Registrar and Deputy Registrar. When the Deputy Director was unavailable due to performing other department duties and responsibilities, the Branch Chiefs were in charge of managing the Bureau. The special project completed in July 2007 to address the mail backlog was a temporary solution as the Registrar testified that since the disbandment of the special project team, the mail is starting to backlog again.

The consequences of a backlog in the recording of documents are numerous and costly as it delays property transfers that depend on timely and efficient processing, which many individuals have invested significant financial interests. Sales and purchases of homes are delayed, thus, placing deals at risk and vulnerable to the fluctuation in market prices. Vendors who service and make possible the sales and purchases of homes and real property cannot generate revenue when these transactions are delayed or in limbo, and government revenues are postponed.

In an attempt to take care of the growing work backlog, Bureau employees began to work overtime. Although overtime was originally performed with the best intentions in order to get the Bureau up-to-date and fully operational, the amount of overtime has become a problem and a source of dispute between the employees of the Regular System and Land Court.

4. Employees Suspected of Abusing Overtime Pay

Bureau employees are faced with a growing backlog of work, the inability to accomplish work during regular work hours, and large increases of recorded documents during certain times of the year. Working overtime is an opportunity for employees to attempt to take control of the mounting workload. However, according to the Auditor's 2005 report and Bureau overtime data analyzed by the Committee, the amount of overtime hours performed by and paid to Bureau employees in recent years appears to

be excessively high. The Committee was not able to categorically determine specific abuse of overtime by Bureau employees because the Department's Fiscal Officer refused the Auditor's repeated requests to gain access to detailed payroll records. By taking into consideration that Bureau employees are distracted by infighting and low work productivity, it appeared to the Committee that these factors create an incentive and artificial need for overtime in some instances, especially in light of the fact that overtime hours increased approximately 1,300 hours in fiscal year 2006-2007 when more employees processed fewer documents. The Committee was concerned that certain employees were taking advantage of the overtime benefits as indicated by the high number of overtime hours reported, and was very concerned over the impact overtime pay would ultimately cost the State.

Information illustrated that, for an office of approximately 45-50 employees, the total number of overtime hours incurred over a four-year span was noticeably high, especially compared to the other divisions within the Department of Land and Natural Resources. Furthermore, information indicates that the total hours of overtime incurred by employees increased by approximately 18% from FY 2004 to FY 2007, and the total amount of overtime paid to employees increased by approximately 32% from FY 2004 to FY 2007.

	FY 2004	FY 2005	FY 2006	FY 2007
<i>Total hours of overtime</i>	12,166	13,252	13,093	14,387
<i>Total of amount of overtime</i>	\$303,000	\$347,000	\$348,000	\$399,000

The total amount of overtime hours incurred by Bureau employees in FY 2007 is probably understated as the Bureau ran out of overtime money in May 2007. For the remainder of the fiscal year, employees who worked overtime were instead granted compensatory time. The Department's Fiscal Officer and Department Chairperson refused to provide the number of compensatory time earned for overtime work for FY 2007, despite repeated requests for that information by the Office of the Auditor. With the new 2008 fiscal year underway, certain employees requested that compensatory time be paid out as the Bureau had funds again, but this was inconsistently applied; thus leading to further bickering amongst the employees.

Because of the large increase in the number of documents recorded at the Bureau during the FY 2006, a reasonable assumption is that more overtime hours could be expected of employees in order to meet the higher recording and processing demands. Nevertheless, the Committee found that even after the volume of documents decreased in FY 2006, the hours of overtime recorded increased by approximately 10% from FY 2006 to FY 2007. The Registrar failed to provide a clear explanation of the existence and continuance of a work backlog despite the high number of overtime hours reported by employees. In touting the importance of overtime work at the Bureau, the Registrar stated that if Bureau employees did not work overtime, the workflow would come to a complete stop. It is reasonable to expect that an increase in overtime work would result in a decrease in the backlog. Instead, the backlog in work increased.

The amount of overtime hours performed and overtime pay earned are not evenly distributed among the employees at the Bureau. Although many Bureau

employees engaged in overtime work, a number of employees continued to earn substantial amounts of overtime pay, which greatly exceeded their base pay salary each year.

For FY 2006, for the six employees earning more than \$15,000 in overtime, noted in the table below, their overtime pay represented 34% to 64% of their base pay. These six employees were paid a combined total of \$136,000 in overtime, which is 39% of the Bureau's total overtime. For FY 2007, for the nine employees noted in the table below, their overtime pay represented 34% to 68% of their base pay. These nine employees were paid a combined total of \$201,000 in overtime, which is 50% of the Bureau's total overtime.

Number of employees paid:	FY 2004	FY 2005	FY 2006	FY 2007
\$15,000 - \$20,000 in overtime	2	4	2	4
\$20,000 - \$25,000 in overtime	2	1	1	3
\$25,000 - \$30,000 in overtime	--	--	3	1
\$30,000 - \$35,000 in overtime	--	2	--	1
Highest overtime paid to an employee	\$25,000	\$31,000	\$27,000	\$35,000

The overtime data provided to the Committee showed that among the employees who performed overtime work, Land Court employees incurred significantly more overtime hours than the Regular System employees. This uneven distribution of overtime performance and earnings only added more fuel to the factionalism and intra-office turmoil.

The above numbers are estimations that were calculated by the Office of the Auditor using available information, but the actual amounts of overtime pay are unknown. Complete records pertaining to the fiscal management of the Bureau of Conveyances, especially with respect to overtime hours and compensatory time were not made available to the Committee.

Testimony indicated that the Bureau of Conveyances lacks an established and uniform procedure with respect to overtime work that could be followed and adhered to by the Registrar, Branch Chiefs, and affected employees. As a result, the Registrar indicated that he had a difficult time trying to stay within the Bureau's budget or faced resistance from the employees when attempts were made to place restrictions on the number of overtime hours an employee could perform by terminating weekend overtime work or denying overtime requests. Furthermore, the Registrar testified that although overtime work is supposed to be pre-approved by him before officially granted to employees, the Branch Chiefs of the Land Court and Regular System sometimes ignored this approval process and would authorize and grant overtime requests instead. The lack of an established uniform overtime procedure enables Bureau employees to abuse overtime benefits. In addition, the ability of individuals to ignore the pre-approval directive of the Registrar highlights the weak standing of management. As will be further discussed later, much of the inability to manage the Bureau stems from lacking uniform work practices, applying them haphazardly and inconsistently, especially when it relates to progressively disciplining employees, and lacking the will to take necessary actions to correct problem employees.

The issue of overtime has been a long standing problem. The Hoike Report issued in June 2005 and costing the State \$75,000 included a number of detailed recommendations to increase productivity. Although the Department of Land and Natural Resources accepted the report without reservations and committed to the implementation of the report's recommendations, no action was taken. Even after assurances to the Legislature in its annual goals report, the Department failed to implement any of the Hoike Report recommendations. The Department Deputy at the time testified that other pressing needs, including addressing the unopened mail backlog and creating a better working relationship with HGEA, were higher priorities than implementing the Hoike Report recommendations. To the Committee, this indicates that the Bureau does not have sufficient management depth to run the day-to-day operations of the Bureau while making changes to address pressing operational and structural issues. Unfortunately, much of the momentum and excitement for improvements from the Hoike effort has been lost.

The uncontrolled and obvious abuse of overtime at the Bureau ultimately results in additional long-term costs for the State as overtime is added into calculating the high three-years for pension payment purposes. The high total amount of overtime pay and budgetary constraints raise questions on whether moneys earmarked for vacant positions at the Bureau are used to fund overtime pay. For fiscal year 2005-2006, 55 full-time employee positions were authorized although only 45 position were filled. For fiscal year 2006-2007, 55 full-time positions were authorized, but only 49 positions were filled.

The Department's refusal to provide full access to and disclosure of the employee payroll records and the lack of accountability and management of overtime at the Bureau prevented clear answers to these questions and a complete cost analysis regarding the overtime issue. The Department's Fiscal Officer testified that the Department was concerned about the continually high overtime amount, but was unable to say what steps the Department was taking or had taken to try to reduce overtime. Clearly, changes are necessary to ensure that overtime is not abused and that taxpayer funds are spent wisely.

5. Weak Leadership from Absent Managers

The factionalism and antagonistic work environment, the work backlog, and the lack of control and abuse of overtime among employees at the Bureau were indications of an absence of strong leadership from those individuals who held supervisory positions. Due to the lack of leadership, employees were forced to manage the workload and operations themselves without guidance or uniformity. Employees expressed resistance or failed to cooperate when the Registrar or Deputy Registrar attempted to exercise control or initiate changes at the Bureau.

The Bureau of Conveyances supervisory positions consist of the Registrar as the head of the Bureau, with a Deputy Registrar, as second-in-command, and two Branch Chiefs, one for the Regular System and the other for the Land Court. On several

occasions, the Deputy Director of the Department of Land and Natural Resources took charge for the Bureau.

The management and operations of the Bureau of Conveyances were often adversely impacted by the physical absence or unavailability of the Bureau supervisors. The Registrar was assigned to a special project to handle unopened boxes of mail for one year and the Deputy Registrar and the Land Court Branch Chief were both absent from work due to illnesses. The Registrar was assigned to the special project in June 2006, intentionally moved to another floor, physically away from the actual operations of the Bureau, to separate the Registrar from the intra-office turmoil at the Bureau. The Registrar was not officially reinstated back to his official duties until July 25, 2007. During the course of the special project and the absence of the Deputy Registrar the Deputy Director of the Department was forced to take charge of the Bureau, but was limited in the tasks he could officially perform. The Deputy Director was not authorized by law to complete certain duties that only the Registrar and Deputy Registrar could perform.

The physical absence and unavailability of the Bureau supervisors resulted in some of the Bureau employees being forced to seek assistance from former supervisory employees of the Bureau of Conveyances. The former Registrar of the Bureau of Conveyances, who is currently a Consultant at Title Guaranty of Hawaii, Ltd., testified that she receives phone calls and e-mails from Bureau employees with questions or requests for assistance regarding documents recorded at the Bureau on a weekly-basis. E-mails sent to this former Registrar from Bureau employees contained copies of recorded documents that were attached to familiarize her with the issues presented and to enable her to formulate advice and guidance in return.

Bureau employees seeking advice on Bureau matters from outside parties is an indication that the current Registrar may have been unavailable for assistance, or these employees may have felt that the Registrar lacked sufficient knowledge or experience to assist or may have lacked trust in the Registrar. The Registrar testified that he was not aware that Bureau employees contacted outside parties, including the former Registrar, for assistance, because he receives inquiries every day from employees regarding Bureau matters. He continued to explain that the proper chain of command for inquiries should be the respective Branch Chief first and then the Registrar if the Branch Chief is unable to assist with the inquiry.

The Registrar testified that he does not believe that a Bureau employee calling a title company employee for assistance poses a conflict of interest per se but that it would be a conflict of interest for a Bureau employee to consult with a title company employee about a document from a competing title company. The Auditor's investigative work indicated that some of the e-mails sent to the former Registrar, a Title Guaranty employee, contained copies of documents attached from a competing title company; thus, posing a potential conflict of interest.

The Committee further found that there was a lack of leadership and initiative from the Registrar to take control and solve some of the mounting troubles relating to the operations and personnel management at the Bureau of Conveyances. Despite the

recommendations listed in the Hoike Report as well as the Auditor's 2005 report, the Registrar lacked the patience and initiative, and failed to develop strategies or implement any of these recommendations to improve the problematic situations at the Bureau. Furthermore, the Registrar failed to effectively enforce any of the rules or procedures relating to employee conduct and responsibilities. The Registrar testified that, due to the mounting retaliatory grievances, he was at his breaking point and would give up after making initial attempts to adhere to the progressive disciplinary actions to correct problems. There was a lack of communication between supervisors and staff, and amongst supervisors, despite daily mandatory supervisor meetings, which were initiated by the former Department Chairperson and frequently attended by the former Deputy Director. The lack of communication within the Bureau led to rumors, suspicions, allegations, and assumptions regarding personnel and the daily operations at the Bureau.

In response, the Registrar testified that when he would attempt to exercise control over problems or situations, he was met with resistance from Bureau employees or some employees would fail to cooperate with him. He testified that he obtained little support from the former Department Chairperson despite his repeated requests for assistance, and received even less support from the union on matters relating to employee conduct, grievances, and disciplinary actions. Furthermore, the intra-office turmoil had developed to a point that he felt was unbearable; thus, leaving him with little strength or patience to implement changes when he felt those initiatives would inevitably be faced with strong resistance.

The Committee's review of Department records also indicated that Bureau supervisors were at times the source of disruptions that resulted in the filing of grievances, temporary restraining orders, threatened lawsuits, and calling of sheriffs and police to remedy conflicts. It is important to note that the Regular System and Land Court Branch Chiefs, who are part of the Bureau's management team, are also union members, HGEA Bargaining Unit 4. Because of confidentiality requirements, the Committee cannot disclose any specific details relating the management infighting, but if the Bureau management team is fighting amongst themselves, it clearly provides a poor example to Bureau employees.

A strong, unified leadership force and the implementation of and adherence to a uniform and fair improvement plan are needed for the Bureau to remedy or mitigate some of the problems and prevent other problems from festering even further. The current management team at the Bureau is either absent (the Deputy Registrar and the Land Court Branch Chief are still on extended leave), unable and unwilling to exercise management authority (the Registrar testified it was easier to give up than to deal with problem employees), or the cause of disruptions at the Bureau. In the Committee's judgment, the management team at the Bureau is either unwilling or unable to take the necessary corrective actions to resolve any of the Bureau's long-standing problems, even after being provided with many opportunities and resources. Ultimately, fixing the Bureau is the responsibility of the Department of Land and Natural Resources, which, despite repeated assurances and promises to the Legislature, has done little to achieve any substantial changes.

6. Outdated Rules and Inconsistent Enforcement Hamper Management

Findings of intra-office turmoil, factionalism, and antagonist work environment at the Bureau led the Committee to question whether any established rules relating to employee conduct or disciplinary procedures existed at the Bureau and whether Bureau employees and supervisors adhered to any of these rules or procedures. The excessive number of filed grievances indicated that the Bureau lacked structure and cohesiveness.

The Committee found that the employees were following rules and procedures that were outdated. The Auditor's investigation indicated that Bureau employees were still relying on a Policies and Procedures Manual from 1997 for guidance on many of the Bureau's work practices and procedures. The Registrar testified that a 2001 version of a Policies and Procedures Manual was voted on and approved by the Bureau staff in 2004; but this version was currently in consultation with the union for implementation. No explanation was given on why after six years, an updated Policies and Procedures Manual has not been approved and implemented at the Bureau.

In the meantime, the Policies and Procedures Manual from 1997 is still in effect at the Bureau. Since 1997, the Bureau has upgraded its computer system, made technological advancements in information sharing to provide faster service to its customers and subscribers, and increased its staff. Yet, factionalism and intra-office turmoil have escalated and the number of grievances filed has risen since 1997. The lack of an updated manual allows staff too much leeway in interpreting work practices, and relying on outdated material has been a source of many grievances and discord. Issues of contention that could be avoided if they were adequately and clearly addressed in the Policies and Procedures Manual include overtime authorization, conflicts of interest, office exit doors, authorized and restricted work areas, acceptance of gifts, vacation blackout periods, employee hiring and promotion procedures, temporary assignments, and fee schedules.

The lack of a uniform interpretation of and adherence to work practices at the Bureau allowed allegedly unauthorized individuals to gain access to restricted areas in the Bureau to correct mistakes on recorded documents. The Committee heard somewhat conflicting testimony indicating that in lieu of following standard procedures to correct mistakes in a recorded document, an officer of a title company was able to gain immediate access to the Bureau to correct mistakes made by employees of the Bureau on recorded documents relating to the closing of an important and very costly housing privatization transaction.

Due to tight deadlines and the large amount of dollars involved in the transaction, it was imperative that these mistakes that may have been made by employees of the Bureau were remedied immediately with a creative solution, without following standard procedures to the correct mistakes made in the recorded documents.

The anecdotal testimony serves as an indication that the Bureau needs clear guidance, established uniform rules, procedures, and training, without which the

employees of the Bureau can be misdirected and led to provide special but improper privileges for selective individuals.

In addition to the lack of updated work practices, there was also the lack of consistent enforcement of existing practices and failure to follow the State's performance appraisal and progressive disciplinary processes. When the Committee asked the Registrar how he manages Bureau employees, he indicated that he made numerous requests to the employees to follow rules; however, when employees rebuffed these requests, he gave up trying. This apparent lack of understanding of the basic management tools at his disposal allowed employees to simply ignore his directives without consequences. Certain employees used this lack of will to undermine management's authority and responsibility to serve the public's property recording needs and to waste taxpayer funds.

