

DAVID Y. IGE
GOVERNOR OF HAWAII



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

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
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
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

Testimony of
SUZANNE D. CASE
Chairperson

Before the House Committee on
WATER, LAND, AND HAWAIIAN AFFAIRS

Wednesday, February 5, 2020
9:00 AM
State Capitol, Conference Room 325

In consideration of
HOUSE BILL 2422
RELATING TO THE DIVISION OF BOATING AND OCEAN RECREATION

House Bill 2422 proposes to require the State auditor to conduct a performance and management audit of the Department of Land and Natural Resources (Department), Division of Boating and Ocean Recreation (DOBOR). **The Department offers the following comments.**

The Department notes that the following audits have been conducted for the small boat harbor program:

- 1976: Management Audit of the Recreational Boating Program (under management of the Department of Transportation)
- 1995: Follow-Up on a Study of the Financing of the Small Boat Harbors and Boat Ramps Program of the Department of Land and Natural Resources
- 1998: Audit of the Management of Small Boat Harbors and Boat Ramps
- 2001: Audit of the Management of State Boating Facilities by the Department of Land and Natural Resources

Additionally, the following financial audits and reviews have been conducted by the Legislative Auditor for the small boat harbor program:

- 1986: Financial Audit of the Boating Program (under management of the Department of Transportation)
- 2000: Financial Audit of the Department of Land and Natural Resources
- 2006: Financial Audit of the Department of Land and Natural Resources

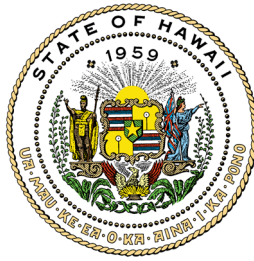
- 2009: Department of Land and Natural Resources – June 30, 2008 Financial Statements and Single Audit Report
- 2010: Department of Land and Natural Resources – June 30, 2009 Financial Statements and Single Audit Report
- 2014: Review of Special Funds, Revolving Funds, Trust Funds, and Trust Accounting of the Department of Land and Natural Resources
- 2018: Review of Special Funds, Revolving Funds, Trust Funds, and Trust Accounting of the Department of Land and Natural Resources
- 2019: Department of Land and Natural Resources – June 30, 2017 Financial Statement

In addition to the audits listed above, a financial audit of DOBOR is conducted every year. When the Small Boat Harbor Program was transferred from the Department of Transportation to the Department in 1991, the Department received the then-\$300 million backlog of deferred maintenance projects, which include capital improvement projects (CIP) and repair & maintenance (R&M) projects.

DOBOR's statutory mandate, contained in Section 200-3, Hawaii Revised Statutes, includes operation of both the small boat harbor and the coastal areas programs, which expands DOBOR's jurisdiction to include ocean recreation activity management in ocean waters out to three nautical miles from shore. The Department appreciates the increases in positions that the Legislature has been able to provide over the years; however, staffing requirements to operate the small boat harbor and coastal areas programs exceed DOBOR's current staffing levels.

In 2019, DOBOR developed a Strategic Plan intended to provide a solution for staffing deficiencies as well as generate funding needed to address the backlog of CIP and R&M projects.

Thank you for the opportunity to comment on this measure.



HOUSE COMMITTEE ON WATER, LAND, & HAWAIIAN AFFAIRS
The Honorable Ryan I. Yamane, Chair
The Honorable Chris Todd, Vice Chair

**H.B. NO. 2422, RELATING TO THE DIVISION OF BOATING AND OCEAN
RECREATION**

Hearing: Wednesday, February 5, 2020, 9:00 a.m.

The Office of the Auditor takes **no position** on H.B. No. 2422 and offers the following comments.

The bill directs the Auditor to conduct a comprehensive performance and management audit of the Department of Land and Natural Resources' (DLNR) Division of Boating and Ocean Recreation (DOBOR).

