

DAVID Y. IGE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

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**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the Senate Committee on
WATER AND LAND**

**Wednesday, April 12, 2017
3:15 PM
State Capitol, Conference Room 224**

**In consideration of
HOUSE CONCURRENT RESOLUTION 106, HOUSE DRAFT 1,
REQUESTING THE AUDITOR TO CONDUCT A PERFORMANCE AUDIT OF THE
DEPARTMENT OF LAND AND NATURAL RESOURCES' DIVISION OF BOATING AND
OCEAN RECREATION**

House Concurrent Resolution 106, House Draft 1, requests the Auditor to conduct a performance audit of the Department of Land and Natural Resources' Division of Boating and Ocean Recreation. **The Department of Land and Natural Resources (Department) offers the following comments.**

The Department welcomes a fair and independent audit as an opportunity to improve our work. The Department regularly reports financial information in Legislative reports and a multitude of budget forms for special, general, and capital improvement project funds. The Department is willing to provide additional information to Legislators, auditors, or any other interested parties.

Like other departments, the Department is regularly audited, such as the Annual Departmental Audit – (completed by Ohata, Chun, Yuen, LLP).

The Department strives to be transparent and proactive, so we would appreciate the opportunity to address any additional questions that are giving rise to an audit recommendation now, rather than waiting for a long and protracted audit process.

Thank you for the opportunity to comment on this measure.

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

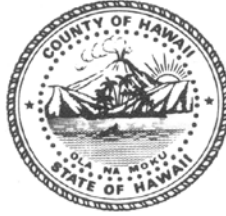
KEKOA KALUHIWA
FIRST DEPUTY

JEFFREY T. PEARSON P.E.
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
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OFFICE OF THE PROSECUTING ATTORNEY

TESTIMONY IN SUPPORT OF HOUSE CONCURRENT RESOLUTION NO. 106, HD1

REQUESTING THE AUDITOR TO CONDUCT A PERFORMANCE AUDIT OF THE DEPARTMENT OF LAND AND NATURAL RESOURCES' DIVISION OF BOATING AND OCEAN RECREATION

COMMITTEE ON WATER AND LAND

Senator Karl Rhoads, Chair
Senator Mike Gabbard, Vice Chair

Wednesday, April 12, 2017 3:15 P.M.
State Capitol, Conference Room 224

Honorable Chair Rhoads, Honorable Vice Chair Gabbard, and Members of the Committee on Water and Land, the Office of the Prosecuting Attorney, County of Hawai'i submits the following testimony in **STRONG SUPPORT** of House Concurrent Resolution No. 106, HD1.

HCR 106 requests the Auditor to conduct a performance audit of the Department of Land And Natural Resources' Division of Boating and Ocean Recreation.

The community perceives corruption in the Department of Land and Natural Resources (DLNR), Division of Boating and Ocean Recreation (DOBOR). I first became aware of this matter when an individual contacted me in my capacity as the Hawai'i County Prosecutor about being a victim of retaliation from DOBOR.

The victim mentioned that he believes there is retaliation in DOBOR and told me that this could be confirmed by employees of DLNR. I routinely receive complaints concerning different law enforcement entities; however, this complaint was different. While looking into this situation, I found evidence of an altered document that misstated the size victim's son's boat as a justification for denying him a mooring. There was also a targeted audit of the victim when I asked for further investigations into this matter.

I started looking into other issues that were going on in DOBOR and quite frankly, I wasn't able to find anyone to tell me anything good about DOBOR. People were afraid to talk to me because they were fearful of retaliation. As I continued looking into this issue, I became

concerned and sent a request to the Hawai'i Department of the Attorney General as well as to Suzanne Case of DLNR, asking that an investigation be conducted. I mentioned to Chair Case that I was hearing – even from DLNR employees – that they believe that there is retaliation and unethical actions happening in DOBOR. During my years as a prosecutor, this is the closest I've seen to government corruption.

In October 2016, I testified at a Board of Land and Natural resources meeting concerning the victim's complaints. After the hearing, Ed Underwood, DOBOR Administrator, took my testimony and criticisms personally and he retaliated against me by filing an ethics complaint for using my position as a prosecuting attorney to represent the victim at the hearing. As County Prosecutor, I felt that someone had to stand up for people who are afraid to speak due to retaliation. As a citizen, we must all stand up and fight injustice. Later, at the Ethics Board Hearing, the Board cleared me of wrongdoing, saying I was within my rights to testify about my perceptions of corruption.