Past experience by the Registrar indicated that the lack of any clear and accepted rules and guidelines have been used by employees as loopholes to circumvent rules. Therefore, by not updating the work practices, the Registrar perpetuated an environment that abdicated control to the employees.

7. Outdated Administrative Rules Limits the Bureau's Financial Interests

In addition to a lack of updated rules and procedures relating to employee conduct and responsibilities, there was a lack of updated Administrative Rules relating to the operations of the Bureau. The version of the Bureau's Administrative Rules that is in current use was revised in 1999. Many changes have taken place at the Bureau since 1999, especially with respect to its computer system and technological advancements in information sharing that provide faster service to its customers. Updated Administrative Rules not only allows the Bureau to operate at a more efficient and effective level, but could enable the Bureau to gain better accountability over any fees charged and information made accessible to the public.

The Registrar indicated to the Committee that the Administrative Rules for the Bureau is in the process of being revised in order to reflect the changes that have occurred since 1999. Despite repeated requests, the Registrar failed to fully explain why it has taken the Bureau over eight years to revise the Rules or to provide the Committee with a copy of the proposed updated Administrative Rules or any related working drafts.

Since 1999, the Bureau has upgraded its computer system known as the Bureau of Conveyances Information System (BCIS), which allows the public and real estate professionals access to information regarding documents the Bureau processes. Employees from the Department of Land and Natural Resources Information Technology Section indicated that the public is able to access information by visiting the Bureau's public access room or ordering documents via the Bureau's website. Real estate professionals and other entities in the title industry may gain wider and more detailed access to information by subscribing to a Virtual Private Network (VPN) to access recorded documents and to print Certificates of Title or by subscribing to the File Transfer Protocol (FTP) server to receive scanned images and indexed data.

VPN and FTP subscribers are required to pay a fee for access and use of the information; however, the Committee found that there were great inconsistencies between the fees listed in the Administrative Rules, the Bureau's website, and the actual amount in fees received by the Bureau. The monthly charges for VPN service subscribers, for example, vary greatly between the fee listed in the Administrative Rules and the fee actually charged.

	Administrative Rules	Website Fee	Actual Charges
VPN monthly charge	\$100/month (\$13-16-32, HAR)	\$250/month (Bureau website)	\$150/month \$100/month (for second account per subscriber)

Thus, it is clear that the established fee schedules in the Administrative Rules are undermined with respect to charges of computerized information and that these rules need to be updated to properly reflect the current fee schedule. The Registrar dismissed this oversight as a technicality by indicating that he "jumped the gun" by posting the website fee schedule before the Administrative Rules were revised. The Registrar's nonchalant attitude toward fee schedules demonstrates to the Committee a weak understanding of the purpose of the Hawaii Administrative Rules and any resulting adverse financial implications.

Furthermore, it is clear that these rules need to be updated to properly reflect the technological advancements for information sharing, especially in light of the introduction of the FTP server and subscription service at the Bureau. In 1999, the Bureau was still providing information through the use of microfilm and magnetic tapes for the daily indexes. With the installation of the BCIS, the FTP server enabled subscribers to download a copy of all of the recorded documents submitted to the Bureau and indexes from the prior day without the use of microfilm or magnetic tapes. The current Administrative Rules do not provide a fee schedule for the monthly subscription and initial setup fees for using the FTP server because the rules were implemented prior to the introduction of the FTP server. However, the monthly fee listed on the Bureau's website for an FTP subscription is \$250 per month for images and another \$250 per month for indexed data, but the actual monthly amount charged was \$100 per month before the FTP server fees were discontinued in February 2005 due to the backlog in the indexing of documents.

	Administrative Rules	Website Fee	Actual Charges
FTP services monthly charge	None (Prior data was transferred via microfilm for images and magnetic tape for indexed data)	\$250/month for FTP images	\$100/month for FTP images
		\$250/month for FTP index data	\$100/month for FTP index data

Lastly, the Administrative Rules for the Bureau need to be updated to clarify the parameters for third parties who commercially use and sell Bureau information.

According to section 13-16-32, Hawaii Administrative Rules (HAR), a third party subscriber of raw images is prohibited from selling and disseminating exact copies or duplicates of raw data or portions thereof without the express written consent of the Registrar or Deputy Registrar, but is permitted to sell images for profit if the information is "value-added." Section 13-16-32, HAR, fails to provide any subscription agreements for the terms of usage of Bureau information. This makes it difficult for the Bureau to determine whether the usage by subscribers is permissible because it is unknown how the subscribers are using the data beyond the obvious needs to populate title plants. Updating the Administrative Rules to provide for subscription agreements and Bureau information usage terms will provide the Bureau further clarity for the use and greater accountability of its information.

8. Missing Contracts and Agreements Limit the State's Legal Rights

In addition to the lack of accountability over its recorded and processed information, the Bureau lacked accountability over its contracts and agreements entered into with outside parties. All government agencies must strive to be as transparent as possible, especially when negotiating and contracting with private individuals and entities for public services. Unwritten contracts and agreements are difficult to enforce without expressed terms, duties, and responsibilities that provide clear guidelines and procedures that each party to the contract can follow. The Committee found several examples of the Bureau entering into verbal contracts and agreements for services with outside private parties.

As discussed previously, the real estate professionals and other entities in the title industry may gain access to information by subscribing to a Virtual Private Network (VPN) to access and print recorded documents or by subscribing to the File Transfer Protocol (FTP) service to access images of unindexed documents recorded from the prior business day. These information subscription services were not supported by written agreements that define responsibilities to pay for these services, permit the use of the information consistent with the Administrative Rules, or define the subscriber's responsibility to protect confidential information that is sometimes contained within recorded documents. Without these written agreements, the Bureau has a difficult time enforcing contracts with subscribers, determining the number of subscribers for VPN and FTP services, determining whether use of its information by third parties is permissible, or determining whether the proper amount of fees have been paid to the Bureau. The Committee noted that an agreement for FTP imaging was drafted in 2003, but never executed with any subscribers. This is yet another example of poor execution of the most basic protections that could have easily been performed, but instead was allowed to slip by management.

Additionally, the Bureau does not have a written service contract or an extension agreement for maintenance of the BCIS beyond the Bureau's initial three-year contract with Unique Computer Systems, Inc., dba The Lange Group for the development and installation of the BCIS. The investigation revealed that after its installation, the Registrar agreed with the Lange Group to pay a yearly set amount between \$32,000 to \$33,000 a year for the Lange Group to provide routine service maintenance of the BCIS, including trouble shooting and repairs without any written agreements for the

maintenance service. However, without any written service contract, the Bureau would be seriously hampered in enforcing the unwritten agreement in the case of nonperformance by the Lange Group, and the Bureau could potentially lose \$32,000 for services not rendered.

Furthermore, the Bureau has previously worked with Title Guaranty of Hawaii, Inc., to assist the Bureau in its efforts to provide more efficient, faster, and up-to-date service and processing of documents. A Vice President of the Project Management Office at Title Guaranty testified that, in 2004, there was a tremendous document indexing backlog at the Bureau. To eliminate the indexing from delaying the availability of recorded and scanned images, a verbal agreement was formed between the Bureau of Conveyances and Title Guaranty of Hawaii, Ltd. where Title Guaranty would develop and install software that would enable a copy of the scanned documents from the microfilm server (not the BCIS computer) that is used for archive microfilm to be read and then written to the FTP server. The Committee found that Title Guaranty developed the software, installed it, and provided troubleshooting services to the Bureau without any monetary compensation. However, in return, Title Guaranty was given the opportunity to obtain scanned images of recorded documents prior to the indexing of the recorded documents by the Bureau and before the documents were made available to the public. The opportunity given to Title Guaranty increased its business opportunities in providing title services to the public and to other title companies in ways that the Bureau could not.

Lastly, the Bureau works with various entities and individuals in the title industry daily. Noting the various sizes of the companies in the title industry, it is important for the Bureau to maintain equity among all companies doing business with the Bureau. A representative of the Hawaii Land Title Association testified that the Association had previously worked with the Bureau to draft and implement an updated recording agreement between the Bureau and members of the Hawaii Land Title Association. The existing recording agreement was last revised in 1994. The recording agreement is designed to be a mutual agreement with respect to the daily recording procedures at the Bureau, applying to the Regular System and Land Court, and contained terms and conditions for a variety of operating requirements and deadlines relating to pre-checks, recording, rejects and re-submittals, pulling of recordings, specials, and liens, to name a few. The updated draft agreement was submitted to the Bureau in 2005, but was never signed and the Association has not received a response from the Bureau regarding the updated draft. The Bureau of Conveyances failed to explain why the Bureau failed to sign or comment on the updated draft agreement. Updated written recording agreements between the Bureau and various title companies can provide uniform guidance in the facilitation of a fair and transparent recording process and foster a working relationship that would ultimately be beneficial to the general public.

9. Outdated Functions and Weak Security Hinders Potential of Computer System

In 1999, the Bureau accepted a bid from Unique Computer Systems, Inc. dba The Lange Group to develop and implement a replacement Land Court and Regular System automated tracking system, which became known as the Bureau of

Conveyances Information System (BCIS). The BCIS plays an extensive and integral role as the electronic repository of all recorded documents processed by the Bureau. Despite the importance of the BCIS, the system was designed to mimic the existing Wang system (in order to limit the time needed to re-train staff) rather than provide truly breakthrough benefits of a system costing the State at total of \$2,200,000.

The President of the Lange Group testified that, despite recent advancements in technology that could assist the Bureau in its recording process, such as the electronic filing of documents, the original request for proposal (RFP ICS-FY-99-52) was limited to procuring and installing a computer system that would be as similar as possible to a dated technology, the Wang computer system that was then in use at the Bureau. While the Lange Group did develop and install a system that copied the file structure and processing of the obsolete Wang system, the Bureau did not have the foresight to ensure that the capabilities of the newly installed system would streamline the recording process using new technology.

The original RFP indicated that the new system should provide a mechanism to obtain compensation for providing Bureau information to the public, and a means to obtain received and stored information from the Bureau and deliver this information to the general public. Instead, the BCIS has actually generated insignificant additional revenues for the Bureau and does not provide the public a quick and efficient means to access Bureau records. Rather than quick and efficient electronic delivery of document requests, currently, a member of the public can confirm the existence of a particular recording online via the Bureau's website, but will need to wait up to two weeks to receive a paper copy of the record. The emphasis on limiting staff re-training time excluded the various possibilities of more efficient and effective features that could have been added to the new system for greater benefits for the State. Ultimately, without management foresight, the State is left with the same outdated and inefficient processes even though new technology was used to develop the BCIS. Since the BCIS went online in 2002, no major upgrades or modifications have been implemented on the system, an indication that the Bureau is still grounded in the past rather than being proactive with new ways to serve the public.

The Bureau has failed to exercise oversight of the security of the computer system. The Registrar and employees from the Department of Land and Natural Resources Information Technology Section testified that diagnostic tests were not performed on and upon the installation of the BCIS and the computer software that was donated by Title Guaranty of Hawaii. The Registrar explained that, due to his prior dealings with the Lange Group and Title Guaranty as well as assurances of the safety and security of the system and software from both entities, he felt diagnostic tests were unnecessary. Considering the importance of the Bureau's functions, the Committee believes that it is a good practice to perform diagnostic tests to confirm that the only the system or software is installed (instead of malicious software) and operating correctly as expected.

When a data security concern was raised due to an allegation that an outside VPN user gained access to the internal system, the Bureau hired the original designer of the Bureau's security features as a security consultant to review his own work. When

this consultant concluded that nothing was remiss, the Bureau reported that a security check was performed. Subsequent review of this work by the State Auditor noted that the consultant did not perform a detailed security vulnerability analysis and instead merely ran a few diagnostics and collected a listing of computer files, which did not test any security measures. Regardless of his qualifications and experience, the hiring of the original designer as the security consultant was baffling as it prevented the security features from receiving an impartial analysis and could have severe ramifications on the integrity and security of the Bureau's computer system.

The Department's Information Technology staff is unable to independently maintain, troubleshoot, and support the BCIS. The Bureau is heavily dependent on the services of the Lange Group, and would be vulnerable should the Lange Group be unavailable for whatever reason. The Committee was also concerned that the Lange Group has super-user capabilities as the system administrator to add and delete users as well as change programs. The Registrar noted that the Bureau provides little oversight on what the Lange Group does, such as overseeing any program changes or spot checking the Lange Group's activities through the use of activity and audit logs, due to his trust and confidence in the Lange Group.

The President of the Lange Group submitted conflicting testimony by indicating to the Committee that training was provided to the Bureau staff and Information Technology Section staff, and members from the Department of Accounting and General Services Information and Communication Services Division (where the BCIS is located). However, the advanced yearly payment by the Bureau for maintenance and repair, in addition to the testimony from the Information Technology staff members, indicates that the Lange Group continues to have a dominant presence at the Bureau despite the completion of the installation and implementation over five years ago.

Furthermore, an employee of the Information Technology Section testified that Title Guaranty would be called to troubleshoot and perform any necessary repairs or updates on its donated software because Title Guaranty developed the software and therefore had the knowledge and experience to perform the work. In addition, no supervision or monitoring by Department Information Technology Section staff members took place during the maintenance checks or repairs by Title Guaranty of its donated computer software. Without any written service and maintenance contracts with terms and conditions, the Bureau is placed in a vulnerable situation without any guarantees that Title Guaranty will perform any expected duties in perpetuity.

In reviewing authorized user accounts, the Committee was also informed that BCIS users rarely changed passwords after their initial accounts were established. This is a clear indication of a poor security practice. The Department's Information Technology Section staff testified that regularly rotating passwords is a desirable practice, but that it is not performed because BCIS users cannot on change their passwords on their own. This is another example of how copying the Wang system serves only to limit progress.

The inability of the Bureau to maintain and support its own computer system and software is a clear indication that the Bureau cannot manage and operate independently

and that the Bureau is too dependent on outside parties to maintain its operations, rendering the Bureau vulnerable if any of these parties discontinue business with the Bureau or ceases to exist.

Draft

THEME 2: Poor Fiscal Management has Led the State to Lose \$226,000 in Revenues

The revenues of the Bureau of Conveyances primarily derive from fees charged for document recordings, document copying, and information sharing subscriptions. During fiscal year 2006-2007, the fees collected by the Bureau totaled approximately \$12,000,000. A large percentage of this total is deposited into the State's general fund with the remainder deposited in the Bureau of Conveyances Special Fund to be used for the planning, acquisition, operation, maintenance, and improvements of the Bureau's recording system; permanent and temporary staff positions; and any administrative costs of the Bureau. Pursuant to section 502-8, Hawaii Revised Statutes, on June 30 of each year, any moneys in the excess of \$500,000 remaining on balance in the Special Fund are transferred to the State's general fund. Due to poor fiscal management and accountability at the Bureau, the State has lost over \$226,000 in fees. Several examples of how the Bureau's poor fiscal management and lack of fiscal accountability has resulted in the State losing revenue are discussed below.

1. Lost Fees for VPN and FTP Services

The Bureau of Conveyances Information System (BCIS) allows the public and real estate professionals to gain access to information regarding the documents the Bureau processes. The BCIS enables the public to access information by visiting the Bureau's public access room or the Bureau's website. Real estate professionals and other entities in the title industry may subscribe to a Virtual Private Network (VPN) to access recorded documents and print Certificates of Title or subscribe to the File Transfer Protocol (FTP) server to access scanned images and data indexes. VPN and FTP subscribers are required to pay a fee for access and use of the information.

A fee schedule for VPN access is listed in the Bureau's Administrative Rules, which was last revised in 1999, as well as on the Bureau's website. Many changes have taken place at the Bureau since then, which warrants the updating and revision of these Administrative Rules. A specific Administrative Rule subject that needs updating is the subscription and user fees for access to the VPN and FTP services as there are major inconsistencies between the fees listed in the Administrative Rules, the Bureau's website, and the actual amounts in fees received by the Bureau.

The monthly charges for VPN service subscribers vary greatly between the fees listed in the Administrative Rules, on the Bureau website, and the fees actually charged.