Performance audits, also referred to as management audits, examine the efficiency and effectiveness of a government program or agency. Because the objectives of a performance audit can vary widely, it is important that we understand concerns you may have or areas you would like audited. Therefore, in order to ensure any audit performed in this area focuses on the issues the Committee is most interested in having us examine, we would suggest the Committee consider identifying the specific programs or activities that it would like assessed.

Thank you for considering our testimony related to H.B. No. 2422. We are committed to providing meaningful audit findings that address the issues identified by the Legislature and are available to work with the Committee on the language of this bill.

HB-2422

Submitted on: 2/4/2020 11:29:57 AM

Testimony for WLH on 2/5/2020 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Dennis Stoner	Lady Ann Cruises INC	Support	No

Comments:

I have attached pdf files showing information sent to DNLR boating, showing I endured a crushing hardship to my company and to my tour boat, Happy Times, sinking under suspicious conditions, only to be denied the hardship request in November of 2016. Then in February of 2017, I resubmitted additional information for the hardship. I also submitted a police report outlining the embezzlement from our bookkeeper, who was responsible for filing almost everything for our company and paying our bills and debts. Although I sent copies of the forged checks, I was once again denied the hardship.

Forward to April 2017, I was sent an offer for a recreational 50 ft slip permit at Port Allen. I explained to the then harbor agent that it is a mistake and that I am on the commercial slip permit list. She indicated that she needed to speak to her boss, Joe. A few days Later I was told by Valery, the Port Allen harbor agent, that I was mistakenly put on the commercial slip wait list and that I needed to have a recreational slip first to be able to be on the commercial wait list. This was the very first time I was told this misinformation; they misinformed me about needing to have a recreational slip first.

So in April 2017, with near bankruptcy looming over the company from embezzlement in 2016, I had no choice but to refuse the recreational slip. I could not justify buying a 50 ft boat, just to have under a recreational permit. If it was the commercial slip permit, I would have accepted and found a boat. Now fast forward to 2019, the DLNR director was removed from the job and a new acting director was put in place. I was then told by the new Port Allen harbor agent that I was going to be offered my "Happy Times" commercial 50 ft slip back, now that the harbor reconstruction was completed.

In April 2019, I was told that I was second on the wait list for the permit, so I started looking for a vessel. I found and bought a quarter of a million dollar 57 ft sport fisher vessel in Kona and created a new corporation that is Called Catch of the Day, LLC. I requested the extension of 120 days in order to finish the financing paperwork and to bring the vessel to Port Allen small boat harbor. In June 2019, I received the permit and was told at that moment it is a recreational permit and that I will not be able to run charters. With no other viable options, I then chose to resubmit my hardship to possibly receive a more fair and none biased review of my 2017 hardship. I believe it was in July 2019, that I was refused the hardship again and was given the reason for the refusal that I was offered a recreation permit after 2017 submittal of hardship. I tried to explain to the then acting DNLR director that I am a commercial boat company and I have no

use for a recreational permit. I was stone walled from that point and told to get a attorney.

So in short, I have been given misinformed and deceived on numerous occasions by the DNLR director and harbor agents concerning the issues of the permit lists and rules. My situation as it stands now, I have a 50 foot recreational slip at Port Allen small boat Harbor, I have a vessel that is valued at \$500,000.00 and all costs associated with this vessel. I would have not started a corporation and bought boat if I was not under the impression that I was getting my old commercial slip back from 2017. I have never once in 18 years, applied for recreational ramp permits or moorings or slips, It has always been commercial not recreational.

Concerning the new docks at Port Allen, there needs to be four points to effectively secure vessels in the slips. This is largely due to the constant surge and wind associated with Port Allen small boat harbor. I submitted a torc claim in October of 2019 for damages happening to my vessel and was even allowed to moor my vessel at Nawiliwili small boat harbor for a short time while I tried to get repair estimates and have repairs done to vessel. I submitted the estimate and was denied. The shipwright even refused to do the work because I was going to be taking the vessel back to Port Allen and he believed that the damage would reoccur and vessel would need same work done within 60 days due to the surge and wind.

