

### **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 2006 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
<b>Regular System:</b>			
Documents Recorded	259,000	236,000	(8.9%)
Requests Processed	248,000	149,000	(39.9%)
<b>Land Court:</b>			
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%
<b>Total Documents</b>	<b>805,000</b>	<b>728,000</b>	<b>(9.6%)</b>
<b>Total Employees</b>	<b>45</b>	<b>49</b>	<b>8.9%</b>

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 2006 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 2006 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.

<b>Number of employees paid:</b>	<b>FY 2004</b>	<b>FY 2005</b>	<b>FY 2006</b>	<b>FY 2007</b>
<i>\$15,000 - \$20,000 in overtime</i>	2	4	2	4
<i>\$20,000 - \$25,000 in overtime</i>	2	1	1	3
<i>\$25,000 - \$30,000 in overtime</i>	--	--	3	1
<i>\$30,000 - \$35,000 in overtime</i>	--	2	--	1
<i>Highest overtime paid to an employee</i>	\$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 2006 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.

	<b>Administrative Rules</b>	<b>Website Fee</b>	<b>Actual Charges</b>
<b>VPN monthly charge</b>	\$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.

	<b>Administrative Rules</b>	<b>Website Fee</b>	<b>Actual Charges</b>
<b>FTP services monthly charge</b>	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 programs 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.

## **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.

	<b>Administrative Rules</b>	<b>Website Listed Fee</b>	<b>Actual Charges</b>
<b>VPN monthly charge</b>	\$100/month (§13-16-32, HAR)	\$250/month (Bureau website)	\$150/month \$100/month (for second account per subscriber)
<b>VPN per minute charge</b>	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
<b>VPN initial setup fee</b>	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:

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

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.

	<b>Website Fee</b>	<b>Actual Charges</b>
<b>FTP images and index data services monthly charge</b>	\$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 2006 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.

### **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.