

lowen1-Kyli

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, January 30, 2013 7:23 AM
To: waltestimony
Cc: patrickjones82@gmail.com
Subject: Submitted testimony for HB550 on Feb 1, 2013 08:00AM

HB550

Submitted on: 1/30/2013

Testimony for WAL/OMH on Feb 1, 2013 08:00AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Patrick Jones	Individual	Support	No

Comments: I would like to support the passing of all bills that aid in reducing or eliminating the state of Hawaii's liability of any and all activities that take place on state lands. Being a rock climber, hiker and mountain biker I knowingly take risks every time i enter the mountains and i would like to continue living this active lifestyle. Please pass theses bills so that the state will "reopen" the public lands for such activities!!

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lowen2-Anosh

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, January 30, 2013 10:06 AM
To: waltestimony
Cc: higgins.scottr@gmail.com
Subject: Submitted testimony for HB550 on Feb 1, 2013 08:00AM

HB550

Submitted on: 1/30/2013

Testimony for WAL/OMH on Feb 1, 2013 08:00AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Scott Higgins	Individual	Support	No

Comments: As a climber for over a decade, I have climbed both on the north shore and on the mainland I am familiar with the dangers of rock climbing. It is a sport, which if practiced correctly, is no more dangerous (and probably less) than surfing, kiteboarding, and a number of other sports currently practiced on the island. Reinstating climbing will not expose Hawaii to liability due to the Access Club's offer of liability coverage. It will also continue to be a draw for tourists and locals to grow both the local community and economy. Please consider allowing the public to climb again on the north shore. Thank you, Scott Higgins PhD Hawaii Natural Energy Institute University of Hawaii

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I am writing as a long-term climber and avid hiker who had from one to four times a month at Mokuleia for the last two years, until its closure. The state's actions directly impact my life and well being in Hawaii. Up until last summer, climbing had been a central component of my life here on Oahu, being my primary source of weekend enjoyment and exercise.

The climbing community on Oahu has deeply enriched my experience here, as do all the hikes into the mountains that are possible. As a result, I am deeply affected by the closures and write to express how important it is that the area remain open for climbing and that any future rules protect access to the climbing and hiking trails on the Islands. In fact, I believe this should be an opportunity for the state to more fully support its trail systems, which are a part of the eco-tourism that many come to Hawaii to experience and that are enjoyed by those of us who live here.

As a climber, I understand that rock climbing is overall a safe sport, and that like all outdoor activities, there are inherent risks involved as well. A respect for nature, and understanding and use of proper gear and protection equipment help to mitigate those risks. Please take the time to look nationally, or internationally at the rates of injuries, you will see that there are few if any lawsuits by climbers regarding injuries suffered while climbing. Furthermore, the state of Hawaii sent a geologist to examine the Mokuleia rock climbing area in the year 2000 and subsequently gave its approval that the area was safe for public use.

I believe that closing the area was an overreaction and a mistake.

Given how important climbing as a sport and lifestyle is to me, I am deeply disappointed with the way the state has chosen to react to this incident. I request that the following be done.

First, open all climbing at Ka'ena Point back up to climbers as soon as possible. The state has been provided with adequate documentation from local climbers (and the Access Fund) regarding the management of climbing sites across the nation. By following these models, a long-term, sustainable solution is easily obtainable.

Second, pass legislation that will provide liability protection for the county and state, and allow access to public lands for those seeking recreational use (climbing, hiking, etc.). HB 550 has a hearing scheduled for Friday, February 1 and there are several senate bills (Senate Bills 1007, 1008, 1167, 1168, 1285, and 1286) that need to be heard as well. I urge you to do whatever is necessary to insure that these bills are not only heard in the Senate, but kept alive, and made into law.

Climbers around the world are an avid and dedicated community – it is as much a lifestyle as it is a sport. To be in the mountains and to climb is more than a physical exercise, it is the opportunity to engage in a community and lifestyle that is larger than one person. **To be deprived of access does me direct and personal harm.** The members of this community

are strongly motivated to secure access to and provide stewardship for the lands we use.

As a community, our hearts ache for the little girl who was injured at Mokuleia. **Closing access to us all is not the appropriate response.** Please rescind the closure and engage the climbing community in a planning process that can enhance yet another type of activity that will draw people to the Islands instead of imposing more restrictive measures that make life all the less enjoyable. Please do not keep this invaluable natural resource from being safely enjoyed by the climbers of Oahu for generations to come.