I believe this is just the tip of the iceberg. It is in the public interest for the Auditor to conduct a performance audit of DOBOR. The citizens of Hawai'i must be confident that all State and local governmental and regulatory agencies are adhering to the highest ethical standards and everyone is treated with the same fairness and professionalism.

For the foregoing reasons, the Hawai'i County Office of the Prosecuting Attorney **STRONGLY SUPPORTS** the passage of House Concurrent Resolution No. 106, HD1. Thank you for the opportunity to testify on this matter.

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, April 9, 2017 8:29 AM
To: WTL Testimony
Cc: fishnainoa@gmail.com
Subject: Submitted testimony for HCR106 on Apr 12, 2017 15:15PM

HCR106

Submitted on: 4/9/2017

Testimony for WTL on Apr 12, 2017 15:15PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Bill Murtagh	Li'i Makau, Inc.	Support	No

Comments: I vehemently urge the legislature to pass HCR106 to initiate an audit of DLNR-DOBOR. There is rampant favoritism, corruption, and selective enforcement throughout the division. Recent BLNR meetings, interviews with elected officials and State Representatives, and recent Findings of Resolution of the Hawaii State Ethics Commission support as much. The division has clearly shown its inability to properly manage our resource at particular small boat harbors. Bill Murtagh

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RE: HCR 106
DOBAR AUDIT

Due to what appears to be corruption within this department, this audit is well over due. There have been instances of businesses functioning Without permit, given cease and desist orders and then blatantly continuing their illegal activities with no recourse whatsoever. The lack of consequence is so wide that the companies then tout their activity on social media with Still no consequence.

There has also been instances of companies functioning illegally in an area that prohibits commercial activity that seemed to have been forewarned by this dept it would seem, that enforcement would be imminent, giving them enough time to cease their illegal activity.

It should be noted that these “instances” took place on differing islands. As we are pinpointing a State Department, it appears that this lack of enforcement is then Statewide.

Normally when this type of activity takes place, there is a financial exchange behind the scenes, but no way for we, the public, to know what is really going on without an audit. It is overdue.

Cynthia Rubinstein
cynthia@lava.net

From: mailinglist@capitol.hawaii.gov
Sent: Monday, April 10, 2017 11:51 AM
To: WTL Testimony
Cc: lisacates@hawaii.rr.com
Subject: *Submitted testimony for HCR106 on Apr 12, 2017 15:15PM*

HCR106

Submitted on: 4/10/2017

Testimony for WTL on Apr 12, 2017 15:15PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Lisa Cates	Individual	Support	No

Comments:

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From: mailinglist@capitol.hawaii.gov
Sent: Monday, April 10, 2017 8:59 AM
To: WTL Testimony
Cc: alpaddles@gmail.com
Subject: Submitted testimony for HCR106 on Apr 12, 2017 15:15PM

HCR106

Submitted on: 4/10/2017

Testimony for WTL on Apr 12, 2017 15:15PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Alfred Van Gieson	Individual	Support	No

Comments: I am in favor of an audit to assure fairness by all and to assure that the money I am paying is used to also enforce the law that I must abide by. Mahalo

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From: mailinglist@capitol.hawaii.gov
Sent: Monday, April 10, 2017 7:23 AM
To: WTL Testimony
Cc: leimomikekina@gmail.com
Subject: Submitted testimony for HCR106 on Apr 12, 2017 15:15PM

HCR106

Submitted on: 4/10/2017

Testimony for WTL on Apr 12, 2017 15:15PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Leimomi Dierks	Individual	Support	No

Comments: Dear Senators of the Water and Land Committee, I am in full support of conducting a performance audit of the Department of Land and Natural Resources (DLNR), Division of Boating and Ocean Recreation (DOBOR). DLNR DOBOR is failing to enforce the laws regarding illegal ocean activities. Companies who are running illegally are making millions of dollars a year, and continue to generate revenue with zero fines and zero fees paid to the State. Many people have complained about these illegal activities and vendors, as they try to exploit the commercialability of our communities, even when there are strict laws about no commercial activity in certain areas. At least one of these companies has been issued a cease and desist order from the State (DLNR DOBOR), yet the company still operates out of the area, and nothing has been done. No fines issued. In fact, they were recently rewarded with permits to operate. Did their cease and desist letter mysteriously disappear? Were there no back fees collected for operating illegally for the past 6 years and generating over 1 million dollars annually? It's unfair for those who run legally. They pay a percentage of their income to the State and is revenue generated for the State. By not enforcing the law on the illegal operators, they are missing out on enough revenue that could hire another full time staff. Also, the people in these communities want to enjoy their "back yards" without being overrun by tour operators. That's why these laws are in place, to provide a balance, control human impact. But what use is it if the laws are not enforced, and illegal vendors are allowed to continue to operate without any consequences for operating illegally for many years? Please, I ask you to also support a performance audit of the Department of Land and Natural Resources, Division of Boating and Ocean Recreation. Thank you very much. With sincere aloha, Leimomi

