



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-THIRD LEGISLATURE, 2026**

**ON THE FOLLOWING MEASURE:
H.B. NO. 1956, RELATING TO FRESHWATER WATERWAYS.**

**BEFORE THE:
HOUSE COMMITTEE ON WATER & LAND**

DATE: Tuesday, February 10, 2026 **TIME:** 9:00 a.m.

LOCATION: State Capitol, Room 411

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Alyssa-Marie Y.H. Kau, Deputy Attorney General

Chair Hashem and Members of the Committee:

The Department of the Attorney General (Department) provides the following comments on this bill.

The purpose of the bill is to protect freshwater waterways and adjacent environmental resources by prohibiting residing in or within fifty feet of a freshwater waterway and authorizing law enforcement agencies to enforce the prohibition. It adds a new chapter to the Hawaii Revised Statutes (HRS) to accomplish its purpose.

I. Definition of "Residing"

This bill does not define the term "reside," "residence," or "residing" in the new chapter. The absence of a statutory definition may create ambiguity regarding what conduct is prohibited and may lead to inconsistent enforcement. Because the bill excludes those who lawfully own or occupy real property, it is not clear under the current language when another person's presence within fifty feet of a freshwater waterway would constitute "residing." From a due process perspective, statutes imposing penalties should provide sufficient notice so that ordinary persons can understand what behavior is prohibited.

In light of these concerns, the Department recommends adopting an objective definition to promote uniform application and reduce constitutional vagueness concerns and is happy to assist the Committee.

II. Definition of "Freshwater Waterway"

The term "freshwater waterway" is defined at page 2, lines 15-16, as including "a river, stream, or drainage canal." The term is used sixteen times in the new chapter, not including in its title, (page 2, line 15; page 3, lines 6, 9, 10-11, 15, 17; page 4, lines 5, 7; page 6, lines 13, 14, 16, 17, 19; page 7, lines 3, 13). As defined, its usage may create confusion or inconsistency with existing terminology governing streams and watercourses in section 174C-3, HRS. The Department notes that many of Hawaii's streams and channels are hydrologically connected to coastal systems and may be brackish or seasonally mixed rather than purely freshwater. Without additional statutory clarification, enforcement personnel may face practical and evidentiary uncertainty in determining whether a particular water body meets the definition of freshwater at a given time or location.

To reduce uncertainty, the Department recommends aligning the terminology with existing water-resource definitions in chapter 174C, or clarifying that the term is intended to include streams or channels that are tidally influenced or brackish due to ocean connectivity.

III. Scope of Exception

Section -3 (page 3, lines 12-17) functions as an exception clause to this bill's general prohibition on residing, camping, or otherwise occupying areas within the defined distance of a freshwater waterway. As currently drafted, the chapter "shall not be construed to apply" to exempt listed individuals rather than solely from the operative prohibition in section -2 (page 3, lines 7-11).

If the legislative intent to ensure that lawful property owners or renters are not subject to the restriction in section -2, the Committee may wish to consider whether section -2(2) should be more narrowly tailored to clarify the categories of lawful occupants intended to be exempted. Therefore, the Department suggests the following clarifying revision to section -2(2) (page 3, lines 16-17):

- (2) Any other individual occupying real property as an owner, lessee, or authorized residential occupant within fifty feet of a freshwater waterway.

IV. Timing of Citations and References to County Protocols

Section -4 (page 3, line 18, through page 5, line 21) contains an internal inconsistency regarding the timing of enforcement for a first violation under section -2 (page 3, lines 7-11). Specifically, subsection (a)(1) provides that for a first violation the officer shall issue an oral order to vacate and notify the individual that "failure to take significant steps to vacate the area within six hours will result in citation." Page 4, lines 1-13. However, subsection (a)(2) then provides that for a "second violation within six hours of the first violation," a citation shall be issued if the individual remains in the prohibited area or leaves personal property behind. Page 4, lines 14-19.

The Committee may wish to specify that a second violation occurs only if the individual remains in the prohibited area six hours after receiving the initial notice to vacate, and that any subsequent violation occurs if the individual again remains or returns within six hours after issuance of a citation. Such clarification would promote consistent application and reduce ambiguity regarding when each enforcement action is authorized.

V. Arrest Authority and Penal Structure

Section - 5 appears to direct law-enforcement officers to make arrests under certain circumstances (page 6, lines 1-10), even though the bill otherwise contemplates citations and clearance protocols as the primary enforcement consequences. This structure may create practical and legal uncertainty regarding the intended enforcement sequence, including what action is expected following an arrest for an offense otherwise punishable only by citation.

Further, this bill also does not clearly specify the classification of violations or whether penalties are intended to be civil or criminal in nature. The absence of an express offense level or graduated penalty structure may create uncertainty for enforcement agencies and affected individuals regarding arrest authority, custody procedures, and the severity of potential consequences.