HB-2422

Submitted on: 2/1/2020 7:08:28 AM

Testimony for WLH on 2/5/2020 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Benton Kealii Pang, Ph.D.	Individual	Support	No

Comments:

**TESTIMONY OF ALANA B. RASK IN SUPPORT OF H.B. 2422
RELATING TO THE DIVISION OF BOATING AND OCEAN RECREATION**

BEFORE THE COMMITTEE ON WATER, LAND, & HAWAIIAN AFFAIRS

DATE: Wednesday, February 5, 2020

TIME: 9:00 A.M.

LOCATION: State Capitol, Conference Room 325

Chair Yamane and members of the Committee,

I, as a live-aboard resident of the Ala Wai Small Boat Harbor, slip 731, provide the following testimony in support of this bill.

The last audit of DOBOR, which was completed in 2001, stated that:

Inadequate management of state boating facilities has been a recurring problem. Our prior audits in 1993 and 1998 reported on these deficiencies. In our present audit, we found that little had changed in the poor conditions of these state boating facilities. The boating program's mismanagement and neglect have deteriorated facilities to the point where their continued use threatens public safety.

The audit further stated, "the boating division lacks adequate controls to ensure the accuracy and integrity of its financial affairs. The boating division is still unable to accurately determine the cost of operating its boating facilities. In addition, inventory and cash collection controls are inadequate . . . delinquent user fees (now totaling approximately \$500,000) continue to increase."

Despite this extremely worrisome report, no follow-up audit was ever conducted. DOBOR did not create a master plan for its harbors. And, considering the current state of the Keehi and Ala Wai Small Boat Harbors, there has been no showing that DOBOR remedied its management practices or the integrity of its financial affairs.

In the meantime, DOBOR has sought to drastically increase mooring fees, and all other fees it charges at small boat harbors across the state. Our base mooring fees alone are increasing by 42% this year.

Respectfully, boaters and live-aboard residents like myself should not be penalized with new, higher, and perhaps arbitrary fees in order to support DOBOR's decades of inefficiency. Many harbor residents are on a fixed income, and the ability to live aboard a boat is their alternative to homelessness.

I request that the legislature direct the Office of the Auditor to conduct a management and financial audit of DOBOR.

Thank you for the opportunity to provide this testimony.

**TESTIMONY OF ERIK RASK IN SUPPORT OF H.B. 2422
RELATING TO THE DIVISION OF BOATING AND OCEAN RECREATION**

BEFORE THE COMMITTEE ON WATER, LAND, & HAWAIIAN AFFAIRS

DATE: Wednesday, February 5, 2020

TIME: 9:00 A.M.

LOCATION: State Capitol, Conference Room 325

Chair Yamane and members of the Committee,

I, as a live-aboard resident of the Ala Wai Small Boat Harbor, slip 731, provide the following testimony **in strong support** of this bill.

The last audit of DOBOR, which was completed in 2001, stated that:

Inadequate management of state boating facilities has been a recurring problem. Our prior audits in 1993 and 1998 reported on these deficiencies. In our present audit, we found that little had changed in the poor conditions of these state boating facilities. The boating program's mismanagement and neglect have deteriorated facilities to the point where their continued use threatens public safety.

The audit further stated, “the boating division lacks adequate controls to ensure the accuracy and integrity of its financial affairs. The boating division is still unable to accurately determine the cost of operating its boating facilities. In addition, inventory and cash collection controls are inadequate . . . delinquent user fees (now totaling approximately \$500,000) continue to increase.”

Despite this extremely worrisome report, no follow-up audit was ever conducted. DOBOR did not create a master plan for its harbors. And, considering the current state of the Keehi and Ala Wai Small Boat Harbors, there has been no showing that DOBOR remedied its management practices or the integrity of its financial affairs.

