H.B. NO. 3172

A BILL FOR AN ACT

RELATING TO ELECTRONIC FILINGS IN THE BUREAU OF CONVEYANCES AND THE OFFICE OF THE ASSISTANT REGISTRAR.

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

SECTION 1. Section 501-20, Hawaii Revised Statutes, is amended as follows:

(1) By adding two new definitions to be appropriately inserted and to read:

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

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

(2) By amending the definitions of "record, recorded, or recording" and "signature" to read:

""Record", "recorded", or "recording" means [~~to make an entire literal copy of all instruments required to be recorded.~~] the act of entering into the public records the written instruments affecting title to real property.

"Signature" means the name of a person as written by the

individual [~~or~~], the affixing of a mark or finger or toe print[~~.~~], or electronic signature as that term is defined in chapter 489E."

SECTION 2. Section 501-107, Hawaii Revised Statutes, is amended to read as follows:

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

Every deed or other instrument, whether voluntary or involuntary, so filed or recorded with the registrar or assistant registrar shall be numbered and indexed, and indorsed with a reference to the proper certificate of title. All records relating to registered land in the office of the

registrar or of the assistant registrar shall be open to the public in the same manner as probate records are open, subject to such reasonable regulations as the registrar, under the direction of the court, may make.

Certified copies of all instruments filed or recorded and registered may also be obtained at any time on payment of the assistant registrar's fees."

SECTION 3. Section 501-108, Hawaii Revised Statutes, is amended to read as follows:

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

The assistant registrar shall note upon, attach to, or

logically associate with all instruments filed or recorded concurrently with the recorded instrument the document number and the certificate of title number [~~in the spaces provided therefor~~] wherever required.

The assistant registrar shall thereupon, in accordance with the rules and instructions of the court, make out in the registration book a new certificate of title to the grantee. The assistant registrar shall note upon the original certificate the date of transfer, and a reference by number to the last prior certificate. The original certificate shall be stamped "canceled". The deed of conveyance shall be filed or recorded and endorsed with, have attached to, or have logically associated with the number and place of registration of the certificate of title of the land conveyed.

(b) On all instruments to be filed or recorded, the top three and one-half inches of space of the first page shall be reserved for recording information for the assistant registrar on the left half of that space, and for the registrar of conveyances on the right half of that space. The following one inch of space shall be reserved for information showing to whom the document should be returned. In addition, the first page shall identify and include, if possible, all names of the

grantors and all names and addresses of the grantees, the type of document, and the tax map key number. Endorsements, if any, may be made on a conforming fly sheet. If an instrument consists of more than one page, each page shall be single-sided sheets of written text numbered consecutively, beginning with number one, and shall be stapled once in the upper left corner. No instrument shall have a cover or backer attached. The assistant registrar shall be permitted to remove any rivets affixed to any instrument.

(c) All names of all natural persons signing in their individual capacity in the instrument shall be typewritten, stamped, legibly printed by hand, or by a mechanical or electrical printing method beneath all signatures. No discrepancy in any name shall exist between the printed name, as it appears either in the body of the instrument, beneath the signature, or in the notary's certificate of acknowledgment. The provisions of this subsection shall not apply to any deed or conveyance instrument executed prior to July 1, 1989.

(d) The assistant registrar may refuse to file or record any instrument that will not reproduce legibly under photographic or electrostatic methods, or that is of a size larger than eight and one-half inches by eleven inches, or that

contains a schedule, inventory sheet, or map in excess of that size.

(e) The assistant registrar may accept an electronic instrument in lieu of an original instrument with original signatures subject to the requirements set forth in rules adopted by the department of land and natural resources consistent with this section and chapter 489E."

SECTION 4. Section 501-117, Hawaii Revised Statutes, is amended to read as follows:

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

SECTION 5. Section 501-131, Hawaii Revised Statutes, is amended to read as follows:

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

SECTION 6. Section 502-7, Hawaii Revised Statutes, is amended as follows:

(1) By adding two new definitions to be appropriately inserted and to read:

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

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

(2) By amending the definition of "signature" to read:

""Signature" means the name of a person as written by the individual or the affixing of a mark or finger or toe print. It may also include an electronic signature, as defined in section 489E-2. The department of land and natural resources shall identify by rule the form of the electronic signature that the bureau of conveyances is able to accept."

SECTION 7. Section 502-21, Hawaii Revised Statutes, is amended to read as follows:

"**§502-21 Recording of plans unlawful.** It shall not be lawful for the registrar to accept for record any plan of land, whether attached to, made a part of, or independent of, any deed, certified copy of judgment of condemnation, or other instrument; to the end and purpose that there shall be no plans

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

SECTION 8. Section 502-22, Hawaii Revised Statutes, is amended to read as follows:

"**§502-22 Copies of plans furnished by registrar.** The registrar shall furnish, when so requested, copies of any map or plan filed in accordance with sections 502-17 to 502-21, duly certified by the registrar's seal of office, upon payment of the fee hereinafter mentioned. In addition, the registrar may authorize the department of accounting and general services to furnish, when so requested, copies of such maps or plans, subject to the payment of fees applicable to maps or plans furnished by the registrar. These uncertified copies of maps or

plans may be furnished in photographic, electronic, or electrostatic form."