	Administrative Rules	Website Listed Fee	Actual Charges
VPN monthly charge	\$100/month (§13-16-32, HAR)	\$250/month (Bureau website)	\$150/month \$100/month (for second account per subscriber)
VPN per minute charge	First 5 minutes free; \$0.25/ minute thereafter per logon	First 5 minutes free; \$0.25/minute thereafter per logon	First 15 minutes free; \$0.25/minute thereafter per logon
VPN initial setup fee	Not listed	\$500 (Bureau website)	Not charged

The Auditor's investigation revealed that seventeen new subscribers, including two state and one county agencies, to the VPN service were added in December 2006, and, under the direction of the Deputy Registrar, have continued to receive service without being charged either the initial setup fee, monthly subscription fee, or per minute usage charge.

The Committee also found that the Bureau lost revenue by providing the first fifteen minutes free for VPN services rather than the first five minutes free as the Administrative Rules and Bureau website expressly indicate. The Auditor estimated the following losses with respect to the VPN fees through September 2007:

Lost new user setup fees	\$8,500
Lost monthly fees <i>(NOTE: If charged \$250/month according to Bureau website)</i>	\$104,400
Lost monthly and per minute fees for new users <i>(NOTE: New users were not billed for both monthly and per minute VPN use)</i>	\$4,928
TOTAL	\$117,828

It is important to note, however, that the Auditor was unable to estimate accurately the loss in per minute usage fees due to the Bureau's inability to maintain and the unavailability of detailed usage logs.

The Bureau's monthly charges for FTP imaging and data access vary between the fees listed on the Bureau's website and the fees actually charged.

	Website Fee	Actual Charges
FTP images and index data services monthly charge	\$250/month for FTP images	\$100/month for FTP images
	\$250/month for FTP index data	\$100/month for FTP index data

The existing Administrative Rules do not provide a fee schedule for the monthly subscription and initial setup fees for using the FTP imaging and FTP indexing services because the rules were implemented prior to the introduction of the FTP services. The Bureau's failure to update its Administrative Rules to appropriately address the distribution of information via the use of current technology and delivery methods resulted in no fees charged for the distribution of Bureau information recorded on DVDs pursuant to an opinion by the Attorney General in April 2007.

According to testimony from the Department's Fiscal Officer, the fees for the FTP imaging and indexing data access were discontinued in February 2005 due to a backlog in document indexing, and these fees have not been charged since even though both the images and indexes continue to be provided to subscribers. Although the Bureau was unable to provide up-to-date FTP index data due to the backlog in indexing, the Bureau was still able to provide current scanned images, and should have continued to charge its subscribers for the FTP images rather than discontinuing both imaging and indexing fees. As a result of the Bureau's failure to recognize these two separate charges and its indiscriminate charging for both services despite the discontinuance of FTP access fees, the Auditor estimated that the loss in monthly fees totaled \$108,500 for thirty-one months beginning in March 2005 to September 2007 for FTP imaging and indexing data access. This is based on an estimate of seven users, subscribing to both image and index data services.

The Committee was also unable to ascertain the accuracy of the subscription fees and the amounts lost due to the Registrar's practice of waiving fees. During the course of reviewing the various monthly logs of subscribers and fees owed by each, the Auditor's investigation revealed that some of the monthly payments from users for VPN or FTP imaging subscriptions did not correspond to the actual usage or expected monthly charges due to the Bureau because the Registrar was waiving or reducing fees. Although the Registrar is authorized to waive fees owed to the Bureau, there are no written policies and procedures regarding fee waivers that the Registrar is required to follow. The Registrar testified that, despite his failure to document subscription fee waivers, including the amount waived, the name of the subscriber, and the reason for a waiver, he was able to account from memory each waiver he authorized in the past. For example, he testified that, on one occasion, a portion of the minute usage charges were waived when it was reported that a subscriber's computer was left logged on and unattended throughout the night. The fee charged for that month's usage was based on a three-month average of the usage charges of that particular subscriber.

Without documentation of these fee waivers, it is unclear how the Bureau cashiers and Department fiscal officers balance the Bureau's ledgers. Furthermore, there was a lack of subscription fee agreements, and inconsistent documentation of subscribers. Thus, not only does the Bureau have a difficult time accounting for the actual subscriptions fees due to the Bureau each month, but has a difficult time accounting for each of their subscribers.

The process to set fees via Administrative Rules is well established. Although the Registrar testified that the updating of the Bureau's Administrative Rules falls under the purview of his duties as Registrar, he admitted that the rule updates were not completed due to his need to focus his attention on more pressing matters occurring at the Bureau. This excuse is unconvincing, especially in light of the fact that updating Administrative Rules is a straightforward process and procedure that does not require a large amount of resources to accomplish, and the fact that the Bureau lost over \$226,000 in VPN and FTP fees over the years. The Bureau's failure to update its Administrative Rules contributes to the pattern of nonperformance of relatively simple and fundamental administrative tasks, including the lack of written contracts, which protect the State's interests and rights.

2. Outdated Rules and Poor Practices Weaken Controls over Cash

The Bureau receives and handles payments for Bureau services and for conveyance tax payments on all transfers or conveyances of real property or any interest therein. The Bureau collects approximately \$60,000 on a regular day and up to approximately \$100,000 on a heavy transactional day. Thus, the Bureau should be required to strictly adhere to established rules and procedures for cash management in order to account for the large sums of money that course through the Bureau on a daily basis. Yet, the Bureau lacks updated rules and procedures with respect to cash management.

The Department's Fiscal Officer testified that the Bureau is responsible for its own cash management and billing, and making sure that all deliverables have been satisfied. The Registrar testified that a manual on cash management exists, but the Auditor's investigation revealed that this manual is outdated. Furthermore, several of the cash management practices followed at the Bureau do not provide adequate measures for the security and accountability of the moneys that course through the Bureau on any given business day.

There were bins of unopened mail at the Bureau that contained payment checks for recording fees or information subscription fees. Some of these checks were stale dated when the mail was finally opened. The Bureau also lacks an effective and diligent tracking system for invoices and payments. The Auditor's 2005 report revealed that monthly issued invoices for services provided by the Bureau do not contain an invoice number to keep track of each invoice. The only way that the cashiers are able to match the invoice with the received check for payment is by matching the payment description on the check with the invoice description on the invoice. The Bureau was unable to explain how the cashiers are able to match payments and invoices when a payment

description on a payment check is not provided, or how the cashiers keep track of overdue invoices or delinquent payments.

Finally, the Committee was greatly concerned when the Auditor's investigation revealed that there was a faulty combination lock on the vault, which secured the safe where money that is received daily by the Bureau is stored until deposited the next day. Although the combination lock is now operable, the Committee notes that the repairs on the vault lock were prompted by the Committee's investigation and by indicating its concerns to the Registrar during a committee hearing.

In light of discovering these problematic cash management practices, the Department's Fiscal Officer explained to the Committee that the Bureau needed to strengthen its cash management and billing practices. A thorough and well-established cash management system is an essential part of the Bureau's operations that deserves the utmost attention and diligence. The lack of accountability over how much is owed and how much is actually received at the Bureau has detrimental fiscal effects for not only any entities doing business with the Bureau, but for the operations of the Bureau as this could potentially result in a loss of revenue.

3. Bureau Loses Potential Revenue Due to Unresponsive Service

The factionalism and antagonistic work environment and low work productivity compounded with the lack of strong leadership and management has resulted in an ongoing and persistent backlog of work at the Bureau. VPN and FTP service subscribers are required to wait several months to a year to gain access to recorded documents, which can cause serious problems for businesses in the title industry because it forces these companies to record subsequent documents based on their own informal indexing system and not on the Bureau's official indexing system. The inability of the Bureau to timely record documents has created an opportunity for the development and operation of faster alternative methods for retrieving and verifying documents by entities in the title industry.

A Vice President for Title Guaranty of Hawaii, Inc. testified that Title Guaranty created and currently maintains the DocuTrieve system, which provides twenty-four hour-a-day, seven days-a-week access to documents by individuals and entities involved in the title industry. DocuTrieve is a subsidiary of Title Guaranty of Hawaii and provides to individuals and businesses, for a fee, real time access to documents based on those recorded at the Bureau. The Committee noted the popularity of and dependence on the DocuTrieve system among those in the title industry, and is concerned over the Bureau's inability to offer speedy service or receive the same level of popularity and reliance, especially when the documents retrieved from DocuTrieve were originally derived from the Bureau. The Bureau is the official recorder and repository for documents for the State, and many entities in the title industry still need to subscribe to the VPN and FTP services in order to receive the official document recording numbers and document indexes. Thus, while alternative systems for the retrieval of documents create a faster alternative for its users, these systems supplement the VPN and FTP services and do not replace the Bureau's official records.

Although the Committee was unable to assess how much revenue the DocuTrieve system generates for Title Guaranty, it is clear that it is lost revenue that the Bureau could have gained if the work backlog did not exist and if the Bureau's cumbersome service for ordering documents was more efficient. Due to a backlog in indexing and without the implementation of any plan to mitigate or resolve the backlog, businesses and individuals must resort to and will continue to use and rely on other available document retrieval systems, such as DocuTrieve, as a faster alternative to retrieve information.

4. Bureau Lost Potential Revenue Due to Pilot Project

The Bureau has entered into contracts and agreements with outside parties for various services with the intention of streamlining or updating its systems and operations. Prior to the contract with the Lange Group for the development and installation of the BCIS, the Bureau entered into an agreement with Title Guaranty of Hawaii for Title Guaranty to setup a scanning system at the Bureau to convert recorded Bureau documents into digital images. The Vice President of the Project Management Office of Title Guaranty testified that the project was intended to jump-start the title industry.

The proof of concept proposal or commonly referred to as the "scanning pilot project" required Title Guaranty to develop a scanning system to scan and convert recorded documents from the Bureau into digital images, and transfer the scanned digital images onto CDs. The information on these CDs could be viewed by Bureau staff through the use of stand alone desktop computers. It is not known if the Bureau did anything more with the CDs other than viewing the digital images of documents. Even though the CDs were the property of the Bureau, the agreement precluded the Bureau from selling the information to other parties in bulk form; however, the purchase of a document by an individual was permitted. Part of the Bureau's 1999 request for proposal (RFP) for the automated tracking system was derived from this scanning pilot project. The Bureau formally accepted the bid submitted by the Lange Group for this part of the RFP, despite receiving a bid from Title Guaranty (for the conversion of past microfilm images into electronic documents), the original developer of the scanning pilot project.

The written agreement for the pilot project that was signed in October 1998 indicated that in order for Title Guaranty to recoup its expenses during the course of the pilot project, the Bureau would remit 50% of Title Guaranty's VPN monthly subscription fee and the cost of the magnetic tape daily entry grantor-grantee indexes. Title Guaranty agreed to continue to pay for the postage of the daily magnetic tapes. Testimony indicated that Title Guaranty saved approximately \$100 per month on monthly subscription fees and \$100 for the daily indexes. The scanning pilot project started at the Bureau at the end of 1998 and was completed at the beginning of 2003.

In addition to its reduction in certain fees, Title Guaranty received a secondary benefit in its scanning pilot project by receiving and retaining copies of all of the scanned Bureau document images. Testimony indicated that approximately 1,000 to 1,500 images were scanned on a daily-basis. Title Guaranty was able to retain all

document images in the process of completing the scanning pilot project, essentially free of charge, as a secondary benefit in addition to the agreed reduction in subscription and daily index fees. The conversion of scanned and recorded Bureau documents into digital images enabled Title Guaranty to gain immediate access to the document images before any other title company or Bureau service subscriber, and enabled Title Guaranty to populate its own title plant with five-years worth of Bureau information. Testimony indicated that the digital images obtained from the pilot project are still available on Title Guaranty's DocuTrieve service and used by and sold to DocuTrieve subscribers, although less frequently due the age of these documents.

The Committee was unable to reasonably estimate how much revenue the Bureau lost by ceding use of the scanned images to Title Guaranty's DocuTrieve service. The Bureau's inability to forecast all the possible ramifications and consequences beyond the primary benefit it would receive in the scanning pilot project ultimately resulted in a loss of revenue for the State.

Draft

THEME 3: Bureau Operations are Vulnerable to Abuse and Exploitation

The mismanagement of the employees and the operations of the Bureau has resulted in a high level of infighting and animosity among staff members; low work productivity; a growing work backlog that delays property recordings; an excessive amount of employee overtime; weak and absent leadership; a lack of rules and procedures; a lack of contracts and agreements; and a lack of oversight of the computer system and software at the Bureau. Furthermore, poor fiscal management at the Bureau has resulted in a loss of revenue for the State. In weighing all these findings, the Committee found that the total lack of operational accountability and the deficiencies in the operations and fiscal management of the Bureau have resulted in the Bureau being vulnerable to abuse and exploitation from outside parties.

1. Missing Agreements Weaken State's Legal Rights

The VPN and FTP services at the Bureau allow real estate professionals and other entities in the title industry to gain access to Bureau information. The Committee found that the Bureau lacked written user subscription agreements with expressed terms and conditions regarding the commercial use or sale of Bureau information gathered from the use and subscription of VPN or FTP services.

The Bureau's Administrative Rules provide limited and vague parameters for the use and sale of Bureau information. According to section 13-16-32, Hawaii Administrative Rules (HAR), a third party subscriber of raw images is prohibited from selling and disseminating exact copies or duplicates of raw data or portions thereof without the express written consent of the Registrar or Deputy Registrar, but is permitted to sell images for profit if the information is "value-added." The term "value-added" is not defined in the Administrative Rules, and it is unclear from the rules who is authorized to make the determination of whether the information is "value-added." Additionally, section 13-16-32, HAR, fails to require the use of written subscription agreements for the terms and condition for use of Bureau information, or indicate any enforcement or penalty procedures with respect to the misuse of Bureau information.

Missing agreements make it difficult for the Bureau to determine whether the use by subscribers is permissible because it is unknown how the subscribers are using the data beyond the obvious needs to populate title plants. Thus, the Committee is concerned that this could pose a free opportunity with little or no consequences for title companies to profit by the use or sale of Bureau information. Also, without written agreements, the Bureau may not be able to protect against misuse of personal and confidential data included in the scanned images provided to external parties.

2. Confidential Personal Information Inadvertently Exposed

In light of its criminal investigation, the Department of the Attorney General issued a letter, which ordered that the raw scanned images recorded at the Bureau be distributed on DVDs instead of the FTP imaging and index electronic services and be made available to any member of the public free of charge. The President of the Lange Group testified to the Committee that the Lange Group, under a \$10,000 contract with

the Bureau, setup a program for the Bureau to create DVDs of the daily recordings, pursuant to the Attorney General's order. The Committee is concerned with regard to the distribution and release of Bureau information on DVDs because some of the scanned images on the DVDs may contain confidential or personal information that should not be available for public inspection, including addresses and Social Security numbers.

The President of the Lange Group testified that she received a letter from the Department of the Attorney General indicating that there were no ramifications with respect to providing DVDs of Bureau information because the documents recorded at the Bureau are considered public information. The Committee agrees with this only to the extent that an individual's privacy rights are not infringed, especially in light of the growing number of identity theft crimes occurring within the State.

After obtaining and viewing a DVD of recordings, the Committee's investigation revealed that several documents contained confidential or personal information, such as Social Security numbers and bank account numbers. Despite assurances from a Hawaii Land Title Association representative that its members, as a common practice, do not use or include personal identifying information on documents for recording at the Bureau, the Committee notes that personal identifying information is still used and actually sometimes necessary to definitely identify the individual named on the document.

The Committee is greatly concerned over the ramifications these daily DVDs could present to the Bureau as well as to the public. Unlike a request for a copy of a specific Bureau document, each daily DVD contains hundreds of raw scanned images, essentially creating a "data dump," which could potentially contain confidential personal information without any filters or procedures to prevent the dissemination of this type of information. Due to its outdated Administrative Rules, the Bureau lacks rules to guide the distribution and use of these DVDs, and lacks procedures to safeguard Bureau documents and secure the privacy interests of those individuals whose names are contained in these documents.

The Bureau is the official repository of all information relating to the title of land; thus, it is imperative that the Bureau safeguard this information. The Committee is gravely concerned that the distribution of the daily DVDs without any clear and established procedures with respect to the use of the information contained on the DVDs could render the Bureau and the public vulnerable to abuse and exploitation.

3. Computer System Vulnerabilities

In 1999, the Bureau accepted a bid from the Lange Group to develop and implement a replacement computer system, the Bureau of Conveyances Information System (BCIS). 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.