Section -5 also appears to contemplate fines after repeated violations. Page 6, line 6. If fines are intended, the Department recommends that this chapter expressly establish the fine amount or permissible range and clarify the respective roles of law-

enforcement agencies and adjudicating bodies in the penalty process. Generally, law enforcement officers issue citations, while the authority to impose fines rests with the court or designated administrative body. Absent an explicit statutory authority, uncertainty may arise regarding who is authorized to levy monetary penalties and under what standards.

Clarifying the relationship among arrest authority, citation authority, notice requirements, and the imposition of fines may promote a cohesive enforcement structure and reduce ambiguity in implementation.

VI. Enforcement Authority and Procedural Safeguards

This bill authorizes multiple-law enforcement entities to effectuate the purposes of the new chapter (see page 2, lines 17-20; page 3, lines 1-3) but does not expressly identify minimum procedural safeguards such as written notice, an opportunity to voluntarily comply, or an administrative review process. Section -5 states that agencies are not required to provide advance notice before issuing an order to vacate. Page 6, lines 3-4. Where enforcement actions may involve the removal or seizure of personal property, the absence of procedural standards may raise due process considerations.

The Hawai'i Supreme Court has recognized that individuals retain constitutionally protected property interests in their unabandoned personal possessions and are entitled to adequate notice and an opportunity to be heard before those possessions are seized or destroyed. *Davis v. Bissen*, 154 Hawai'i 68, 82, 545 P.3d 557, 571 (2024). To withstand a *Davis* challenge, the Department recommends statutory language requiring written notice identifying the location and nature of the alleged violation, steps required for compliance, time to comply, and method for seeking administrative or judicial review before removal of persons or property. Greater statutory clarity regarding definitions, notice content, and enforcement sequencing may reduce the risk of inconsistent or selective enforcement among agencies.

In addition, to the extent enforcement actions result in the permanent disposal or destruction of personal property without an opportunity for retrieval, such actions may also implicate the Takings Clause of the Fifth Amendment to the United States

Constitution and article I, section 20, of the Hawai'i Constitution, in addition to procedural due process considerations.

VII. Limitation on Complaints to Government Entities

Section -7 appears intended to direct the public to county police departments and the Department of Land and Natural Resources (DLNR) for complaints regarding individuals residing near freshwater waterways. Page 7, lines 1-6. However, as currently drafted, this provision may create confusion regarding whether complaints may also be made to other government agencies or officers. To avoid any misunderstanding and to preserve flexibility for the public and government agencies, the Department recommends deleting section -7 or revising it to clarify that it does not limit the public's ability to contact other government entities.

VIII. Rulemaking Authority and Agency Roles

Section 8 requires the DLNR to adopt rules pursuant to chapter 91, HRS, while multiple agencies are authorized to enforce the chapter. Page 7, lines 7-9. The allocation of responsibility is not expressly delineated. If DLNR remains the designated rulemaking authority, this section could be amended to clarify the intended scope of those rules—such as whether DLNR's role is limited to environmental and resource-management matters (for example, defining waterways and setting environmental standards), or whether broader enforcement procedures are also contemplated.

The Department thanks the Committee for this opportunity to submit our comments.

HB-1956

Submitted on: 2/9/2026 11:28:27 PM
Testimony for WAL on 2/10/2026 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Jean Shimabuku	Individual	Support	Written Testimony Only

Comments:

Dear Madam/Sir,

Bill HB1956 needs to be passed because of what's going on in and around river near Kaimuki High School.

I walk my dog over the bridge almost every day and see a lot that goes on.

They throw their rubbish in the river; mattresses, air conditioners, bicycles , and you name it whatever else. Often times I smell a weird metallic-like burning. Maybe drugs? They also seem to be bringing stolen bicycles to the river and on two separate occasions 2 dogs being handed over to someone and taken down to the river. There was also 5 smaller dogs running around loose and the dogs would actually run across the street and try to attack me and my dog. Luckily, we did not get hurt. There was also a very pregnant dog that waddled across the street to the other side. My heart goes out to the dogs that are with the homeless. They obviously love their owners but they run about unleashed and do their business where ever they please. I often pick up dog poop if I see it but it's not my job. On one occasion, there was a dog stuck in the drain on the side of the river. They should not be allowed to have pets

**because they are not treated right and not cared for.
I know I'm mentioning more about the dogs but I also care
about our environment and can't stand all the trash that is
left around the Kapiolani Blvd. area.**

**Sometimes I also see some high school kids sitting on the
bridge hopefully not associating with what's going on bellow
the bridge.**

**Please schedule to cut the tall grass/trees down the river and
clean up our rivers. Make our area safer for our Kupuna
and children**

Thank you for allowing me to tell you my stories.

Mahalo,

Jean