I am writing as a long-term climber and avid hiker who had climbed from one to four times a month at Mokuleia for the last two years, until its closure. The state's actions directly impact my life and well being in Hawaii. Up until last summer, climbing had been a central component of my life here on Oahu, being my primary source of weekend enjoyment and exercise. The climbing community on Oahu has deeply enriched my experience here, as do all the hikes into the mountains that are possible. As a result, I am deeply affected by the closures and write to express how important it is that the area remain open for climbing and that any future rules protect access to the climbing and hiking trails on the Islands. In fact, I believe this should be an opportunity for the state to more fully support its trail systems, which are a part of the eco-tourism that many come to Hawaii to experience and that are enjoyed by those of us who live here.

As a climber, I understand that rock climbing is overall a safe sport, and that like all outdoor activities, there are inherent risks involved as well. A respect for nature, and understanding and use of proper gear and protection equipment help to mitigate those risks. Please take the time to look nationally, or internationally at the rates of injuries, you will see that there are few if any lawsuits by climbers regarding injuries suffered while climbing. Furthermore, the state of Hawaii sent a geologist to examine the Mokuleia rock climbing area in the year 2000 and subsequently gave its approval that the area was safe for public use.

I believe that closing the area was an overreaction and a mistake.

Given how important climbing as a sport and lifestyle is to me, I am deeply disappointed with the way the state has chosen to react to this incident. I request that the following be done.

First, open all climbing at Ka'ena Point back up to climbers as soon as possible. The state has been provided with adequate documentation from local climbers (and the Access Fund) regarding the management of climbing sites across the nation. By following these models, a long-term, sustainable solution is easily obtainable.

Second, pass legislation that will provide liability protection for the county and state, and allow access to public lands for those seeking recreational use (climbing, hiking, etc.). HB 550 has a hearing scheduled for Friday, February 1, and two other bills, HB625 and HB586 will serve to provide comprehensive liability. There are several senate bills (Senate Bills 1007, 1008, 1167, 1168, 1285, and 1286) that **need** to be heard as well. I urge you to do whatever is necessary to insure that these bills are not only heard in the Senate, but kept alive, and made into law.

Climbers around the world are an avid and dedicated community – it is as much a lifestyle as it is a sport. To be in the mountains and to climb is more than a physical exercise, it is the opportunity to engage in a community and lifestyle that is larger than one person. **To be deprived of access does me direct and personal harm.** The members of this community

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As a community, our hearts ache for the little girl who was injured at Mokuleia. **Closing access to us all is not the appropriate response.** Please rescind the closure and engage the climbing community in a planning process that can enhance yet another type of activity that will draw people to the Islands instead of imposing more restrictive measures that make life all the less enjoyable. Please do not keep this invaluable natural resource from being safely enjoyed by the climbers of Oahu for generations to come.

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ESTHER KIA'AINA
FIRST DEPUTY

WILLIAM M. TAM
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

**Testimony of
WILLIAM J. AILA, JR.
Chairperson**

**Before the House Committees on
WATER AND LAND
and
OCEAN, MARINE RESOURCES, AND HAWAIIAN AFFAIRS**

**Friday, February 01, 2013
8:00 AM
State Capitol, Conference Room 325**

**In consideration of
HOUSE BILL 550
RELATING TO PUBLIC LAND LIABILITY**

House Bill 550 proposes to amend Act 82, Session Laws of Hawaii 2003, and clarifies the definition of "improved public lands" for the limitation of liability for public entities based on the duty to warn of dangers on public lands. The Department of Land and Natural Resources (Department) strongly supports this measure. This clarification is critical due to the vast amounts of wild land acreage under the Department's jurisdiction that is not promoted or managed for any public access.

Act 82, Session Laws of Hawaii 2003, as currently written, does not distinguish between parks and trails constructed, owned, and maintained by the State and counties and other lands that, although part of the of the state park system, are unimproved and not maintained by the State or counties. This bill would clarify that the State or counties do not have a duty to warn of dangerous natural conditions on public land that is part of the park system, if the land is unimproved and not maintained by the State or county. This bill also defines and excludes "voluntary trails" from the definition of "improved public lands" since these unofficial trails and routes are created by members of the public without the knowledge or permission of the State or counties.

Again, the Department is in strong support of passage of this measure.