Testimony indicated that diagnostic tests were not performed on and upon the installation of the BCIS as well as subsequently installed computer software donated by Title Guaranty of Hawaii. The Registrar felt diagnostic tests were unnecessary due to his prior dealings with and trust in both the Lange Group and Title Guaranty, and failed to recognize that despite good intentions and assurances, it is good practice to perform diagnostic tests to confirm proper installation and operation. Testimony indicated that the Bureau hired the original designer of the Bureau's computer security features to review his own work, which may have prevented the security features from receiving an impartial analysis. Testimony indicated that the Bureau fails to use and review audit logs of the computer system's users, length of use, and purposes for its use. The use and review of these types of audit logs can indicate unauthorized access or use of the system and enable the Bureau to improve its administration and security of the computer system. Testimony indicated that the Bureau fails to regularly and systematically rotate user passwords for access to the computer system. A systematic rotation of passwords can assist the Bureau in securing the system from unauthorized use, including individuals who may gain access to the Bureau's information for malicious purposes. Lastly, testimony indicated that the Bureau lacks appropriately tested firewall protection at various segments of its computer system, which ultimately could have severe ramifications on the integrity and security of the computer system.

The Lange Group has a disproportionate authority over the administration and maintenance of the computer system. The Committee's investigation revealed allegations regarding unauthorized users gaining access to the BCIS system at the Bureau of Conveyances. This allegation caused the Committee to be concerned over the security of the recorded documents stored within the BCIS system. The Committee notes that while this allegation could not be verified within the course of its investigation, it was determined that the Lange Group appears to have super-user abilities via its role as the system administrator.

Furthermore, the Department of Land and Natural Resources' Information Technology staff is unable to independently maintain, troubleshoot, and support the BCIS as well as perform the necessary administrative procedures for adding and deleting VPN and FTP subscribers. Title Guaranty is in charge of software troubleshooting and performing any necessary repairs on its donated software. The inability of the Bureau to maintain and support its own computer system and software greatly concerned the Committee because it is a clear indication that the Bureau cannot operate independently. In the case of a computer malfunction, the availability and security of Bureau records could potentially be jeopardized. It also indicates that the Bureau is overly dependent on outside parties to maintain its operations, which in turn renders the Bureau vulnerable if any of these parties discontinue business with the Bureau or ceases to exist.

The Bureau's failure to exercise administrative control and maintenance over its computer system and software is an indication that the Bureau appears to be disengaged from its own computer system, which is an integral part of its operations.

The Bureau's lack of oversight of its system can result in serious ramifications in terms of the security of the information stored in the system, and leaves the Bureau vulnerable to abuse and exploitation by outside parties.

4. Outdated Agreements and Lack of Standard Operating Rules with Title Industry Allows Potential Abuse

The Bureau works with various entities and individuals in the title industry on a daily-basis through personal contact, via the mail or internet, or by information sharing subscription services. It is important for the Bureau to maintain equity among all companies doing business with the Bureau, regardless of the size of the company, or the number or importance of the transactions requested from a company or individual. The Committee raised concerns over the lack of updated recording agreements and lack of documentation of exceptions or waivers as these could result in companies seizing the opportunity to exploit the Bureau's operational procedures for their own gain over other title companies, and cause friction between various title companies and the Bureau.

A written recording agreement exists between the Bureau and members of the Hawaii Land Title Association. Despite a revised and updated recording agreement draft submitted to the Bureau in 2005, title companies and the Bureau are currently following a recording agreement that was revised in 1994 because the Bureau failed to respond or agree to the 2005 draft. The recording agreement is intended to be a mutual agreement with respect to the daily recording procedures at the Bureau and contains terms and conditions for a variety of operating requirements and deadlines, including the number of specials a title company is allowed to use a day, which is currently up to three specials-a-day per title company. Specials refer to exceptions to agreed upon practices.

Title companies are required to observe a number of operating deadlines with respect to submitting documents for recordation at the Bureau. Due to various reasons and situations, title companies are periodically unable to meet these deadlines and are allowed to use their allotted specials to record documents on the same day submitted or past the deadline for recordation. The former Vice President of Island Title Corporation testified to the Committee that the number of "specials" allowed per day, for each title company has been a source of dispute between smaller- and larger-sized title companies. Smaller-sized companies have raised concerns and alleged that exemptions have been made for larger-sized title companies to use specials beyond the deadline time to redeem specials or to submit documents, or beyond the three specials allotted per day. Recommendations have been made in the past to raise the number of specials allotted per day or to allot the number of specials per company by the percentage of all of the work received by the Bureau from each company. Despite these recommendations and voiced concerns, the number of special allotted per day to title companies remains at three due to an outdated recording agreement and failure by the Bureau to implement changes to settle these concerns.

Furthermore, the Registrar is authorized to waive fees owed to the Bureau, but written policies and procedures relating to fee waivers do not exist at the Bureau.

Without the documentation of waivers, the Committee was unable to ascertain how often, how much was waived, for what reason, and for whom these waivers were granted. Although never confirmed during the course of its investigation, the Committee was concerned that the lack of documentation of waivers or a written policy regarding waivers leads to the impression of preferential treatment, especially if it appears that some title companies are granted more waivers than other companies. Without documentation, these allegations and impressions of preferential treatment cannot be proved, nor can disciplinary actions be enforced.

Therefore, the Committee is greatly concerned that outdated written recording agreements between the Bureau and various title companies can result in a failure to provide guidance in the facilitation of a fair and transparent recording process and fails to foster a strong working relationship between the Bureau and title companies. Furthermore, the Committee is concerned that the lack of documentation regarding waivers and certain exemptions from the standard operating procedures, such as specials, could lead to impressions of preferential treatment, and could provide an opportunity for title companies to take advantage of the Bureau's deficiencies in its operating rules on recording.

5. Improper Access Bypassed Bureau Rules and Procedures

Testimony indicated that rules were implemented at the Bureau that prohibited unauthorized individuals from gaining access behind the Bureau's front counters. The former Deputy Director testified that these rules were established after complaints were received regarding children or friends of staff members entering restricted work areas where Bureau documents are processed and stored, and money is collected and secured. However, allegations of unauthorized individuals entering restricted work areas still exist, and the Committee is concerned that this can create an opportunity for Bureau information and money to be lost, misplaced, or altered by unauthorized individuals.

The Committee is particularly concerned over allegations that title company employees were permitted access to the Bureau to correct mistakes on recorded documents. Testimony indicates that Island Title Corporation employees were granted access to the Bureau to correct mistakes on recorded documents relating to the closing of an important and costly housing privatization transaction. Due to the tight deadline for the transaction, a creative solution was necessary to expedite the correction rather than to follow the standard procedure for document corrections. According to a letter submitted by attorney, Mr. Raymond Iwamoto, the former Registrar was hired by Goodsill Anderson Quinn Stifel (as outside legal counsel) to assist Island Title Corporation in developing a creative solution.

The creative solution consisted of allowing Island Title Corporation employees to gain access to restricted work areas of the Bureau to correct the errors on the pertinent documents by using liquid white-out to cover the errors and replacing them with the correct recorded document reference numbers. Testimony indicated that the customary procedure to correct this type of error would be to obtain consent of the original parties involved in the transaction, which was not possible due to the tight deadline of the

transaction. However, the former Registrar testified to the Committee that white-out should not have been used to correct the mistakes in the recorded documents and instead the proper procedure to correct the error would be to notarize each correction.

Despite the inconsistencies in testimony presented regarding this housing privatization transaction, the Committee notes that the mistakes were corrected with the use of white-out and that the standard procedure for correcting recorded documents was bypassed to accommodate this situation. The Committee was unable to decipher the exact procedure and actions that took place to correct these mistakes, and questions how often, for who, and for what reasons the rules and procedures at the Bureau are bypassed to accommodate other situations that need special attention. Nonetheless, unauthorized individuals have been allowed access to the Bureau, and the Committee is deeply concerned that unauthorized access potentially leaves the operations, information, and property of the Bureau vulnerable to abuse and exploitation by outside parties.

6. Deficient Bureau has Created Opportunities for Competing Services

Due to the backlog of document indexing at the Bureau, many entities in the title industry are required to wait several months to a year to view documents via VPN or FTP services. Title companies require quick and up-to-date access to Bureau documents to complete conveyances settlements, or other types of real estate transactions. The Committee found that the work backlog at the Bureau has created an opportunity for the development and operation of faster alternative methods for retrieving documents by entities in the title industry.

Title Guaranty maintains the DocuTrieve system, which provides twenty-four hour-a-day, seven days-a-week real time access to documents by individuals and businesses within the title industry. The Committee notes the popularity of and dependence on the DocuTrieve system among those in the title industry, and is concerned over the Bureau's inability to offer speedy service or receive the same level of popularity and reliance, especially when the documents retrieved from DocuTrieve were originally derived from the Bureau.

DocuTrieve and other alternative document retrieval systems were created in response to the work backlog at the Bureau, and its inability to provide documents on an efficient and timely-basis. The Committee found that companies, such as Title Guaranty, identified the need for real-time access to documents, and seized the opportunity to provide a retrieval system that the Bureau could not provide, and make a profit in the end. Thus, due to a backlog in indexing and without the implementation of any plan to mitigate or resolve the backlog, businesses and individuals must resort to and will continue to use and rely on other available document retrieval systems, such as DocuTrieve, as a faster alternative to retrieve documents.

The Committee believes that the Bureau should be the resource that the title industry and public rely upon for property information since it is the official record keeper. However, because of all the noted problems, the Bureau is unable to satisfactorily fulfill that role and responsibility given to it by the State.

7. Risk of Conflict of Interests Exists

The comprehensive nature of the Committee's work required it to touch upon conflicts of interest, even though that is the State Ethics Commission's investigation primary scope of work. Testimony indicated that Bureau employees were seeking advice and assistance on a weekly-basis from outside parties on Bureau-related matters rather than seeking assistance from their immediate supervisors or the Registrar. The Committee is concerned that this frequent practice of seeking the assistance from outside parties may pose potential conflicts of interests and pose a threat to the security of Bureau documents by unnecessarily exposing Bureau information to unintended recipients with questionable motives.

First, the action of seeking advice from outside parties indicated to the Committee that the proper chain for inquiries, consisting of the respective Branch Chief and then the Registrar, is not followed and is actually undermined in some instances. The Committee noted that the former Registrar receives inquiries at least once a week from Bureau employees, despite the current Registrar's assurances to the Committee that he receives multiple numbers of inquiries daily from Bureau staff. Second, the Committee is concerned that seeking the advice and guidance from an outside party, especially from an employee of a title company, poses a conflict of interest. The Auditor's investigative work indicated that some of the e-mails sent to the former Registrar, a Title Guaranty employee, contained copies of documents attached from a competing title company; thus, posing a potential conflict of interest.

Although the Committee recognizes the former Registrar's wealth of experience and knowledge in the Bureau and the title industry in the State, it is concerned that e-mail inquiries with actual Bureau documents attached could get into the hands of an unintended recipient with questionable motives, which could lead to significant detrimental consequences and security issues for the Bureau. Furthermore, the Committee is concerned over the ramifications that could arise for the title industry regarding the issue of sending inquiries to employees of competing title companies.

The Committee firmly believes that the Bureau of Conveyances should serve as the definitive source and subject matter expert on real property ownership issues and should not rely on third parties. Seeking advice from outside parties on Bureau-related matters or allowing unauthorized individuals to gain access to Bureau records undermines the Bureau's authority to serve as this definitive source.

PART IV. LEGISLATIVE RECOMMENDATIONS

The Joint Senate House Investigative Committee has identified serious shortcomings relating to the Bureau of Conveyances' ability to serve, loss of revenue, and potential areas of vulnerability. From a review of the testimony and materials presented to the Committee, and in light of the long standing nature of the problems uncovered, it appears extremely unlikely that the Bureau, or the Department of Land and Natural Resources, possesses the will or capability to address these issues without some form of legislative intervention. As a result, the Committee now finds it necessary and appropriate to develop and mandate methods and solutions -- short- and long-range -- to assist the Bureau in becoming a more efficient, effective, and accountable operation.

Despite the apparent and documented negative effects of the debilitating personnel issues plaguing the organization, ridding the Bureau of particular employees or placing blame on a particular group or entity would not suffice in solving the Bureau's problems. Instead, the Committee has determined that a comprehensive plan that entails acceptance, open compromise, and constructive dialogue is needed to assist the Bureau in conquering its current problems and creating strategies to remain and maintain or exceed an efficient level of operation in the future.

In October 2007, the Committee contacted various stakeholders of the Bureau of Conveyances, including title companies, banks, and realtors in the State, to solicit recommendations for improvements at the Bureau. These stakeholders were asked to describe their interaction with the Bureau, characterize their relationship with the Bureau, describe specific problem areas at the Bureau, and make any recommendations that would help the Committee improve the operations and functions of the Bureau. The Committee received a number of responses from various stakeholders, and reviewed and considered each response.

The Committee found that a number of responses indicated similar recommendations for improvements at the Bureau, including the following:

- Addressing the management and employee issues at the Bureau;
- Streamlining the functions of and services provided by the Bureau;
- Updating the Bureau's policies and procedures, and Administrative Rules;
- Combining the Land Court and Regular System functions of the Bureau into a single unified system of recordation, or eliminating one of the Branches of the Bureau;
- Assigning the Bureau to another state agency other than the Department of Land and Natural Resources;
- Privatizing or outsourcing certain functions of the Bureau;

- Automating certain functions of the Bureau, including the implementation of electronic filing;
- Creating and implementing a grievance policy;
- Strengthening the relationships between title companies and the Bureau; and
- Implementing the recommendations of the Hoike Report.

The Committee notes that the stakeholder's recommendations for the improvement of the Bureau also recognize a number of the same prevailing and longstanding problems the Committee has identified within this report. These are stakeholders who work with the Bureau on a daily basis and can clearly identify the problems that they face when interacting with Bureau staff and management, and completing various recording transactions at the Bureau, especially throughout a long expanse of time. Thus, these recommendations were considered in depth and the Committee used some of these recommendations in developing its own.

In light of the breadth and depth of the challenges the Bureau faces, and given the relative lack of success that accompanied earlier attempts at improving operations, it is clear that the Committee must be willing to explore more fundamental changes in the Bureau than have been discussed in the past.

Among the approaches the Committee must consider are combining the two existing systems - Land Court and Regular System - into a single form of recordation that better serves the needs of the community. In addition, the Bureau's continuing failure to operate in a productive and effective manner as a part of the Department of Land and Natural Resources raises an unavoidable question whether the function would be better placed in another department of the Executive branch or within the Judicial branch. Finally, the Committee must ask whether the recordation function would be better placed outside of state government altogether, and instead privatized to an existing or newly-created entity capable of handling the needs of landowners in the State.

After thoughtful discussion, and a thorough review of its findings and the responses received from the stakeholders, the Committee has determined that the scope of the review and planning required to bring meaningful improvements to the Bureau of Conveyances, being both complex and technical in nature, will best be served by the oversight of a single qualified and experienced individual dedicated to making the necessary changes and acting with the input of a knowledgeable panel of advisors. Consequently, the Committee recommends the appointment of a Special Master to oversee improvements at the Bureau of Conveyances, consistent with the findings and recommendations of this report. The Special Master will be assisted by an Advisory Council. Together, the Special Master and Council shall:

- (1) Re-evaluate the roles, duties, and functions of the Land Court and Regular System staffs from a union and employee perspective and the operational functions of the Bureau from a legal and legislative perspective;
- (2) Develop and implement a plan to safeguard personal information contained in Bureau documents, which the Bureau collects, maintains, and disseminates for public inspection;
- (3) Investigate the legal and technical obstacles to combining the Land Court and Regular System functions of the Bureau of Conveyances into a single unified system of recordation, including the development of policies and legislation to provide for documents and properties recorded under the existing dual system;
- (4) Determine the advisability of reassigning the Bureau of Conveyances from its current position within the Department of Land and Natural Resources to another department within the Executive or Judicial branches of the State government; and
- (5) Outline the preliminary considerations attendant to privatizing the functions of the Bureau of Conveyances, including the nature and qualifications of a non-governmental entity suitable to accept current Bureau functions.

These recommendations are discussed in the following sections.

