

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

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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.