In the meantime, DOBOR has imposed unauthorized mooring fee increases via its newly amended Administrative Rules, HAR § 13-234-3. HRS 200-10(c)(1) limits DOBOR to imposing mooring fee increases “annually . . . , to reflect a cost-of-living index increase” but DOBOR instead imposed 24% to 96%

increases at all Hawaii Small Boat Harbors. This issue is currently being litigated in State Circuit Court.

In light of DOBOR's failure to competently manage Hawaii's public harbors, I request that this Bill be passed so that the Auditor may conduct a much-needed, long-overdue management and financial audit of DOBOR.

Thank you for the opportunity to provide this testimony.

/s/ Erik Rask

HB 2422

Requires the auditor to conduct a performance and management audit of DLNR's Division of Boating and Ocean Recreation.

My name is Thomas Oi resident of the Island of Kauai. I'm in support of HB 2422.

The Small Boat Harbors through out the State was built to support resident boaters for subsistence purposes. Now Commercial Tours are over running our Small Boat Harbors making it hard for local fisherman to utilize the facilities.

On Kauai in recent years the Kauai Manager was found in violation of procurement laws.

Recently removing 125 public parking stalls at Ala Wai Boat Harbor without public notice.

Everything listed above is because of poor Management and an Audit of DOBOR may help guide DOBOR in become better manager of our Small Boat Harbor.

Thank you

Thomas Oi
3944 Kapena Street
Lihue, HI 96766



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P.O. Box 1082 Kalaheo, HI 96741
Phone: 808-742-6331
Web: www.napaliriders.com
Email: info@napaliriders.com

LATE

To Whom It May Concern:

I, Christopher Turner, a resident of the Island of Kaua'i, am in support of HB 2422.

I was misinformed by DOBOR in regards to an application for a commercial mooring permit at Port Allen. In Dec. 2016, I initially applied for the commercial mooring permit at Port Allen, and was put second on the waitlist for one. However, this application was later said to be null and void, and I was told, repeatedly, by DOBOR staff that I would not be able to apply for a commercial mooring permit without first having a recreational permit in place. Therefore, I followed these instructions and did not renew my commercial mooring permit application, followed DOBOR guidance, and applied for a recreational permit. To my dismay, in early 2019, I was informed that possession of a recreational permit was not a required pre-condition to the commercial mooring permit application.

Now that years have passed, I am having to re-apply for a commercial mooring permit at Port Allen, but I am now at the bottom of the waitlist, whereas if my initial application had been accepted in Dec. 2016, it's highly likely that I would have already been awarded one.

I would like to request that I be reinstated to the priority that I would have received back in Dec. 2016 when I first applied for the commercial mooring permit.

Sincerely,

A handwritten signature in black ink, appearing to be "C. Turner", written over a white background.

Christopher Turner

HB-2422

Submitted on: 2/4/2020 9:10:02 PM
Testimony for WLH on 2/5/2020 9:00:00 AM



Submitted By	Organization	Testifier Position	Present at Hearing
marvin otsuji	Individual	Support	No

Comments:

I was on the original panel that created the Hawaii State Recreation Management Rules and Regulations. I have been in business for over 34 years and have outlasting numerous DLNR Heads and Harbor Masters. I have witnessed some unfair practiced and inconsistant interpretation of the Hawaii State Rules and Regulation. I have been audited by the State and was due a \$20,000.00 refund for over payment and was denied refund of everything except that which occured within 30 days of audit. I did not pursue legal action due to the cost .

My lasted unjust interaction with DOBOR was a commercial mooring permit at Port Allen . I was on a wait list for a 40 and 50 foot commerical mooring permit. When the harbor expanded and upgraded the dock facility I was informed that I was chosen to have both the 40 and 50 foot slip. I chose the 50 foot but upon signing the permit I was informed that I it was a recreational permit and that I need to be on the commercial list. What list ? I have nevered owned a recreational vessel and have had and still have mooring and ramp permits so I know what I wait listed on a commercial permit. I was told would need a recreational permit first then apply for a commercial permit. How do you buy a million dollar boat to sit and wait until a commercial permit becomes available. According to DOBOR you can be on a commercial list and not get the slip because you did not have a recreational permit . This is madness. I was forced to give up the slip due to the lack of commercial permits available. Something is very fisy about this process. I was never shown the list, or letter informing me of any changes in the procurment process. I am still in consult as to any legal action against the State of Hawaii. I like the current State employees and really do not want to throw them under the bus.