RECOMMENDATION 1: Designation of a Special Master with the Assistance of an Advisory Council to Oversee Short- and Long-Term Changes and Improvements to the Bureau of Conveyances

In light of its findings, it has become apparent to the Committee that the problems at the Bureau require special action. The Committee recognizes that the current situation calls for a non-Bureau employee with experience and strong skills in leadership, organization, and motivation to develop a comprehensive plan to assist the Bureau in becoming a more efficient, effective, and accountable operation. The existing management has become jaded and cannot devote sufficient time and energy to developing and executing a comprehensive action plan to deal with the Bureau's many problems. The Registrar, Deputy Registrar, and both Branch Chiefs are too overwhelmed by and entrenched in the day-to-day operations and intra-office crises to move ahead with effective solutions and strategies for improvement. Moreover, the fact that the positions of Deputy Registrar and Land Court Branch Chief remain out on leave at the time of this report leaves the Committee with little confidence that a self-directed program of improvement at the Bureau will be effective.

The Committee noted this type of special action has been used in the past to assist the State in times of crisis when an independent perspective was needed to aid in the development of solutions and strategic actions. In 1989, a Special Master was appointed to the Department of Corrections, pursuant to Senate Concurrent Resolution No. 107 (1989), to concentrate on the larger, non-day-to-day issues, including goals and objectives, a possible reorganization, improved vertical and lateral communication techniques, a computerized information system, interdepartmental changes for improving personnel administration, a multifaceted training program, standards of conduct, and accountability requirements. In 2006, the Legislature adopted House Concurrent Resolution No. 192, H.D. 1, S.D. 1 (2006) to appoint a Special Deputy Attorney General to independently and impartially conduct a civil investigation on the roles and possible culpabilities of various parties involved in the Kaloko reservoir dam breach.

The Committee recommends the following:

- The introduction of legislation to appoint a temporary Special Master to develop and implement a comprehensive plan to assist the Bureau in becoming a more efficient, effective, and accountable operation, and develop strategic initiatives for the Bureau.
- The Special Master shall be selected by a selection committee composed of the President of the Senate, the Senate Minority Leader, the Speaker of the House of Representatives, and the House Minority Leader, or any of their designees; provided that there is no conflict of interest or appearance of conflict of interest in serving on the selection committee. In the event of a tied vote, the final selection between the two leading candidates shall be made by a majority vote of the Joint

Senate House Investigative Committee, as composed at the time of the issuance of this report.

- The Special Master shall be willing to serve, for reasonable compensation for their service, and have no conflict of interest.
- The Special Master shall be assisted by an Advisory Council, consisting of various stakeholders of the Bureau of Conveyances, to aid in the development and implementation of a comprehensive plan for operational improvements and strategic initiatives for the Bureau.
- The Advisory Council shall consist of various stakeholders of the Bureau of Conveyances, including but not limited to members representing:
 - The Director of the Department of Land and Natural Resources;
 - The Bureau of Conveyances, Department of Land and Natural Resources;
 - The Judiciary;
 - The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO;
 - The Hawaii Land Title Association;
 - The Hawaii Association of Realtors;
 - The financial services industry; and
 - The legal community.
- The Special Master and the Advisory Council shall consult and work with various entities to aid in the development and implementation of the comprehensive plan, such as the Hawaii Government Employees Association (HGEA) and the Department of Human Resources Development.
- The Special Master and the Advisory Council shall work with and accept full participation and consultation from Bureau employees, management, and the Department.
- The Special Master and the Advisory Council shall cease to exist on June 30, 2011.
- Funding, whether through the Bureau of Conveyances Special Fund or general funds, shall be provided to accommodate the Special Master and the operational needs of the Advisory Council.

RECOMMENDATION 2: Examine and Study the Feasibility of Possible Methods to Re-Evaluate and Modernize the Operational, Functional and Employee Concerns of the Bureau

Having identified numerous operational concerns at the Bureau of Conveyances, the Committee finds a need to review and evaluate the overall functioning of the Bureau, and make the changes necessary to ensure the Bureau provides the services expected of it by the business community and the public. Once again, the level and type of review and evaluation required under the circumstances will rely upon a measure of technical expertise that calls for the service of the Special Master and Advisory Council to develop a comprehensive plan for the improvement of operations at the Bureau of Conveyances.

The Committee recommends the following:

- As part of the comprehensive plan, the Special Master and the Advisory Council shall concentrate on improving the various problematic operational issues at the Bureau, including but not limited to:
 - Updating the Bureau's Administrative Rules, including establishing standard fee schedules for various Bureau services, and a standard fee waiver policy that includes the amount waived, the recipient of the waiver, and the reason for the waiver to ensure greater accountability of all moneys due to the Bureau;
 - Drafting or updating written contracts and operating agreements between the Bureau and outside parties for goods and services, including but not limited to computer system repair and maintenance, software development and installation, information sharing subscriptions, and recording agreements;
 - Developing and implementing best practices and methods to provide greater security of the Bureau's information system;
 - Updating and implementing the Bureau's policies and procedures manuals, or creating and implementing policies and procedures for areas where manuals do not exist so that all procedures are performed uniformly;
 - Developing and implementing strong human resource management practices, including reviewing and revising employee job descriptions, duties, salary schedules and performance incentives;
 - Developing and implementing best practices for personnel performance evaluations and employee disciplinary procedures to ensure that all employees are meeting or exceeding minimum performance requirements and expectations;

- Developing and managing an effective, transparent, and fair practice for overtime work at the Bureau to ensure an equal distribution of and opportunity for overtime work;
- Actively engaging and consulting with the leadership of the Hawaii Government Employees Association to ensure union representation and consultation on all matters concerning its union members;
- Establishing and implementing standard cash management practices and procedures to efficiently and accurately account for all moneys flowing in and out of the Bureau;
- Developing and implementing appropriate job training to ensure that all employees are able to perform efficiently and effectively within their job title capacity; and
- Addressing staff needs and staff budgetary constraints.
- As part of the comprehensive plan, the Special Master and the Advisory Council shall concentrate on developing strategic initiatives for the Bureau, including but not limited to:
 - Developing an effective, operational, and secure computer information system for document retrieval that will be useful and relied upon by entities in the title industry;
 - Considering whether it is still appropriate for the Bureau to remain under the Department of Land and Natural Resources;
 - Examining and identifying best practices in dealing with timeshares recorded at the Bureau by reviewing other jurisdictions' practices;
 - Examining, identifying, and adopting best practices to improve the operations and employee management of the Bureau, including a system of periodic review and evaluation, and establishing performance indicators, benchmarks, and objectives, to achieve greater accountability and customer satisfaction;
 - Reviewing the personnel management at the Bureau and developing improvements and best practices to increase work productivity and employee satisfaction;
 - Examining the current recording system at the Bureau, reviewing and exploring other jurisdictions' recording systems, and implementing best practices to improve the Bureau's recording system; and

- Establishing a timeline and assigning responsibilities to implement operational and strategic initiatives at the Bureau.
- The Special Master shall submit a preliminary report to the Legislature regarding the areas of policy and operation that might be improved prior to the 2009 Regular Session, and a final report regarding the operational measures achieved and strategic initiatives to be implemented prior to the 2010 Regular Session.

In addition to the operational concerns and problems at the Bureau, the Committee recognizes that there are various functional concerns relating to the Bureau. The Committee found that the operations and various functions and services that the Bureau provides have not been updated or revamped during the course of several years despite the introduction of technological advancement that could effectively improve Bureau operations, such as electronic filing of documents for recording, or changes in the title industry that need to be addressed. Thus, the Bureau's failure to keep up with changes, adopt better practices within its operations, or improve its functions has resulted in the Bureau becoming obsolete despite its status and designation as the official repository of all information relating to the title to land for the State. The Committee recognizes that there is a great need for the Bureau to examine its operational and employee functions and modernize its functions to become a more effective, efficient, and reliable operation for the State and the title industry.

The Committee recommends the following:

- The Special Master and Advisory Council shall examine and study the feasibility of possible methods to re-evaluate and modernize the operational and employee functions of the Bureau. In doing so, they shall:
 - Examine the policies, procedures, and operations of state agencies charged with similar responsibilities and functions as the Bureau;
 - Examine the roles, duties, and functions of the Land Court and Regular System staffs of the Bureau from a union and employee perspective; review other state agencies' activities, policies, and rules relating to employee training, job descriptions, pay scales, disciplinary procedures, and performance evaluations; and identify and develop recommendations to re-evaluate and modernize the roles, duties, and functions of the Land Court and Regular System staffs of the Bureau;
 - Examine the operational roles, duties and functions of the Bureau from a legal and legislative perspective; review other jurisdictions' activities, policies, directives, and laws relating to recording the title to land; and identify and develop recommendations to revamp and modernize the operational roles, duties, and functions of the Bureau;
 - Establish findings and develop recommendations on how the Bureau of Conveyances may re-vamp its employee functions and modernize its

operational functions to become a more effective, efficient, and reliable operation for the State and the title industry.

- The Special Master shall submit a preliminary report to the Legislature regarding the operational functions at the Bureau that need improvement and modernization prior to the 2009 Regular Session, and a final report, including any suggested legislation, prior to the 2010 Regular Session.

RECOMMENDATION 3: Develop and Implement a Plan to Safeguard Personal Information Contained in Bureau Documents, which the Bureau Collects, Maintains, and Disseminates for Public Inspection

In the course of its investigation, the Committee raised concerns regarding the DVDs containing all scanned documents received and recorded and indexed data processed that were made available to the public, free of charge, pursuant to the Attorney General's request. The Committee has concerns regarding the distribution and release of Bureau information on DVDs, as some of the documents recorded on the DVDs may contain confidential or personal information that should not be available for public inspection. Although the Committee recognizes that the DVDs contain information reflected in public documents, the Committee agrees with this only to the extent that an individual's privacy rights are not infringed, especially in light of obtaining and viewing a DVD of a previous day's recordings, which revealed several documents containing confidential or personal information, such as Social Security numbers and bank account numbers.

The Committee is greatly concerned over the ramifications these daily DVDs could present to the Bureau as well as the public. The Bureau is the official repository of all information relating to the title of land, and it is imperative that the Bureau safeguard this information. Furthermore, as the official repository, it is also imperative that the Bureau not only keep track of the information coming into the Bureau, but also account and be responsible for the information that it disseminates to the public. The distribution of the daily DVDs without any clear and established procedures with respect to the use of the information contained on the DVDs could render the Bureau and public vulnerable to abuse.

The Committee strongly recommends that the Attorney General take immediate action to limit the distribution of the daily DVDs to those individuals and entities with a demonstrable, legitimate reason for accessing the information reflected there. These safeguards may include a screening process or user agreement covering those who request copies of the data. In the short term, such action is absolutely required to protect the public.

For the long term, the Committee recommends that the Special Master and Advisory Council develop and implement a policy plan and procedure to safeguard

personal information contained in documents and records that the Bureau collects, maintains, and disseminates for public inspection, including the following:

- The Special Master shall examine policies, procedures, and operations of state agencies charged with the responsibility of developing policies and procedures to prevent, monitor, and enforce rules and statutes relating to safeguarding personal information, especially in light of the enactment of chapter 487J, Hawaii Revised Statutes, relating to social security number protection applying to all businesses and government agencies in Hawaii.
- The Special Master shall develop and implement procedures that will enable the Bureau to identify information deemed personal and confidential in documents and develop a procedure to ensure that personal identifying information remains confidential.
- The Special Master shall develop and implement procedures that will enable the Bureau to account for and keep track of the information it disseminates to the public, including via the internet, in-person or mail requests, or computer information subscription services.
- The Special Master shall review all statutes and Administrative Rules relating to all documents recorded at the Bureau, and propose any necessary amendments to ensure that personal information is kept confidential in the course of disseminating Bureau information to the public.
- The Special Master shall be assisted in the above duties by the Advisory Council, as required.
- The Special Master shall submit a written report to the Legislature of its findings and recommendations, including any proposed legislation, prior to the 2009 Regular Session.

RECOMMENDATION 4: Investigate the Legal and Technical Obstacles to Combining the Land Court and Regular System Functions of the Bureau of Conveyances into a Single Unified System of Recordation

The Committee's investigation has demonstrated that maintaining the dual system of recordation, including both the Land Court and Regular System, has placed significant strains on the Bureau of Conveyances. Among the challenges encountered have been the conflict and enmity that the two systems, each with its own set of employees, has engendered among the Bureau's staff. At the same time, no usable method of combining the two distinct staffs into a single operational unit has been found. Training disparities, job descriptions, collective bargaining agreements and union rules have stymied attempts to move employees from one side of the Bureau to the other as needed to address changes in workloads.

The difference in workloads between the two systems has also led to a disparity in the backlogs in each office. In the Regular System, the indexing backlog is three months, while the Land Court recording backlog is a year and a half. In light of these findings, the Committee must consider the foundational question of whether the two distinct systems of recordation are necessary or advisable, or whether the community would be better served by a single, unified system of recordation.

The Committee recommends that the Special Master and Advisory Council perform an in-depth review of the feasibility of combining the Land Court and Regular Systems of recordation into a single unified system, including the following:

- The Special Master and Advisory Council shall examine and study the feasibility of merging the existing Regular System and Land Court systems of land recordation into a single unified system of recordation, including legal and practical impediments to creating such a system. In doing so, they shall:
 - Perform a survey of systems of land recordation in other jurisdictions, including dual-systems and unified systems, to identify best practices and existing challenges in those jurisdictions;
 - Work with stakeholders of the Bureau of Conveyances to identify current aspects of property recordation in Hawai'i that are critical to the continued effectiveness of the Bureau as a single unified system of recordation;
 - Consider the pros and cons of the Regular System that relies on title insurance to settle discrepancies in ownership versus the Land Court's explicit guaranty by the State of property ownership; and
 - Establish findings and develop recommendations on how the Bureau of Conveyances may be unified into a single system of recordation.
- Any report of the Special Master and Advisory Council called for under this section shall include a discussion of and specific findings related to the level of protection and security of title offered by a single unified system of recordation, when compared to the existing dual system of recordation.
- The Special Master shall submit draft legislation, if such legislation is appropriate, to facilitate the creation of single unified system of recordation, including a timetable for merging the staff and functions of the Regular System and Land Court, and a plan and timetable for consolidation of existing dual-system title into the newly-created single system.
- The Special Master shall submit a preliminary report to the Legislature regarding the creation of a single unified system of recordation prior to the 2010 Regular Session, and a final report, including any suggested legislation, prior to the 2011 Regular Session.

RECOMMENDATION 5: Determine an Administrative Assignment of the Bureau Other than Within the Department Of Land and Natural Resources

Pursuant to Recommendation 2 above, and in connection with the development of a comprehensive plan to improve the functioning of the Bureau of Conveyances, the Special Master will make a preliminary inquiry whether the Bureau should remain within the Department of Land and Natural Resources. This Recommendation calls upon the Special Master, with the assistance of the Advisory Council, to determine where the Bureau should be optimally assigned for administrative purposes.

Several possibilities exist, including an assignment to the Department of Commerce and Consumer Affairs and, moving outside the Executive Branch, to the Judiciary. The Department of Land and Natural Resources (DLNR) is a large and complex department covering a broad range of concerns, including historic preservation, aquatic resources, forestry, and land management. Given the serious and long-standing problems that have been identified at the Bureau of Conveyances, the Committee is faced with a question whether the DLNR represents the financial and management resources necessary to improve and maintain the functioning of the Bureau.

The current director of the DLNR has expressed an intention to make changes at the Bureau, calculated to address a number of long-simmering concerns. However, two principal concerns arise. First, while well-intentioned, the Director's initial announced initiative, which would automate some of the Bureau's functions, is too narrow in scope to make a significant impact on the wide range of management and personnel concerns now existing at the Bureau. In addition, it bears noting that the Bureau is not the only division within the DLNR that is facing challenges. Within the past year, significant and growing concerns have also surfaced at the State Historic Preservation Division, the Division of Boating and Ocean Recreation, and the Division of Conservation and Resources Enforcement. In short, the functions performed by the Bureau are too important to be but one of a series of critical problems within the DLNR. While the Committee expresses every confidence that the DLNR Director will in time address each problem division, the situation at the Bureau is too pressing and has existed too long wait for solutions.

The Committee recommends that the Special Master and Advisory Council identify a new administrative assignment for the Bureau of Conveyances within the state government, including the following:

- The Special Master shall perform a review of departments within the state government to identify likely administrative assignments for the Bureau of Conveyances, in order to produce a "short list" of agencies for in-depth review. This review shall not be limited to Executive Branch departments, but shall include the Judiciary of the State of Hawaii.