To: Committee on Water and Land

From: Eva Bosch RN, individual rock climber

Hearing: February 1, 2013, 8:00 AM Conference Room 325

RE: HB 550

Dear Committee on Water and Land,

As an avid rock climber and outdoor adventurer, I am writing this letter in support of the passage of HB 550, which defines improved public lands and liability it carries with the state. I had climbed weekly at Mokuleia for the last five years, until its closure. The state's actions directly impact my life and well being in Hawaii. I work as an RN in the neonatal intensive care unit and am a homeowner in Hawaii, however I would consider moving out of state if Mokuleia continues to be closed. My entire family climbs regularly and internationally, and it is an essential part of our lives. It is central component of my life here on Oahu. The climbing community on Oahu has deeply enriched my experience here, as do all the hikes into the mountains that are possible. As a result, I am deeply affected by the closure and write to express how important it is that the area remains open for climbing and that any future rules protect access to the climbing and hiking trails on the Islands.

I believe that it is important for outdoor enthusiasts to understand the risks nature present and not hold the state accountable for activities they choose to engage in. A trail that is maintained regularly may still fail. Rocks and dirt move as does the ocean. The state should not be responsible for paying out settlements to people that choose to venture outdoors. Our state just paid a 15.4 million dollar settlement to the families of two hikers that have died on a Kauai trail. Unfortunately this is not an isolated incident. The money that the state pays out eventually filters back to the taxpayers. I believe the lawyers group in opposition of amending chapter HB520 at the last session on January 28th, has a fair bit or interest in keeping it written as is due to monetary incentives.

Such legislation is needed because despite virtually no injuries in the 22 years residents and visitors have climbed at Mokuleia and other areas on Oahu, a single injury in June of 2012 has led the DLNR to ban all climbing on the North Shore, impose harsh financial and criminal penalties, and confiscate community-owned safety equipment that had been donated and in-place at our climbing areas for community use. As a climber, I understand that we assume risk for our welfare when engaging in hazardous recreational activity. Across the nation, rock climbers rarely if ever sue for injuries sustained by rock climbing or mountaineering. However, given that not all people who try rock climbing are avid climbers, I also recognize the state's need to explicitly limit liability. Thus, I am in full support of this legislation and the DLNR's efforts to avoid unnecessary regulation of unencumbered state lands.

Furthermore, while not scheduled for a hearing yet, I am also in support of HB 778/588 that would make permanent the Chapter 82 warning signs established by the state to help limit liability for hazardous recreational use. I feel that the warning signs at the bottom of the trail informing hikers and climbers of the dangers of possible rock fall should be sufficient. It makes no sense that the State would criminalize outdoor adventurers because they enjoy the natural environment. It is our understanding that current rules regarding the provision to recreational users with fair warning are sufficient.

While climbing is not risk-free, climbing is at least as safe as other State-approved outdoor activities such as surfing, kiteboarding, or paragliding. Indeed, our climbing areas have been voluntarily maintained and we have self-imposed safety measures not seen in any other climbing area in the world. Certainly, accidents do happen, yet when compared to the accidental death and injury rate occurring in the oceans almost daily, there is no significant threat from rock climbing in Hawaii. Hawaii has the second highest drowning rate in the nation and yet the beaches remain open to water activities. It is unclear why a different approach would be taken with a far less dangerous activity in the mountains. Imagine the uproar of the surfing community if the State closed Sunset Beach and Pipeline - Oahu's climbers feel no less passionately about access to Mokuleia and our other Northshore climbing sites. The unilateral closure of all of our Oahu climbing sites has been devastating to our climbing community.

Since the early 1990s, Oahu's climbing community has carefully stewarded our few climbing sites, emplaced world-renown safety measures at these sites, coordinated with the local fire department and external experts on review of our safety measures, and coordinated with DLNR regarding our activities while seeking approval. Climbers in Hawaii and around the world are an avid and dedicated community – it is as much a lifestyle as it is a sport. To be in the mountains and to climb is more than a physical exercise - it is a spiritual awakening to the flow of mind and body. To be deprived of access does direct and personal harm to those of us who depend upon climbing to free our minds and bodies amid the wonder that is our natural world.

I urge you to pass this legislation, along with the other bills introduced to achieve these goals and make the state safer from overly litigious residents and visitors who should understand that they assume risk for their personal safety when leaving the confines of their homes.