SECTION 9. Section 502-26, Hawaii Revised Statutes, is amended to read as follows:

"**§502-26 Copies of instruments, certificates.** The registrar, when applied to, shall furnish an attested copy of any instrument or document recorded in the registrar's office, or of any fact appearing upon the registrar's records. The registrar may also issue nonattested documents or portions of any instrument or document recorded in the registrar's office[~~.~~] in photographic, electronic, or electrostatic form. The registrar may issue certificates of search or incumbrance when personnel is available for the making of the certificate."

SECTION 10. Section 502-31, Hawaii Revised Statutes, is amended to read as follows:

"**§502-31 Recording, method.** The registrar shall make or cause to be made an entire literal copy of all instruments, with their original signatures, required to be recorded in the registrar's office, and the registrar, the registrar's deputy, or clerk shall certify its correspondence with the original, after which the registrar, the registrar's deputy, or clerk shall certify upon the exterior, or indorse upon the recorded

instrument with the original signature, the date of its registry and the document number.

The registrar, for purposes of the general indexes of the bureau of conveyances, shall use the names of the parties as they first appear in the recorded instrument. All names of all natural persons signing in their individual capacity shall be typewritten, stamped, legibly printed by hand, or by a mechanical or electrical printing method beneath all signatures. The provisions of this paragraph shall not apply to any deed or conveyance instrument executed prior to July 1, 1989.

The registrar or the registrar's deputy may refuse to accept for record any document of a size larger than eight and one-half inches by eleven inches, or which contains a schedule or inventory sheet in excess of such size.

This section shall apply to all instruments presented for recording in the bureau of conveyances, unless otherwise provided by rules adopted by the department of land and natural resources, pursuant to chapter 91.

All instruments to be recorded shall include the original signature and the top three and one-half inches of space of the first page shall be reserved for recording information for the

assistant registrar on the left half of such space, and for the registrar of conveyances on the right half of such space. The following one inch of space shall be reserved for information showing to whom the document should be returned beginning one and one-half inch from the left margin and not exceeding three and one-half inches per line. In addition, the first page shall identify and include, if possible, all names of the grantors and all names and addresses of the grantees, the type of document, and the tax map key number. Indorsements, if any, may be made on a conforming fly sheet. No papers or materials, written or otherwise, shall be secured or attached to a page in any manner that may conceal any other written text. If an instrument consists of more than one page, each page shall be single-sided sheets of written text numbered consecutively, beginning with number one, and shall be stapled once in the upper left corner. No instrument shall have a cover or backer attached. The registrar of conveyances shall be permitted to remove any rivets affixed to any instrument. The registrar may refuse to accept all instruments, papers, or notices presented for recordation that will not reproduce legibly under photographic, electronic, or electrostatic methods. The registrar shall accept an electronic instrument in lieu of an original instrument with

original signatures subject to the requirements set forth in rules adopted by the department of land and natural resources consistent with this section and chapter 489E. A party shall be required to submit electronically, information regarding the instrument, the parties to the instrument, and other information required by the department of land and natural resources, in a form specified by rule, together with all electronic instruments."

SECTION 11. Section 502-92, Hawaii Revised Statutes, is amended to read as follows:

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

in its public archives. The registrar may convert into electronic form information or documents recorded before the registrar began to record electronic documents."

SECTION 12. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 13. This Act shall take effect upon its approval.

INTRODUCED BY: Calvin K.Y. Say

BY REQUEST

JAN 22 2008

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Report Title:
Electronic Filing

Description:
Authorizes the Registrar and Assistant Registrar of the Bureau of Conveyance to accept electronic signatures and electronically filed documents in lieu of an original document with original signatures.

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JUSTIFICATION SHEET

DEPARTMENT: Land and Natural Resources

TITLE: A BILL FOR AN ACT RELATING TO ELECTRONIC FILINGS IN THE BUREAU OF CONVEYANCES AND THE OFFICE OF THE ASSISTANT REGISTRAR.

PURPOSE: To authorize the Registrar and Assistant Registrar of the Bureau of Conveyances (Bureau) and the Office of the Assistant Registrar to accept electronic instruments in lieu of original instruments with original signatures.

MEANS: Amend sections 501-20, 501-107, 501-108, 501-117, 501-131, 502-7, 502-21, 502-22, 502-26, 502-31, and 502-92, Hawaii Revised Statutes.

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

Impact on the public: This bill will allow for faster and better processing of documents to be recorded at the Bureau and at the Office of the Assistant Registrar. People on the neighbor islands will be able to record documents electronically with the Bureau and the Office of the Assistant Registrar without the need to mail or courier documents to Honolulu.

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Impact on the department and other agencies: The Bureau and the Office of the Assistant Registrar will be able to record and index documents faster and more efficiently through the use of electronic documents and an electronic cover sheet.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: LNR 111.

OTHER AFFECTED AGENCIES: Judiciary/Land Court.

EFFECTIVE DATE: Upon approval.