- The Special Master and Advisory Council shall review the policies, procedures, and current functions of "short list" agencies to determine the feasibility and advisability of reassigning the Bureau of Conveyances to one of those agencies.
- The review of the Special Master and Advisory Council shall include consultation with the executives of the agencies identified as relocation candidates, their staffs, and stakeholders of those agencies as identified by the respective executives.
- The review of the Special Master and Advisory Council may also include the leadership of the Hawaii Government Employees Association as necessary to ensure union representation and consultation on all matters concerning its union members.
- The Special Master shall prepare a report on the reassignment of the Bureau of Conveyances, which shall include:
 - A list of no less than two and no more than four agencies that are appropriate candidates to accept and oversee the functions of the Bureau of Conveyances;
 - Appropriate amendments to the comprehensive operational plan prepared pursuant to Recommendation 2 above, which would allow the selected agency to manage the Bureau of Conveyances in a manner that will ensure the proper functioning of the Bureau consistent with the recommendations provided in this report;
 - A recommendation of budgetary and personnel provisions to allow the new agency to accept the Bureau of Conveyances and its functions;
 - A timeline and transition plan for the reassignment of the Bureau of Conveyances to the selected agency; and
 - An analysis of other issues and considerations that may militate against the reassignment of the Bureau to any or each of the identified candidates.
- The final decision on reassignment of the Bureau of Conveyances and the agency to receive the Bureau shall be made by the Legislature, in consultation with the Governor and the then-serving Registrar of the Bureau.
- The Special Master shall provide proposed legislation, if necessary, to facilitate the reassignment of the Bureau of Conveyances consistent with this recommendation.
- The Special Master shall submit a preliminary report to the Legislature regarding the reassignment of the Bureau of Conveyances prior to the 2010 Regular Session, and a final report, including any suggested legislation, prior to the 2011 Regular Session.

RECOMMENDATION 6: Determine the Advisability and Feasibility of Privatizing the Bureau of Conveyances.

The facts and testimony presented to the Committee has established that the Bureau of Conveyances provides vital but complex services to the people of Hawaii. The scope and nature of the Bureau's functions simultaneously call for both absolute confidence in its records and a need for flexibility in performing its duties, in order to address the ever-growing mass of information it processes. As a result, the Committee must consider whether these functions are best provided by a department of the state government, or whether the Bureau is an appropriate candidate for transfer to a private entity.

Privatizing the Bureau of Conveyances offers the possibility of improved service, but raises a host of concerns, including personnel issues, the security of information, liability for errors and omissions in recordation, and the potential for succession to new or additional private entities as the number or nature of land recordations change or grow in the future. Still, the Committee would be remiss if it did not consider the entire range of potential solutions to the Bureau's problems, and privatization may be one such solution.

The Committee recommends that the Special Master and the Advisory Council perform an in-depth review of the issues and potential challenges presented by privatizing the functions of the Bureau of Conveyances, including:

- The Special Master shall prepare a survey of land recordation systems in other jurisdictions that have been privatized. That survey shall include:
 - Provisions for ensuring the protection of personal information and other sensitive data;
 - Provisions for ensuring the reliability of recorded information;
 - Experience with transitions between vendors, including migration of data, assignments of liability, and continuing assurances of data safety and completeness; and
 - The existence and nature of agreements for the protection of the state or other government entity from claims of liability for errors and omissions in the recordation or preservation of land claims.
- The Special Master shall also actively engage and consult with other stakeholders of the Bureau of Conveyances in analyzing the potential for privatization, including:
 - The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO;

- The Hawaii Land Title Association;
- The Hawaii Association of Realtors;
- The financial services industry; and
- The legal community.
- The Special Master shall prepare a report on the privatization of the Bureau of Conveyances, which shall include:
 - An outline of criteria to be applied in identifying and selecting a private entity to assume the responsibilities of the Bureau of Conveyances;
 - Financial projections related to privatizing Bureau functions, including potential income earned and expenses borne by the private entity, adequacy of current pricing, and potential net income to the State;
 - An analysis of tax collections now handled by the Bureau of Conveyances and, if appropriate, a process for the selected private entity to collect and transfer those tax revenues;
 - A recommendation of budgetary and personnel provisions to allow the selected private entity to accept the Bureau of Conveyances and its functions;
 - A timeline and transition plan for the privatization of the Bureau of Conveyances; and
 - An analysis of other issues and considerations that may militate against the reassignment of the Bureau to a private entity.
- The final decision on the privatization of the Bureau of Conveyances shall be made by the Legislature, in consultation with the Governor and the then-serving Registrar of the Bureau.
- The Special Master shall provide proposed legislation, if necessary, to facilitate the privatization of the Bureau of Conveyances consistent with this recommendation.
- The Special Master shall submit a preliminary report to the Legislature regarding the privatization of the Bureau of Conveyances prior to the 2010 Regular Session, and a final report, including any suggested legislation, prior to the 2011 Regular Session.

PART V. CONCLUSION

The Joint Senate House Investigative Committee has identified serious shortcomings relating to the Bureau of Conveyances' operational mismanagement, potential loss of revenue, and potential areas of vulnerability. Some of these shortcomings have been longstanding and prevailing problems for several years that have not been properly addressed and allowed instead to continue and worsen. Other shortcomings have not been previously identified by earlier reports of the Bureau, but testimony indicates that these previously unidentified shortcomings have been continuing problems for the Bureau.

From a review of the testimony and materials presented to the Committee, and in light of the longstanding nature of the problems uncovered, it appears extremely unlikely that the Bureau, or the Department of Land and Natural Resources, possesses the will or capability to address these issues without some form of legislative intervention. The Committee recognizes that the Bureau and the Department have made several attempts in the past to address the various problems at the Bureau, such as the work backlog, but these attempts were ineffective, failed to address the root of the problem, or lacked foresight and prevention.

The Committee also recognizes the Department Chairperson's announced initiative to automate some of the Bureau's functions, including the electronic filing of documents for recordation, as the Department's attempt to address a number of the long simmering problems at the Bureau. While the Committee applauds the Department in its attempts, the automation initiative may be too narrow in scope to appropriately address the full range of problems, and may pose additional problems in the long term. While automation may aid in addressing the work backlog, it does not address the infighting and animosity among Bureau employees or the low work productivity as a result of the intra-office disputes. The automation of certain functions may require further job training, change in job descriptions and positions, and revisions and updates in the Bureau's policies and procedures and Administrative Rules. Some of these changes will require consultation with HGEA to respect collective bargaining agreements. More specialized job training may also require an increase in pay, which may not be factored into the Bureau's budget due to financial constraints. Thus, the automation initiative may be more properly suited as an initiative to be considered for the Bureau's long term future.

The functions performed by the Bureau are too important to be but one of a series of critical problems within the Department of Land and Natural Resources. While the Committee expresses every confidence that the Department Chairperson will in time address each problem division, the situation at the Bureau is too pressing and has existed too long to stand in line for solutions. The Committee recognizes that the current situation calls for a non-Bureau employee with experience and strong skills in leadership, organization, and motivation to develop a comprehensive plan to assist the Bureau in becoming a more efficient, effective, and accountable operation as it is clear that the existing management is unwilling or unable to take on this challenge. The management has become jaded and are too overwhelmed by and entrenched in the

day-to-day operations, and are unable to address or are the subject of intra-office crises to move ahead with effective solutions and strategies for improvement.

As a result, the Committee now finds it necessary and appropriate to develop and mandate methods and solutions -- short- and long-range -- to assist the Bureau in becoming a more efficient, effective, and accountable operation. The Committee has determined that a comprehensive plan that entails acceptance, open compromise, and constructive dialogue under the direction of a Special Master and advisory committee is needed to assist the Bureau in conquering its current problems and creating strategies to remain and maintain or exceed an efficient level of operation in the future.

Draft

Draft

ATTACHMENT 1**Joint Senate-House Investigative Committee on the Bureau of Conveyances
Stakeholder Recommendations**

October 22, 2007

Company:

Pacific Title, LLC
765 Amana Street, Suite No. 303
Honolulu, HI 96814

Contact Person:

Anthony W.O. Ching
(Member/Manager)

Phone: (808) 945-9000

Email: anthonyc.pactitle@hawaiiantel.net

1. Please describe your interaction with the BOC.

Pacific Title, LLC is a full service title insurance agency registered with the Insurance Division of the State Department of Commerce and Consumer Affairs. The services which we provide to our customers are no different than those provided by other title insurers or agencies (Title Searches, Miscellaneous Reports, Document Recording Services and Title Insurance Policies). Unlike other title insurance companies or agencies whom maintain a title plant or has access to a title plant, Pacific Title, LLC is the only title company or agency which is 100% dependent on the indexes and records maintained by the BOC and services it provides.

2. How would you characterize your relationship with the BOC (as both an individual and with your company)?

I consider the relationship of myself and my company to be symbiotic and our close association is mutually advantageous and beneficial. Our working relationship with the Management and Staff of the BOC has been nurtured over the years and I consider the same as "professionals dealing with professionals".

Pacific Title, LLC
Anthony W.O. Ching
October 22, 2007

3. Briefly describe what you consider to be specific problem areas at the BOC.

In my observation, the team at the BOC (Management Regular System Employees & Land Court Employees) is dysfunctional. Too much focus is placed on protecting each respective interest at the expense of not timely or accurately completing the tasks for which the BOC is responsible. One good example is evident in the fact that the BOC is 2 to 3 months behind in their indexing of recorded documents.

4. What recommendations do you have to help the committee improve the operations and functions of the BOC?

I believe that the problems existing at the BOC today are "people" problems. Promote "Teamwork".

Create one team: Support and enact legislation to accomplish the discontinuance of the Land Court System. Over the past few years legislation to discontinue the Land Court System have failed. Presently the Land Court System does not provide any tangible benefits to the Registered Owner and therefore the costs to maintain this registration system are not justified.

Promote Teamwork: Do whatever it takes to support and encourage teamwork. Creating different teams to deal with specific duties will not work. We all know that the real estate industry is either very busy or very slow. Approaching management to deal with the "averages" will not work and teamwork is imperative in mitigating the effects of surges experienced in the real estate industry.



OLD REPUBLIC
TITLE & ESCROW OF HAWAII

FACSIMILE TRANSMITTAL SHEET

TO: JILL TOKUDA
COMPANY: JOINT SENATE-HOUSE
INVESTIGATIVE COMMITTEE
FAX #: 587-7220
PHONE #: 587-7215
DATE: 10/30/2007
RE: INVESTIGATIVE COMMITTEE QUESTIONAIRE

FROM: OLD REPUBLIC TITLE & ESCROW OF
HAWAII
FAX #: 566-0227
PHONE #: 566-0100
OF PAGES INCLUDING COVER: 3
TIME: 3:49 PM

Dear Ms. Tokuda

In response to the questionnaire received, please see the attached. Thank you!

Aloha,

Robin Murakami
Title Operations Manager

DRAFT

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**Joint Senate-House Investigative Committee on the Bureau of Conveyances
Stakeholder Recommendations**

Company or Organization: OLD REPUBLIC TITLE & Address: ESCROW OF HAWAII City, State, Zip Code: 733 BISHOP ST, #2700 HONOLULU, HI 96813	Contact Person: PATRICIA YEE Phone: 566-0100 Email: tyee@ortc.com
--	--

1. Please describe your interaction with the BOC.
SEE ATTACHED

2. How would you characterize your relationship with the BOC (as both an individual and with your company)?
SEE ATTACHED

3. Briefly describe what you consider to be specific problem areas at the BOC.
SEE ATTACHED

4. What recommendations do you have to help the committee improve the operations and functions of the BOC?
SEE ATTACHED

Attachment to the Joint Senate-House Investigative Committee Questionnaire:

#1

As a title company, we work in conjunction with the Bureau of Conveyances to record pertinent documentation for transactions involving real property. On a daily basis, we submit packets for recording to the Bureau in both the regular system and land court land systems. Throughout the process, we work closely with the Bureau staff to ensure that the documentation is valid and proper for recordation, thus interacting with various personnel at the BOC on a consistent basis.

#2

Overall, I would characterize the relationship between the Bureau and Old Republic as being good. In general, the personnel there has been very helpful and provides assistance on all manners of issues to do with the reviewing and recordation of documents. The relationship can be contentious at times and sometimes getting a response from the Bureau can be rather difficult and that may be due to the volume of work as we do hear comments from individuals there that they are understaffed.

#3

Problem areas:

- 1) Staffing issues and internal relations between BOC personnel (i.e. communication, accountability, professionalism)
- 2) Inconsistent recording requirements for the two land systems
- 3) Internal processes – how they process work
- 4) Relationship with Union.....work together to resolve issues
- 5) Customer Services (i.e. upgrade services in order to make more client/business friendly, more professional attitude)
- 6) Upgrade of online systems/capabilities (i.e. upgrade computer services/systems, electronic recording)

#4

Recommendation that the DLNR review and implement the measures proposed by the "Bureau of Conveyances, Operations Review Project" done in June 2005 by the firm, Heike Consulting, LLC.



HONOLULU
BOARD OF
REALTORS®

Honolulu Board of REALTORS®

Fax

To: Senator Jill N. Tokuda

Date: 10/31/07

Fax: 587-7220

From: Lea Mukai

Phone: 792-4943

Pages: 2

Fax: 732-3055

Good morning. Attached is our completed form on the Bureau of Conveyances Stakeholder Recommendations. Thank you.

DRAFT

Disclaimer: The information transmitted is intended only for the person(s) or entity to which it is addressed and may contain confidential and/or privileged material. If you are not the intended recipient of this message you are hereby notified that any use, review, retransmission, dissemination, distribution, or production or any other action taken in reliance upon this message is prohibited. If you receive this in error, please contact the sender.

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Phone: 808.732.3000 Fax: 808.732.3055
www.HiCentral.com



**Joint Senate-House Investigative Committee on the Bureau of Conveyances
Stakeholder Recommendations**

Company or Organization: Hon. Board of REALTORS	Contact Person: Donna Asino
Address: 1136 12th Ave. #200	Phone: 732-3000
City, State, Zip Code: Hon. HI 96816	Email: donna.asino@hcentralmls.com

1. Please describe your interaction with the BOC.

HBR subscribed to a data file of all documents recorded at the BOC. Since the data distribution was abruptly changed, HBR relies on the title industry as its data source.

2. How would you characterize your relationship with the BOC (as both an individual and with your company)?

HBR's relationship with the BOC was based on a vendor/client relationship.

3. Briefly describe what you consider to be specific problem areas at the BOC.

HBR members depend on accurate, current data. Our major concerns are the delays in data distribution and the restrictions/requirements placed on title companies which ultimately impact HBR members and consumers. Data should be available on-line and real-time.

4. What recommendations do you have to help the committee improve the operations and functions of the BOC?

1. Revise position descriptions to streamline processes and combine duties between the Regular System and Land Court staff.
2. Conduct on-site research of states with dual recording systems.
3. Research the possibility of eliminating the Land Court system.

TITLE GUARANTY OF HAWAII

INCORPORATED
235 QUEEN STREET ♦ HONOLULU, HAWAII 96813

Phone: (808) 539-7700 OR 521-0261

EXECUTIVE

Fax: (808) 532-3160

FACSIMILE TRANSMITTAL COVER SHEET

Date: October 31, 2007

To: Senator Jill N. Tokuda

FAX: (808) 587-7220

From: Anela Shimizu

Phone No.: (808) 539-7700

Fax No.: (808) 532-3160

Email Address: ashimizu@tghawaii.com

Re: Stakeholder Recommendations – Bureau of Conveyances

Page: 2 (Including Cover) REVISED

Comments:

Revisions have been made – please use this revised copy of Title Guaranty's Stakeholder Recommendations to the Joint Senate-House Investigative Committee on the Bureau of Conveyances.

Thank you,

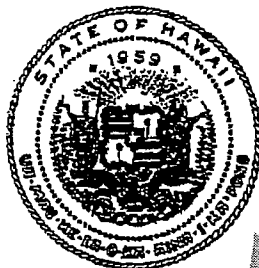
Anela Shimizu

Should you have any difficulties or questions in receiving this transmission, please call Anela at (808) 539-7700 or Yvonne at (808) 521-0261. If you wish to send us a fax, our number is (808) 532-3160.

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**Joint Senate-House Investigative Committee on the Bureau of Conveyances
Stakeholder Recommendations**

Company or Organization:	Title Guaranty of Hawaii, Inc.	Contact Person:	Lorin Hirano
Address:	235 Queen Street	Phone:	533-5842
City, State, Zip Code:	Honolulu, Hawaii 96813	Email:	lhirano@tghawaii.com

1. Please describe your interaction with the BOC.

Title Guaranty interacts with the Bureau of Conveyances ("BOC") on a daily basis in connection with various day to day activities, such as recording documents, requesting copies of maps, and addressing documents recorded in error. Occasionally, Title Guaranty coordinates "bulk recordings" with the BOC. Interaction with the BOC most often consists of phone calls with staff, but may also include emails or mailed correspondence.