Sincerely,

Eva Bosch

January 30, 2013

Dear Representative Evans and members of the Water and Land Committee,

I am writing in support of HB550, related to a change in the definition of improved public lands to include wording of what constitutes a voluntary trail. I am in support of this legislation given the intended purpose, “ of limiting liability for public entities based on the duty to warn of dangers on public lands.” It is my understanding that the DLNR has requested HB 550 in addition to HB 588, which would make permanent the use of signs on state land warning users about possible risks.

As an avid hiker and rock climber, I agree with the DLNR argument that they have met their duty to warn anyone assuming the risk of hazardous recreational activities by placing a sign at the trailhead of trails maintained by the state. Voluntary trails, used for recreational purposes, whether that be paragliding, hang gliding, pig hunting, climbing, or orienteering, should not be considered part of the scope of the DLNR duty to warn.

In fact, I would prefer that the committee would hear HB 586 which would more clearly articulate the state’s liability when it comes to hazardous recreational use. However, if such comprehensive legislation cannot be adopted, then I would hope the committee would help limit liability by supporting the passage of these very modest and minor repairs.

Sincerely,

Debora Halbert

To Whom It May Concern,

I am giving my testimony on behalf of bill HB550. I would like to see a reduction of state liability for outdoor recreation. I would like to see legislation which will protect the state from liability arising from outdoor recreation because the perception of that liability has led to area closures on Oahu for outdoor recreation. Living in Hawaii, these places to hike, climb, and participate in outdoor activities are valued and enjoyed by myself and other residents of Hawaii. Being an honest taxpayer, I cannot bear to see my own and other honest taxpayers' money go towards these lawsuits that are keeping these areas of recreation closed, and depriving us of enjoying the beautiful sites and places that this island has to offer. This bill must be passed because the state needs this protection from these liabilities, taxpayers money needs protection from these lawsuits, and residents need the opportunity to enjoy all that we can on the island. Thank you.

lowen2-Anosh

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, January 31, 2013 2:21 AM
To: waltestimony
Cc: mermelon@gmail.com
Subject: Submitted testimony for HB550 on Feb 1, 2013 08:00AM

HB550

Submitted on: 1/31/2013

Testimony for WAL/OMH on Feb 1, 2013 08:00AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Meghan Taylor	Individual	Support	Yes

Comments: My name is Meghan Taylor and i have lived on Oahu for 18 years. I love this Island and the freedom to enjoy the nature and beauty of this Island. I started Rock climbing in a class at makapuu at the end of july 2012 and it was such a blessing to me. Rock climbing is such a positive and exciting sport! It is so challenging to you physically, spiritually and mentally. I am new to the sport but love it so much, it has made my life so much more fulfilling and for many climbers it is their lifelong sport they love, just as surfing in hawaii is for many. With almost any sport, such as surfing there is risk but with responsible behavior it has so much more benifits than risk. It is so important to be stated that most all sports have some risk and it would be wrong for the government to try to outlaw any sports that have some risk, such as surfing. It violates individuals personal freedom to live and enjoy their life. It would be an outrage if surfing was prohibited because there is some risk involved and it is the same with rock climbing, people love their sport of climbing and it is a sport around the world. If the population that rock climbs is smaller in hawaii than surfing it does not make it correct to stop climbers freedom just cause its a smaller group. It is just as important to me to climb as a surfer's need to surf. There are ways to make it known to individuals that certain areas have risk by signs that say, danger possible rock fall or others that inform people and then they can make their own informed decision to enter and to enjoy their god given feedom to enjoy their sport they love.

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lowen2-Anosh

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, January 31, 2013 6:33 AM
To: waltestimony
Cc: Blim@hawaii.edu
Subject: *Submitted testimony for HB550 on Feb 1, 2013 08:00AM*

HB550

Submitted on: 1/31/2013

Testimony for WAL/OMH on Feb 1, 2013 08:00AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Benjamin Lim	Individual	Support	No

Comments:

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To: Committee on Water and Land

From: Charles Derrick Krause, MBA

Hearing: February 1, 2013, 8:00AM
Conference Room 325

Re: HB 550

I support the passage of HB 550, redefining the definition of “improved public lands” to exclude “voluntary trails created by users of the public lands that are not part of the statewide trail and access system, ocean and submerged lands, and any public beach park covered by section 663-1.56.” I believe this will reduce state liability of recreational activities, which will benefit the state and general public. I am a recreational rock climber, and I firmly believe that individuals should assume the full risk of their personal actions. In the past, the climbing community on the north shore of Oahu has understood the inherently dangerous nature of rock climbing (and most other recreational activities), and the record demonstrates a strong history of safety. I urge you to pass this legislation and transfer the liability assumed to the individual where it belongs.