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From: mailinglist@capitol.hawaii.gov
Sent: Sunday, April 9, 2017 8:29 PM
To: WTL Testimony
Cc: nakoa@hoadventures.com
Subject: Submitted testimony for HCR106 on Apr 12, 2017 15:15PM

HCR106

Submitted on: 4/9/2017

Testimony for WTL on Apr 12, 2017 15:15PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Brett prejean	Individual	Comments Only	No

Comments: I am in full support of an audit on DLNR, DOBOR,DOCARE,DOFAW, in all and every aspect! DLNR/DOBOR:Due to lack of adherence to state, county and federal rules and regulations, changing rules and regulations based on VERBAL AG opinions, none of which are substantiated in writing, issuance of CUP permits to commercial operators who have knowingly operated illegally without CUP FOR YEARS, with no insurance indemnifying the state of Hawaii. DOCARE: lack of enforcement on illegal operators, no penalties on illegal operations, no follow up on cease and desist issued by DLNR on state lands, no follow up/penalties/ land board penalties for operations with a cease and desist in place and continuing to operate illegally at the same location. DOFAW: no enforcement on islands they issue commercial permits, no capacity limits on these islands, not listening to community concerns about capacity issues for said islands. ETC, ETC,ETC!!! I'd be happy to provide written documentation to substantiate my claims.

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From: mailinglist@capitol.hawaii.gov
Sent: Saturday, April 8, 2017 9:03 PM
To: WTL Testimony
Cc: Terrygalpin@gmail.com
Subject: Submitted testimony for HCR106 on Apr 12, 2017 15:15PM

HCR106

Submitted on: 4/8/2017

Testimony for WTL on Apr 12, 2017 15:15PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
terry marshall	Individual	Support	No

Comments: I believe as a state agency the rules they set should apply state wide and not island by island which they seem to be. Absolutely there needs to be a audit.

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From: mailinglist@capitol.hawaii.gov
Sent: Friday, April 7, 2017 8:24 PM
To: WTL Testimony
Cc: bcsc@hawaii.rr.com
Subject: *Submitted testimony for HCR106 on Apr 12, 2017 15:15PM*

HCR106

Submitted on: 4/7/2017

Testimony for WTL on Apr 12, 2017 15:15PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
William K. Chang	Individual	Support	No

Comments:

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From: [Cindy and Bill Armer](#)
To: [WTL Testimony](#)
Subject: Support for HCR 106, HD1 Performance review of DOBOR-DLNR Performance Audit
Date: Monday, April 10, 2017 1:51:32 PM

Aloha Committee Members,

I support the performance audit of DOBOR and DLNR. The bill language identifies the numerous shortcomings to be covered in the Department's performance. I ask the study to review the supervisory actions to discipline members of the department for inappropriate or unethical behaviors in the performance of their duties. We have no faith that any such reprimands or censures have been performed in the past 5 years. Members in the Kailua-Kona office have established a culture of passive aggressive behavior and favoritism toward specific constituents in responding to constituents that is non-responsive, arrogant, unseemly, and inappropriate for government employees.

Bill Armer
cbarmer@hotmail.com

April 10, 2017

David S. Case
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Kailua-Kona, HI 96740-2822
casedavids@gmail.com

The Honorable Karl Rhoads, Chairman
SENATE WATER AND LAND COMMITTEE
Wednesday, April 12, 2017 at 3:15 PM
State Capitol, Conference Room 224

**RE: IN SUPPORT OF HCR 106, HD1 REQUESTING A PERFORMANCE
AUDIT OF THE DEPARTMENT OF NATURAL RESOURCES' (DLNR)
DIVISION OF BOATING AND OCEAN RECREATION ("DOBOR")**

I am as an individual and in strong support of HCR 106, HD1. I support the proposed performance audit of DLNR and DOBOR management (mismanagement really) of Hawaii's boating and ocean resources because it is long overdue. For that reason I request that your Committee consider requiring the audit to be completed in time for the beginning of the 2018 Legislature.