2. How would you characterize your relationship with the BOC (as both an individual and with your company)?

Our company's working relationship with the Bureau staff on a day-to-day basis is generally good. Most of the Bureau staff works cordially with our recorders, responds to our requests on a timely basis, and cooperatively assists us with recording issues. We have encountered some staff members, however, who are not cooperative and do not respond in a professional manner. When this happens, our staff sees the rift between Bureau staff and DLNR management, and the Bureau's internal communication issues make it difficult to solve problems.

3. Briefly describe what you consider to be specific problem areas at the BOC.

The primary problem at the BOC is the lack of ability or authority for management to implement changes with staffing or procedures. We sometimes experience inconsistency in decision-making by different BOC staff members, and upper BOC management appears to have difficulty resolving the differences. Lack of cooperation between various BOC personnel contributes to the delay in reaching a solution. The BOC's service to the public is negatively affected by the grievances filed within the BOC and the strife between the staff and management. The delay in processing Land Court documents and issuing TCTs needs to be significantly reduced, and the practice of memoing of documents already accepted for recording needs to be re-examined.

4. What recommendations do you have to help the committee improve the operations and functions of the BOC?

- Support management who try to improve the current process through procedural and personnel changes;
- Improve training and implement procedures to reduce inconsistent decision-making;
- Upgrade systems and procedures by which documents are currently recorded and made available to the public: i.e., same day recording; electronic recording; electronic downloading of images; allocate resources to large-volume bulk or project recordings; create a simpler fee structure; and
- Facilitate cooperation between HGEA and DLNR management in dealing with BOC staff issues to promote professionalism and to improve service to the public from all personnel.

TITLE GUARANTY OF HAWAII

INCORPORATED
235 QUEEN STREET ♦ HONOLULU, HAWAII 96813

Phone: (808) 539-7700 OR 521-0261 EXECUTIVE Fax: (808) 532-3160

FACSIMILE TRANSMITTAL COVER SHEET

Date: October 31, 2007

To: Senator Jill N. Tokuda

FAX: (808) 587-7220

From: Anela Shimizu

Phone No.: (808) 539-7700

Fax No.: (808) 532-3160

Email Address: ashimizu@tghawaii.com

Re: Stakeholder Recommendations – Bureau of Conveyances

Page: 2 (Including Cover)

Comments:

The following document is Title Guaranty's Stakeholder Recommendations to the Joint Senate-House Investigative Committee on the Bureau of Conveyances.

Thank you,

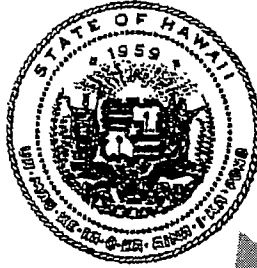
Anela Shimizu

Should you have any difficulties or questions in receiving this transmission, please call Anela at (808) 539-7700 or Yvonne at (808) 521-0261. If you wish to send us a fax, our number is (808) 532-3160.

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Joint Senate-House Investigative Committee on the Bureau of Conveyances
Stakeholder Recommendations

Company or Organization:	Title Guaranty	Contact Person:	Lorin Hirano, Esq.
Address:	235 Queen Street	Phone:	533-5824
City, State, Zip Code:	Honolulu, Hawaii 96813	Email:	lhirano@tghawaii.com

1. Please describe your interaction with the BOC.

Title Guaranty interacts with the Bureau of Conveyances ("BOC") on a daily basis in connection with various day to day activities, such as recording documents, requesting copies of maps, and addressing documents recorded in error. Occasionally, Title Guaranty coordinates "bulk recordings" with the BOC. Interaction with the BOC most often consists of phone calls with staff, but may also include emails or mailed correspondence.

2. How would you characterize your relationship with the BOC (as both an individual and with your company)?

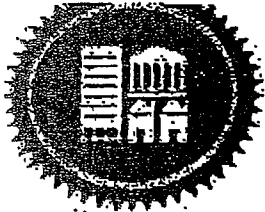
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3. Briefly describe what you consider to be specific problem areas at the BOC.

The primary problem at the BOC is the lack of ability or authority for management to implement changes with staffing or procedures. We sometimes experience inconsistency in decision-making by different BOC staff members, and upper BOC management appears to have difficulty resolving the differences. Lack of cooperation between various BOC personnel contributes to the delay in reaching a solution. The BOC's service to the public is negatively affected by the grievances filed within the BOC and the strife between the staff and management.

4. What recommendations do you have to help the committee improve the operations and functions of the BOC?

- Support management who try to improve the current process through procedural and personnel changes;
- Improve training and implement procedures to reduce inconsistent decision-making;
- Upgrade systems and procedures by which documents are currently recorded and made available to the public: i.e., same day recording; electronic recording; electronic downloading of images; allocate resources to large-volume bulk or project recordings; create a simpler fee structure; and
- Facilitate cooperation between HGEA and DLNR management in dealing with BOC staff issues.



Fidelity National Title INSURANCE COMPANY

Title Department

FAX TRANSMISSION

Date: 10-31-2007

To: Senator Jill Tokuda

Fax #: 587-7220

From: Kent Pelt

Re: BOC

Total number of pages, including coversheet: 3

Our company's recommendations.

KSP

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City Financial Tower
201 Merchant Street, Suite 2100 - Honolulu, Hawaii 96813 - Telephone: (808) 536-0404 - Title Fax: (808) 533-3173

**Recommendations to Joint Senate-House Investigative Committee
on the Bureau of Conveyances
by Fidelity National Title & Escrow of Hawaii, Inc.
201 Merchant Street, Suite 2100
Honolulu, HI 96813**

Phone: (808) 536-0404

Dale Hastie, President, dale.hastie@fnf.com

Kent Pelt, Vice President, kent.pelt@fnf.com

October 31, 2007

1. Please describe your interaction with the BOC.

Our company submits a substantial number of documents to the BOC for recording each business day. The documents are recorded to finalize real estate transactions for our customers; Hawaii consumers selling, buying or refinancing real property. Our recording clerks personally interact with the BOC receiving staff when documents are delivered. Our title department staff calls Carl Watanabe or the Regular System and Land Court Supervisors to resolve recordation problems.

2. How would you characterize your relationship with the BOC (as both an individual and with your company)?

Our relationship with the BOC is cordial and professional at present. In particular, Carl Watanabe has always been helpful and pragmatic in his approach to problem resolution. During busier years, however, we were told we had too many "pulled" recordings along with other companies in the industry. Some BOC Supervisors and staff members do not recognize that title and escrow companies' customers are members of the general public, and have complained openly that "title company" work takes away from their ability to "serve the general public." The absurdity of this position is that our customers are members of the general public.

3. Briefly describe what you consider to be specific problem areas at the BOC.

Supervisors (other than Carl Watanabe) are entrenched in a "form over substance" belief system. Bureaucratic procedures stifle common sense and any pragmatic approach to problem solving. In other words, following internal rules for document recording that are not based on the requirements of the Hawaii Revised Statutes has become more important to BOC staff than the simple mission of recording documents in a timely and efficient manner.

4. What recommendations do you have to help the committee improve the operations and functions of the BOC?

Although the BOC records land record documents, its function has less to do with "land" than commerce. Oversight of the BOC should be transferred to the DCCA from the DLNR eventually. The BOC should be operated like a business rather than part of a state organization that manages state land and Hawaii's precious natural resources.

The one day advance submission of documents for "pre-checking" before recording should be abandoned in favor of a "same day" recording system. As of now, documents must be submitted to the BOC before 8:30 a.m. the business day before actual recording. Documents should be submitted by 7:00 a.m. the business day of recording and checked and recorded throughout the same business day with the 8:00 a.m. recording stamp. Unlimited special recordings should be allowed throughout the day at the "general public" receiving window. Our customers are members of the general public.

Images of daily recordings need to be kept current and furnished to Hawaii's two private title plants by secure internet connection on a daily basis.

Adopting "same day" recording procedures now will pave the way for electronic recording in the near future. The document approval process needs to be simplified so that documents meeting the minimum legal requirements are recorded without further scrutiny in either Regular System or Land Court. Many documents are overly-scrutinized by BOC receiving staff now, and improperly rejected.

The present practice of Land Court issuing "memos" to TCT's (effectively rescinding a TCT issued to a consumer 1 to 1 and ½ years after accepting a document for recording improperly) must be abolished. There is no statutory authority for the practice, and technically the state should have liability on a TCT. Where a title insurance policy is issued, the insured owner looks to the insurer rather than the state for defense and indemnification against title defects.

FAX SHEET



**Hawaii
Association of
REALTORS®**

Hawaii Association of Realtors
1136 12th Avenue, Suite 220
Honolulu, Hawaii 96816

Date 10/31/07

Number of pages including cover sheet 4

To: **Sen. Jill N. Tokuda**

Myoung Oh

Hawaii Association of REALTORS®

Phone (808) 587-7215

Phone (808) 737-7060 ext. 104

Fax Phone (808) 587-7220

Fax Phone (808) 737-4977

CC:

REMARKS:

Urgent For your review Reply ASAP Please comment

Hi,

HAR has limited to no interaction with the Bureau of Conveyances. We must defer to our membership for any responses to their firms. Enclosed are replies from our members representing both large and small real estate brokerage companies.

If you have any questions, please don't hesitate to call me. Let's work together to help improve the operations of the BOC.

Thank you,
Myoung Oh



HAWAII STATE LEGISLATURE
STATE CAPITOL
HONOLULU, HAWAII 96813

October 15, 2007

Ms. Denise Motohiro
Interim Director
Hawai'i Association of Realtors
1136 12th Avenue, Suite 220
Honolulu, Hawai'i 96816

Dear Ms. Motohiro:

As you may be aware, the Joint Senate-House Investigative Committee on the Bureau of Conveyances was created to determine what problems this division faces, and what can be done to ensure that the Bureau is able to effectively carry out its mission.

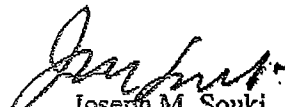
In an effort to solicit recommendations for improvement from all stakeholders of the Bureau of Conveyances and to develop a comprehensive report to the Legislature, we are seeking your input in the completion of this form.

To provide us with adequate time to present your recommendations to Committee members and to include it in our report, please fax the completed form to 587-7220 by Wednesday, October 31st or mail it to:

Senator Jill N. Tokuda
State Capitol, Room 218
415 South Beretania
Honolulu, Hawai'i 96813

We encourage you to share this form with other stakeholders we may not have contacted, if you have any questions or concerns, please feel free to contact us at 587-7215. Thank you in advance for your cooperation and participation. Together, we can help the BOC move forward.

Sincerely,


Joseph M. Souki
Co-Chairperson


Jill N. Tokuda
Co-Chairperson

737-4977



RECEIVED OCT 30 2007

Joint Senate-House Investigative Committee on the Bureau of Conveyances
Stakholder Recommendations

Company or Organization: Coldwell Banker Pacific Properties	Contact Person: Tom Gill
Address: 1314 S. King, 2nd Floor	Phone: 597-5582
City, State, Zip Code: Honolulu, HI 96814	Email: tomg@cbpacific.com

1. Please describe your interaction with the BOC.
 Only through the escrow and title companies

2. How would you characterize your relationship with the BOC (as both an individual and with your company)?

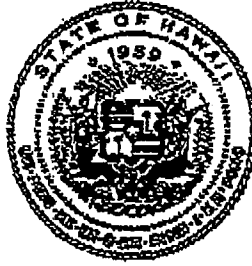
3. Briefly describe what you consider to be specific problem areas at the BOC.

- Recording backlog - Land Court over a year behind
- Very limited same day recordings (only 3 per title co.)
 - causes hardships for transactions with critical date requirements
 - causes buyers to pay extra interest
 - recording errors can show up long after closing

4. What recommendations do you have to help the committee improve the operations and functions of the BOC?

- What would it take to be able to handle most recordings on the same day they are presented?
 - Reorganization?
 - Automation?
 - Privatization???

Myoung - 737-4977



RECEIVED OCT 23 2007

Joint Senate-House Investigative Committee on the Bureau of Conveyances
Stakeholder Recommendations

Company or Organization: <i>Property Profiles Inc</i>	Contact Person: <i>Berton Hamamoto</i>
Address: <i>98-030 Hekaha St. #26</i>	Phone: <i>487-9500 x 207</i>
City, State, Zip Code: <i>Aiea, HI 96701</i>	Email: <i>berton@pixi.com</i>

1. Please describe your interaction with the BOC.

Very limited to nonexistent

2. How would you characterize your relationship with the BOC (as both an individual and with your company)?

*Now that escrow can send us copies of documents
or we can retrieve online, we don't have to go to the BOC
anymore*

3. Briefly describe what you consider to be specific problem areas at the BOC.

*Slow, not automated or using technology to make it
more efficient*

4. What recommendations do you have to help the committee improve the operations and functions of the BOC?

*Put everything online and go digital - paperless.
Re-train the staff on computer skills.*



FAX SHEET

Hawaii Government Employees Association • AFSCME Local 152 • AFL-CIO
Working Together For Hawaii

This is confidential material for the addressee's use only. If you received this transmission in error, please do not use, distribute or reproduce it. Instead, please call the sender at the phone number provided on this sheet. Thank you!

DATE: 10/31/07

TOTAL PAGES: 2 (including cover sheet)

TO: Senator Jill Tokuda

FAX NUMBER: 587-7220

FROM: Kevin Mulligan, Union Agent

PHONE NUMBER: 543-0067

FAX NUMBER:

SUBJECT: Stakeholder Recommendations

MESSAGE: Senator Tokuda: Here is our input to the Joint Senate-House Committee on the BOC.

Draft

**Joint Senate-House Investigative Committee on the Bureau of Conveyances
Stakeholder Recommendations**

Company or Organization: HGEA/AFSCME
Address: 888 Mililani St.
City, State, Zip Code: Honolulu, HI 96813

Contact Person: Nora Nomura
Phone: 543-0071
E-mail: nonomura@hgea.org

1. Please describe your interaction with the BOC.

HGEA is the exclusive representative for non-managerial employees at the BOC. Our statutory responsibility is to enforce the terms of the collective bargaining unit agreements covering BOC employees. HGEA's interaction with BOC occurs when there has been a violation of our agreement by management. Our interaction with the BOC has been long-standing and on going over a variety of issues affecting labor relations.

Our interaction with BOC occurs whenever there are concerns about working conditions or operating policies and procedures. We have a statutory responsibility to represent BOC employees in bargaining units 03, 04 and 13 and enforce these bargaining unit agreements. Unlike some other stakeholders, our interaction with the BOC is not on a daily basis. When there are specific issues of importance to the BOC staff, the frequency of our interaction increases.

2. How would you characterize your relationship with the BOC (as both an individual and with your company)?

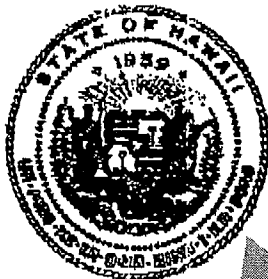
Our relationship with BOC administration has been characterized by conflict and has been, at times, adversarial. In our view, BOC management has promoted division among the staff and disregarded the union's collective bargaining agreements resulting in numerous grievances. Our working relationship could improve significantly if management took a more collaborative approach in solving problems.

3. Briefly describe what you consider specific problem areas at the BOC.

The problem areas at the BOC are: 1) a lack of leadership by management; 2) management's promotion of factions among staff; 3) apparent favoritism given to certain title companies over others and 4) need for additional staff positions and resources.

4. What recommendations do you have to help the committee improve the operations and functions of the BOC?

- Change BOC Administrator.
- Fill the vacant Deputy Registrar's position with an experienced manager.
- Provide additional staff and administrative support for the BOC, as necessary.
- Have BOC administration engage in more collaborative labor-management processes.
- Prohibit special treatment, i.e., to a particular title company, specific individuals or employees. Hire a more effective Registrar who will work cooperatively with all interested parties.



10/31/07 - 2:30PM -
FAXED - 587-7220 -
TO : SEN. JILL
TOKUDA

**Joint Senate-House Investigative Committee on the Bureau of Conveyances
Stakeholder Recommendations**

Company or Organization: Government Efficiency Teams, Inc. (GET)	Contact Person: Sumner Howard, Pres.
Address: 126 Queen St.	Phone: 808-599-4199
City, State, Zip Code: Honolulu, HI. 96813	Email: getefficient@hawaii.rr.com

1. Please describe your interaction with the BOC.

A. Please review carefully, and in its entirety, ATTACHMENT "A", Pages 1 and 2, which briefly describes our interactions with the BOC since August-2003.