Sincerely,
Charles Derrick Krause

lowen2-Anosh

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, January 31, 2013 7:57 AM
To: waltestimony
Cc: eidolem@gmail.com
Subject: Submitted testimony for HB550 on Feb 1, 2013 08:00AM

HB550

Submitted on: 1/31/2013

Testimony for WAL/OMH on Feb 1, 2013 08:00AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Chu	Individual	Support	No

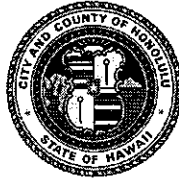
Comments: Please pass HB550. Climbing is a community-building sport much like surfing, and climbers should be allowed access to climbing areas. There shouldn't be any liability on the State for injuries, and climbers are in support of this. Climbing is much more popular in other states; it's just starting in Hawaii. Climbers respect the land, and it's exciting to see a new sport being developed in Hawaii!

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DEPARTMENT OF THE CORPORATION COUNSEL
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KIRK CALDWELL
MAYOR



DIANE T. KAWAUCHI
ACTING CORPORATION COUNSEL

January 31, 2013

The Honorable Cindy Evans, Chair
and Members of the Committee on Water & Land
The Honorable Faye P. Hanohano, Chair
and Members of the Committee on Ocean, Marine
Resources & Hawaiian Affairs
State House of Representatives
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Evans, Chair Hanohano and Committee Members:

Subject: House Bill 550, Relating to Public Land Liability

The City and County of Honolulu ("City") supports H.B. 550 which seeks to amend and clarify the definition of "improved public lands" in Act 82, Session Laws of Hawaii 2003.

The purpose of Act 82 was to establish a risk management procedure for improved public lands, that involves the design and placement of signs warning of dangerous natural conditions, and that affords the State and counties protection from liability for injuries resulting from those dangerous conditions. The 2003 Legislature found that many dangerous conditions on unimproved and improved public lands pose a risk of injury to recreational users. In practice, current laws discouraged the State and counties from warning of risks, because to do so may impose additional responsibility and liability on the State and counties. Act 82 was a fair and balanced solution to this problem; otherwise many public recreational areas would be closed for use by the public. Sen. Conf. Comm. Rep. No. 14, in 2003 Sen. Journal, at 951.

The definition of "improved public lands" in Act 82 does not distinguish between parks and trails which are improved and maintained by the State and counties, and other public lands within the State and county park systems which

The Honorable Cindy Evans, Chair, and
Members of the Committee on Water & Land
The Honorable Faye P. Hanohano, Chair, and
Members of the Committee on Ocean, Marine
Resources & Hawaiian Affairs
January 31, 2013
Page 2

are unimproved and not maintained. Passage of H.B. 550 would clarify that the State or counties do not have a duty to warn of dangerous natural conditions on public land that is part of the park system, if the land is unimproved and not maintained by the State or county. H.B. 550 would further define and exclude "voluntary trails" from the definition of "improved public lands" covered by Act 82 since these unofficial trails and routes are created by the public without the knowledge or permission of the State or counties.

Passage of H.B. 550 would help by providing a more clear delineation of where warning signs should be placed which would allow the State and counties to make the best use of their limited financial resources.

The City requests that the definition of "improved public lands" be further amended to delete "and any public beach park covered by section 663-1.56", as follows:

"Improved public lands" means lands designated as part of the state park system, parks, and parkways under chapter 184, which are developed or maintained by the State, or as part of a county's park system, which are developed or maintained by the county, and lands which are part of the Hawaii statewide trail and access system under chapter 198D, excluding buildings and structures constructed upon such lands. For purposes of this part, "improved public lands" excludes voluntary trails created by users of the public lands that are not part of the statewide trail and access system, ocean and submerged lands [and any public beach park covered by section 663-1.56]."