I am among some 50 to 100 adults and children who daily paddle outrigger canoes out of Keauhou Bay on Hawai'i Island. From 2012 to 2016 I was among a group of Keauhou Bay stakeholders who opposed DOBOR's ill-conceived plan to shoehorn seven moorings for motorized vessels (one up to 60 feet long) into this small, historic and environmentally sensitive bay. It is already stretched to accommodate just nine vessels.

We sued DOBOR to compel them to perform an Environmental Assessment of the proposed action. DOBOR completed the EA, but then obtusely "found" that there would be "no significant impact" from the new moorings. We responded with a thirty-page rebuttal of why that was not so. DLNR Chair Suzanne Case (no relation) concluded, as had we, that the DOBOR mooring proposal was not feasible and pulled the plug.

This four-year fiasco is just one example of the need for this performance audit. I'm sure you have read about others in the paper, as have I. Those reports document credible allegations of everything from retaliation against whistle blowers and favoritism to outright bribery. These distractions are at the expense of DOBOR's real mission to manage boating and ocean recreation.

Keauhou Bay is a prime example of DOBOR's continuing dereliction. DOBOR subsequently advised us that while the mooring issue was pending they had permitted 18 new commercial ramp-launched ventures on the bay and then subsequently adopted a regulation allowing only 11. The result is seven additional motorized, commercial operators with no consideration given to the historic and well-established non-motorized use swimmers, outrigger paddlers, kayakers and paddle boarders make of the bay. Keauhou Bay is now overcrowded, polluted and at times dangerous because DOBOR has not and does not do its job. So it is important to complete this audit as soon as possible.

Mahalo,



David S. Case

April 10, 2017
Dennis Mihalka, DDS
77-285 Maliko St.
Kailua Kona, Hi 96740

The Honorable Karl Rhoads, Chairman
SENATE WATER AND LAND COMMITTEE
Wednesday, April 12, 2017 at 3:15 PM
State Capitol, Conference Room 224

RE: IN SUPPORT OF HCR 106, HD1 REQUESTING A PERFORMANCE AUDIT OF THE DEPARTMENT OF NATURAL RESOURCES' (DLNR) DIVISION OF BOATING AND OCEAN RECREATION ("DOBOR")

I am testifying solely as an individual and in strong support of HCR 106, HD1 which is regarding the proposed performance audit of DLNR and DOBOR management of Hawaii's boating and ocean resources. Please present this letter to your committee in favor of this audit. There have been egregious acts by its director and the organization as a whole. Please have this audit completed prior to the 2018 legislature session.

I paddle Keauhou Bay, six days a week all year around. In addition, I have performed an extensive analysis of the water quality of the bay sampling on 40 discrete days, eight data sets at eight locations from the shoreline to 800 meters straight out the channel. Also, under water photographs were taken at each location on each day. The photo collage shows a very challenged bay. This information was presented at the few public DOBOR meetings. They took the photographs and data and per their engineer, did nothing with the report. In addition, a UH research project studied the nitrogen content of many bodies of water along the West shore of the Big Island and found that Keauhou Bay had the highest nitrogen levels of all and Keauhou Bay was declared to be impaired by both Federal and State agencies. This information was also disregarded.

Among the more egregious acts include favors being given in the form of mooring to an individual who was low on the list moved to first position. In addition, penalizing and damaging the business of a commercial fisherman who was moved from his buoy to an untenable position on the doc. Another egregious act was the issuance of 18 commercial launch permits when the legal limit was 11. This act has caused greater congestion and challenges the safety of Keauhou Bay. It is amazing to have experienced the wanton disregard of people who personally know the bay and depend upon its management for the health of the water as well as users.

In addition there were a minimal number of public hearings which seemed to be an intentional avoidance based upon representation that was inadequate. One meeting requested by the director of DOBOR to be on the grounds of the canoe club. I was quite shocked to see six or eight uniformed and armed DOBOR officers strategically spaced and aligned around us. It was a clear statement that the director was grossly insecure or was practicing bully tactics. I remember noting what a waste of personnel and how we rarely see any enforcement officers in and around the bay regulating speeding boats, fish gut disposing, etc. What a waste of tax payers' money. So shameful all these events have been. If the findings are not reviewed, then shame on our government.

Mahalo,

Dennis Mihalka, DDS