B. Several "friends" of GET deal with the BOC weekly; their interactions are included in the below comments.

2. How would you characterize your relationship with the BOC (as both an individual and with your company)?

A. GET's individual and company relationships with the BOC have been very cordial. Of course, this is the only attitude one should have when you are trying to assist someone.

B. Our "friends" advise the same, adding that the staff is pleasant and helpful.

3. Briefly describe what you consider to be specific problem areas at the BOC.

A. Backlog of completed documents; late from 2-weeks to one-year.

B. Inconsistent application of the Policies and Recording Rules by the Land Court and the BOC, making double work for everyone.

C. The two(2) different locations of the BOC(1151 Punchbowl) and the Land and Tax Appeal Court(777 Punchbowl), which require two(2) visits, instead of one(1), to complete a transaction. This is not good business.

4. What recommendations do you have to help the committee improve the operations and functions of the BOC?

A. Transfer the BOC to the DCCA(Dept. of Commerce/Consumer Affairs). B. Eliminate the Land Court. This will allow all Escrow/Title functions to be in ONE bureau. C. Immediately MODERNIZE the BOC: 1. "Document-Entry and "Document-Locator" systems; 2. Availability of documents "on-line"; 3. Utilize the \$75,000 (tax payers' money) June-2005 Hoike Report in the modernization;

4. Utilize NOW the on-hand research results of up-to-date mainland systems; if more details needed, get it NOW and modernize NOW; 5. Implement Sen. Fred Hemmings' Oct. 10, '05 letter to you re a Hearing of 4 BOC employees.

We believe that you/we can definitely learn much from these concerned, subpoenaed BOC employees.

ATTACHMENT "A" - Page 1. - 10/31/07

11/30/06
FAX
955-8031

In an interview this week with Sumner-Howard, the ^{Volunteer} Pres. of Government Efficiency Teams, Inc., known as "GET", he indicated how he and his members were so disgusted with

"No progress to improve the operations at the Bureau of Corrections."

"GET" became involved in August of 2003, when it contacted DLNR ^{Director} Peter Young and offered to assist the Bureau by presenting them with the well-known

"The GE Work-Out", designed for "Busting ~~Bureaucracy~~ and Attacking Organizational Problems". This simple, highly effective change program has been used successfully by Sears, Home Depot, General Electric and General Motors, amongst others.

GET, ^(SH) with Director Courtney Brown - past real estate experience on the mainland and an Information Technology ^{expert} - attended the March 4th, 2004, meeting of the Bureau's Process Review Group, at which no objectives were established. We again offered our assistance and presented Chairman Howard Matsura with an Outline of

Sumner Howard (2) ATTACHMENT: "A" - 10/31/07

"The GE Work-Out". Nothing came out of the "Process Review Group".

After ^{a few} meetings with Carl Watanabe - Registrar, we were advised that Hoike Consulting LLC was preparing an "Operations Review Report". This ~~was~~ 113-page document was published in June 2005 at a cost of \$75,000.

GET attended and testified in favor of this well-written and all-encompassing report at the DLNR Board Meeting of August 18, 2005. On August 16 we mailed a Summary of the well-known "GE Work-Out" to DLNR Board Director Peter Young and all 6 Directors. We have heard nothing since.

"GET is still willing to assist DLNR in a complete reorganization of the Bureau. We have several real estate and lawyer friends who will be willing to help."

HAWAII ESCROW TITLE, INC.
Via facsimile

October 31, 2007

To: Senator Jill N. Tokuda
State Capitol, Room 218
415 South Beretania
Honolulu, Hawaii 96813

Re: Response to Joint Senate-House Investigative Committee
Bureau of Conveyances Stakeholder Recommendations

Please confirm receipt of responses for both Hawaii Land Title Association and Hawaii Escrow & Title, inc. to Denise M. Kaehu at dkaehu@hetinc.com.

Response to Joint Senate-House Investigative Committee
Bureau of Conveyances Stakeholder Recommendations
October 30, 2007

Company: Hawaii Escrow & Title, Inc.
Address: 1100 Alakea Street, 5th floor
Honolulu, Hawaii 96813

Contact Person: Denise M. Kaehu
Phone: (808) 532-2977, ext. 301
Email: dkaehu@hetinc.com

The following represents a general consensus of the HLTA as a specific response from an individual company may be submitted separately:

1. Please describe your interaction with the BOC.

The Title companies interact daily with the receiving clerks for both Regular and Land Court recording systems when they bring documents to the BOC for recordation on behalf of the general public. We also go to "Will call" to pick up recorded documents, order map copies, file plans and pick up copies of Transfer Certificates of Title that may not be available through the LCAT's system.

2. How would you characterize your relationship with the BOC (as both an individual and with your company):

We experience somewhat of an awkward relationship on a daily basis. Interpretations of the application of rules and procedures cause our relationships to become strained which inhibit a smooth recording process. The BOC's conduct is not always professional.

3. Briefly describe what you consider to be specific problem areas at the BOC.

- a. Inconsistent application of rules and procedures
- b. Backlog of indexing
- c. Backlog of Transfer Certificate of Title posting
- d. Review of documents is not consistent with the Hawaii Revised Statutes requirements
- e. There is no "cross over" allowed to enable Regular System to help Land Court when needed
- f. Inconsistent procedures in posting for Land Court Projects
- g. Lack of effective/problem solving ability/application and a lack of pro-active management
- h. Personality conflicts within the departments
- i. Employees training
- j. Out dated computer hardware and software
- k. Improved and modernized environment for the BOC employees to work in
- l. Morale at the BOC
- m. Lack of understanding by the BOC staff that the title industry is representing the general public

- n. The BOC usually takes an adversarial approach to issues when dealing with the title industry
- o. No accountability for poor performance
- p. The grievance process and the union often cover up issues that need to be addressed and often protect individuals with poor performance and attitude.

4. What recommendations do you have to help the committee improve the operations and functions of the BOC?

- a. Follow the recommendations of the Hoike Report
- b. Automate the functions of the BOC, possibly outsource certain technology aspects or specific functions
- c. Revise statues to allow Electronic recordings in the future
- d. Allow title companies to record on the same day
- e. Take timeshare out of Land Court to increase productivity in other areas
- f. Use standardized forms of documents
- g. Transfer of operations from the DLNR to the DCCA
- h. Recommend to management that employees be put on a Flex hour program to accommodate the needs of the general public
- i. Increase limit on "special" recordings on an equal basis that would be allowed each day per title company
- j. Increase receiving desk staff for the last two weeks of each month to accommodate the increased month end volume
- k. Improve working conditions for the BOC staff to better enable them to reach their full potential to better serve the public, working environment, training, published rules and procedures, increase staffing when as and needed and provide training on how to better serve the consumer.
- l. The BOC should be reminded that the title companies are there representing the general public and therefore are conducting business at the BOC on their behalf.

HAWAII ESCROW & TITLE RESPONSE TO QUESTIONNAIRE:

Hawaii Escrow & Title, Inc. is in agreement with the majority of the above noted responses. However, we would like to add the following:

Interaction with the BOC:

Item 1: Same as Hawaii Land Title Association's response above.

Characterization of our relationship with the BOC:

Item 2: Our relationship for the most part is a good one. There are times when situations arise in which we need to seek the help of upper management. It would have been helpful on these occasions if the department supervisors would be more proactive and be able to offer resolutions or other alternatives on the problems being discussed. I have found that if

you approach most situations with some fact and communicate effectively that the BOC staff is far more responsive.

Specific Problem Areas with the BOC:

Item 3: Same as Hawaii Land Title Association's response above.

Recommendations to improve the operations and functions at the BOC:

Item 4:

- a. Management staff needs to be immediately available to help resolve any issues/recording problems on the same day or in a manner that is conducive to finding a resolution. It is better to offer suggestions on how to resolve problems and be proactive, instead of a flat "no" answer.
- b. A flex hour arrangement will benefit not only the employees with families, but would benefit the State in not having to pay Overtime. It would allow more work to be completed uninterrupted by the usual daily activities during off hours.
- c. Creation of a separate department to handle all data input.
- d. Need to have a BOC relationship committee to resolve any issues that may arise between the BOC and the title companies. This would allow a work out session to solve any of these issues before they become a problem. Communication is key in problem solving. It is not always the BOC that is in error, title companies also must take responsibility for incomplete or improper recording packets (documents incomplete, names inconsistent, notary seals, recordings fees calculated improperly) proper training of their employees and enforcement of the rules and procedures need to be followed by all of the title companies. A grievance procedure should be established for any problems.
- e. Our title company agreement to record must be updated and all title companies must adhere to the same agreement, rules and procedures established or be subject to going before the grievance committee. The BOC has to be open to making changes to their procedures if they become outdated or the rules need to be revised.
- f. If same day recordings are allowed that would almost eliminate the need for specials and pulled recordings. One of the largest problems that the BOC faces on a daily basis with the title companies is pre-checking documents that may be pulled from recordation for the following day for lack of "Good funds". The BOC spends almost all morning checking the documents only to be notified by the title companies that the lenders have not funded as promised or the banks have not yet been able to verify the receipt of the funds prior to our "pull" deadline which means we now have to pull the documents back from the clerks that have already pre-checked them. The clerks will then have to start the process all over again the following day or put it on as a special if you have not exceeded your allotted number of specials for that day. If we brought the documents to the BOC on the morning after we have received the funds we would not have this problem. It is a duplication of effort by both parties because you cannot verify with our banks that the lender's/borrower's funds have been wired in by the pull deadline of 12:00 each day. We should not be bringing down documents if we do not have the funds at all. We have tried many times to change the deadline time or receive same day recording as we used to have it but to no avail.

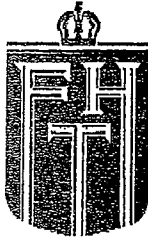
- g. Same day recording will also benefit the consumer by not having to pay an additional 2-3 day prepayment of daily interest on a new loan. Since the title companies must have Good Funds prior to recordation so many days in advance the borrower must start paying daily interest on the day the loan has been funded to us. It also costs the seller additional day's interest if we cannot get the recordings on record prior to 9:00 am each day because the title companies cannot receive the confirmation of recordation in a timely manner to allow us sufficient time to notify the bank to send the wire to payoff the existing mortgage. Daily per diem rates can start at \$25.00 per day up to hundreds or more dollars depending on the loan amounts.
- h. We would recommend a more intensive study be done in regards to the original intention of Land Court to provide individuals with land ownership guaranteed title to their properties. A suggestion would be to evaluate these properties based on their zoning uses. If a claim were ever to be brought against the State of Hawaii on a large piece of commercial property the possible loss of revenue could be tremendous. Currently many Land Court properties are being used by non-resident individuals or entities. We do not currently have any statistics as to what types of properties remain in Land Court that is current. Please take it under consider the removal of timeshare properties and commercial properties. This suggestion could avoid a complete abolishment of the Land System and bring the Land Court statue back to its original intent.
- i. In order to provide a more efficient and less cumbersome process for TCT indexing in the Land Court system, I would like to recommend a statue change to allow for:
- a. A transfer of ownership from a timeshare owner back to the original timeshare developer be re-posted to the developer's current TCT. There are a large number of "points based" timeshare transactions that are "deeded back" to the developer for non-payment of mortgage payments. Currently when the inventory is returned to the developer a new TCT is issued to the developer, the end result is that the developer now has ownership of many TCT's that each that show a different amount of "points" or undivided interests. If the next sale that takes place does not have enough "points" or undivided interests to convey to a new buyer you must then have the deed refer to additional TCT's numbers on one deed conveyance. This process involves the Land Court taking a "liability" position on guaranteeing that an owner has received the proper number of "points" or undivided interests on their land title. These are issues that were never anticipated to arise when this recording system was devised long ago. This also poses a "nightmare" for proper posting of a new TCT and doubles the amount of checking the document for accuracies and making sure that the project as a whole or the project as to each unit/apt. has not been oversold. This problem of course would be solved if timeshares were to be removed. For the most part most of the timeshare owners are non-residents of Hawaii.

- b. Another item for consideration is the amendment of the statute to allow for the creation of a Project Master Transfer Certificate of Title for the sole purpose of posting all of the pertinent documentation that gets recorded in regards to the creation, management, easement, leasehold and any other applicable document types that directly effect condominiums, subdivisions, timeshares and commercial properties. This Master TCT would include property declarations, leases, sub-leases, By-Laws, House Rules and any other applicable documentation that is currently reproduced on each TCT upon any change of ownership. This is a duplication of information that could be incorporated and referenced with a Master TCT number on the new TCT being issued to the new owner. Currently the information is reproduced on every new TCT being issued and some of our information is pages long. Currently this also poses problems for Leasehold land that requires amendments/revisions to leases, subleases because the Land Court now has to post all amendment documents each current owner's TCT. This is especially cumbersome and time consuming when you may be dealing with hundreds of TCT's that must be noted.
- j. Automation is only one piece of the BOC's reorganization. The department itself needs to be revitalized and given a "face lift". This process includes possible renovations to improve the work place for the employees and the general public that have to wait for their recordings to be accepted. A separate cashiering section with a wall separating the general public from the work general population of the BOC would also protect any privacy issues and allow a quieter environment for the employees. A modern approach needs to be taken to insure the integrity of our documents, provides a productive work environment, a consumer friendly environment and a department in which both the employees and management can work in harmony with the public that relies on its efficiency, accuracy and security.
- k. The department needs to make sure that when the public records are made available that all companies regardless of whether or not they belong to a title plant or not are given the same information at the same time. There are companies in Hawaii that solely rely on current public records to search for information.
- l. We need to insure that no remote access is granted to anyone outside of the department at any time to protect the integrity of our public records.
- m. We need to further discuss what information is considered "private" and what public record is. Title companies have great difficulty trying to distinguish which liens are applicable to our clients without any specific identification process to determine if this is our client. Our sources of information are strictly based on what is contained within the documents themselves. The base information is names (it may be first, middle & last, but not always), last known address as of the date of filing and property description. If a lien appears and there is no other criteria on the documentation to identify the parties it creates a situation for the title companies that we must show this lien of record which puts a "cloud" on title. We have always used the social security number as part of our identification process previously. Many names in the world are common place such as the infamous "John Smith" and in Hawaii there are many Lee's, Chang's, Ramo's, Kealoha's etc. Many Hawaii documents do not require the seller's address to be

incorporated as part of the document. A suggestion would be to require a unique identification such as date of birth possibly.

We look forward to working with the committee to find viable resolutions that will benefit the general public, the department and its employees.

Draft



FIRST HAWAII TITLE CORPORATION

Title Department ♦ City Financial Tower ♦ 201 Merchant St. Suite 2000
Honolulu, Hawaii 96813 ♦ Telephone: (808) 521-3411 ♦ Facsimile: (808) 531-5241

FACSIMILE TRANSMISSION COVER SHEET

DATE: October 31, 2007

DELIVER TO: Senator Jill N. Tokuda
State Capitol, Room 218
FAX 587-7220

FROM: Lester G. L. Wong, President
Phone: (808) 521-3411, Ext. 226 / FAX (808) 521-8848

RE: Joint Senate-House Investigative Committee on the Bureau of Conveyances
Stakeholder Recommendations

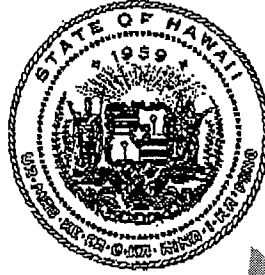
MESSAGE: Attached is First Hawaii Title Corporation's submission in response to the request for Stakeholder recommendations.

Number of pages being sent (including cover sheet): 2

Original will be sent to you: YES NO

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**Joint Senate-House Investigative Committee on the Bureau of Conveyances
Stakeholder Recommendations**

Company or Organization: First Hawaii Title Corp.	Contact Person: Lester G. L. Wong
Address: 201 Merchant Street, Suite 2000	Phone: 521-3411, ext. 226
City, State, Zip Code: Honolulu, HI 96813	Email: lesterw@firsthawaii.com

1. Please describe your interaction with the BOC.

Our responses and recommendations have been addressed through the submission that the Hawaii Land Title Association will be submitting to the committee.

2. How would you characterize your relationship with the BOC (as both an individual and with your company)?

3. Briefly describe what you consider to be specific problem areas at the BOC.

4. What recommendations do you have to help the committee improve the operations and functions of the BOC?