Hawaii Revised Statutes ("HRS") Section 663-1.56 imposes a duty upon the State and counties to warn the public of dangerous natural conditions in the ocean adjacent to a public beach park. The scope of HRS Section 663-1.56 is therefore limited to the ocean adjacent to the beach park and does not extend to any dangerous natural condition within the land portion of the public beach park which would be covered by Act 82. Public beach parks fall within the definition of "improved public lands." The public beach parks under City jurisdiction are part of the City's park's system. Amending H.B. 550 to delete the foregoing language would correct the general misconception that public beach parks fall within the

The Honorable Cindy Evans, Chair, and
Members of the Committee on Water & Land
The Honorable Faye P. Hanohano, Chair, and
Members of the Committee on Ocean, Marine
Resources & Hawaiian Affairs
January 31, 2013
Page 3

protection of HRS Section 663-1.56 which only applies to the ocean abutting the public beach park and not the land portion of the public beach park.

For these reasons, we respectfully request your support in amending H.B. 550 to include the foregoing revision and passing H.B. 550.

Thank you for the opportunity to provide our comments on this bill.

Very truly yours,


DIANE T. KAWAUCHI
Acting Corporation Counsel

DTK:ey

13-00691/267550

Climbing.txt

As a rock climber on Oahu, the closures of Makapu'u and Mokuleia have been very detrimental. I have been unable to practice on any real rock faces for months (the VRG gym is not the same) and now will be much less prepared for my upcoming climbing trip (out of state). I do understand why Hawaii cannot allow this practice with the current liability issue (and past lawsuit payouts), but I do not understand why we cannot change the law, like practically every other state (that allows such things). As an avid hiker as well, I find it difficult to differentiate between the accident at Mokuleia that spurred the closure and the recent incident on the widely used Kulio'ou'ou state trail (which remains open). Both were falling rocks incidents that severely injured passerbys. No honest climber or hiker would ever say that being out in nature doesn't have a dangerous component, but we choose to do it for a myriad of reasons that outweigh that risk for us, much like a long list of extreme sports (even surfing). In making that individual decision, one must acknowledge the possibility of injury and not hold the state responsible. Since the state cannot trust that everyone will not sue in such cases, the law must be changed to make them unable. Why is Hawaii, the land of such natural beauty and awesome year-long weather, so conducive to these types of activities, so far behind all the other states on an issue where we should be leading? It is about time the legislature passed these types of changes, regardless of what the trial attorney lobby says.

Randy Glidden
Resident of Oahu for past 15 years

To: Committee on Water and Land

From: Kitt Turner

Hearing: February 01, 2013, 8:00 AM Conference Room 325

RE: HB 550

Dear Committee on Water and Land,

As an avid hiker and rock climber, I support the passage of HB 550. This legislation will help reduce the states liability pertaining to injuries sustained on state land. The passage of the legislation will help assure that trails and hikes do not get shut down because of liability concerns.

As a hiker and climber, I understand that we assume risk for our welfare when engaging in hazardous recreational activity. Hiking and climbing is a way of life for many living here on Oahu. We have unfortunately seen many trails and areas closed unnecessarily because of liability concerns, and it is in best interest of everyone to pass HB 550.

I urge you to pass this legislation to make the state safer from overly litigious residents and visitors who should understand that they assume risk for their personal safety when leaving the confines of their homes.

Sincerely,

Kitt Turner

lowen2-Anosh

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, January 31, 2013 11:11 AM
To: waltestimony
Cc: haydn.huntley@gmail.com
Subject: Submitted testimony for HB550 on Feb 1, 2013 08:00AM

HB550

Submitted on: 1/31/2013

Testimony for WAL/OMH on Feb 1, 2013 08:00AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Haydn Huntley	Individual	Support	No

Comments: Aloha, I moved to Maui 11 years ago, and I love exploring the outdoors in Hawaii. When I'm not working, I hike, swim, kitesurf, kayak, rock climb, and I'm learning canyoneering. I think it is horrible that the DLNR is currently taking the stance of prohibiting recreational activities like rock climbing on public land. Please straighten out this situation, so that the citizens of Hawaii can enjoy the outdoors with freedom!

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My name is Duc Ong. I am a high school math teacher at Kaiser High School. As a resident tax-payer and employee of the state, I would like to make the following statement.

As advocates for all forms of outdoor recreation, Oahu's 500+ climbers are writing to put full support behind legislation recently brought to you by the DLNR that would waive State liability for recreational activities on State land, including rock climbing, mountaineering, bouldering, and rappelling. Such legislation is needed because despite virtually no injuries in the 22 years residents and visitors have climbed at Mokuleia and other areas on Oahu, a single injury in June of 2012 has motivated the DLNR to essentially ban all climbing, impose harsh financial and criminal penalties, and confiscate community-owned safety equipment that had been donated and in-place at our climbing areas for community use.