In another matter I am questioning the amopunt of permits for Kukuiula Small boat harbor. I was very aware of the propsed number of ramp and mooring permits for both recreational and commercial. I heard that a new commercial permit is being awarded. It would turn a recreational permit into a commercial permit leaving no recreational permits on the books. This situation needs to be carefully exained . I know that there will be litigation sagainst the State should this happen.

Please feel free to contact me with any questions.

Sincerely,

Marvin Otsuji

Kainani Inc

2-5-2020

FR: MIA SHIRAISHI, ESQ. mia.shiraishi@gmail.com

Re: Audit of DoBoR



I am writing in support of an audit of DoBoR. I am an attorney in private practice and dealt with DoBoR in assisting clients in permit transfers.

I dealt with the Kauai head and DoBoR employees at the Nawiliwili Harbor in 2015 and 2018 on two separate transactions involving the transfer of commercial use permits. My issues with the Kauai head and DoBoR were:

1. The Kauai head was unresponsive to my phone calls/messages to the point that I had to go to the harbor to track him down. When I called for him, DoBoR employees would tell me that he was on vacation or had left work early.
2. DoBoR did not follow the requirements listed in their own checklist for transferring commercial use permits/vessel/corporation.
3. Instructions from the Kauai head, Nawiliwili Harbor employees, and even the DoBoR office on Oahu were conflicting and confusing.
4. Comments from other boaters that the Kauai head and/or DoBoR were favoring certain boaters and rules were being enforced (or not enforced) unfairly.

2015:

DoBoR employees at the Nawiliwili Harbor provided me with a written checklist for transferring commercial use permits/vessel/corporation. The first item on the checklist is "Letter of Intent / Proposed Bill of Sale (For BOR approval)", and they told me that they needed this document and then we would schedule a meeting with the Kauai head. They told me that sellers and buyers were required to be at that meeting.

In order to satisfy the first requirement on the checklist, we sent a letter of intent and proposed sale agreement to DLNR DoBoR in Honolulu. Maria Robben Gaydos (with cc to Ed Underwood and the Kauai head) at DoBoR replied via email saying "We are in receipt of your proposed stock sale agreement. It is not our standard procedure to review and approve the contract and business documents of our permittees so we cannot comment on the content and substance of the sale agreement."

I had questions regarding the checklist requirements and wanted to speak with the Kauai head directly. Despite leaving him many phone messages, he never called me back. Thus, I had to physically go to the DoBoR office at Nawiliwili Harbor to ask to speak with the Kauai head. The Kauai head happened to be in the office, despite not answering or returning my call of three hours prior. Contrary to what DoBoR employees had told me, the Kauai head said he did not

need the “Letter of Intent / Proposed Bill of Sale (For BOR approval)” and that only buyers were required to meet with him.

2018:

We represented the Buyer, and Seller’s attorney commented that DoBoR was making the transfer process difficult. Seller’s attorney thought that the wanted the sale of the commercial permit to fail so that he could then give the permit to his friends. However, Seller’s attorney brought some cookies/snacks to the Nawiliwili harbor office and the Kauai head seemed more amenable after that.

DoBoR did not require that they approve the proposed bill of sale, as per the checklist.

Comments from other boaters:

1. Port Allen harbor was about to be renovated, and Joe was being lenient with some people in not making them pay slip fees
2. The requirement that boaters needed \$15,000 in gross receipts for the prior year in order to renew their permit was not being enforced in some situations