I hope very much to see this bill pass in the next session so that I can resume climbing, which to us is as important as surfing is to surfers. I wish to extend our full support to help get this legislation passed. Over 1,000 people have already signed a petition requesting that the DLNR reopen the area and I believe I can generate even greater support in favor of these bills. I am fully in support of a specific limit on liability for rock climbing in Hawaii, something that would be consistent with how 45 other States approach this recreational activity.

While I await the passage of this legislation, *I would also encourage you to request that the DLNR immediately reopen Mokuleia and other popular climbing sites located in the mountains above and accessed through Kaena State Park.* The Access Fund, a national rock climbing advocacy group, has offered to enter into a management agreement for these climbing sites with the DLNR that would provide some liability insurance coverage for the DLNR while I work out the legislative issues. The goal of this offer is to allow the areas to be re-opened immediately while the climbing community and the DLNR work out a viable and long-term plan. So far, the DLNR has been unwilling to even discuss this possibility with us, but I would hope you could convince them to do so.

Furthermore, instead of banning climbing outright, I seek your support in convincing the DLNR to remove the monetary and criminal penalties for climbing. I feel that the warning signs at the bottom of the trail informing hikers and climbers of the dangers of possible rock fall are sufficient to absolve the State from liability similar to DLNR's use of Chapter 82 in placing warning signage in other State locales. It makes no sense that the State would criminalize outdoor adventurers because they enjoy the natural environment. It is our understanding that current rules regarding the provision to recreational users with fair warning are sufficient.

While climbing is not entirely risk-free, climbing is at least as safe as other State-approved outdoor activities such as surfing, kiteboarding, or paragliding. Indeed, our climbing areas have been voluntarily maintained and I have self-imposed safety measures not seen in any other climbing area in the world. Certainly, minor accidents do happen, yet when compared to the accidental death and injury rate occurring in the oceans almost daily, there is no significant threat from rock climbing in Hawaii. Hawaii does have the second highest drowning rate in the nation and yet the beaches remain open to water activities. It is unclear why a different approach would be taken with a far less dangerous activity in the mountains. Imagine the uproar of the surfing community if the State closed Sunset Beach and Pipeline - Oahu's climbers feel no less

passionately about access to Mokuleia and our other Northshore climbing sites. The unilateral closure of all of our Oahu climbing sites has been devastating to our climbing community.

I understand I live in a litigious world where everyone is afraid of lawsuits. However, I also live in a world where people seek to explore, push their physical limits, and live outside the boundaries of personal safety. The State's solution should not be to close public lands to public access because of a fear of liability or injury. The laws and policies in Hawaii should be framed in such a way that assumed risk is clearly emphasized and the State's job ought to be to ensure the basic maintenance of our public trails and park systems.

Since the early 1990s, Oahu's climbing community has carefully stewarded our few climbing sites, emplaced world-renown safety measures at these sites, coordinated with the local fire department and external experts on review of our safety measures, and coordinated with DLNR regarding our activities while seeking approval. Climbers in Hawaii and around the world are an avid and dedicated community – it is as much a lifestyle as it is a sport. To be in the mountains and to climb is more than a physical exercise - it is a spiritual awakening to the flow of mind and body. To be deprived of access does direct and personal harm to those of us who depend upon climbing to free our minds and bodies amid the wonder that is our natural world.

I urge you to pass the legislation, direct DLNR to open climbing again with the insurance policy offered by the Access Fund, and also to invite climbers to play a role in developing management plans for recreational use.

Sincerely,

Duc Ong

lowen1-Kyli

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, January 31, 2013 12:30 PM
To: waltestimony
Cc: toyofuku@hiadvocates.com
Subject: Submitted testimony for HB550 on Feb 1, 2013 08:00AM
Attachments: HB 550 Trails Liability OPPOSE WAL-OMH.doc

HB550

Submitted on: 1/31/2013

Testimony for WAL/OMH on Feb 1, 2013 08:00AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Bob Toyofuku	Individual	Oppose	Yes

Comments: Bert Sakuda will appear for me

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TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE HAWAII ASSOCIATION FOR JUSTICE (HAJ) IN OPPOSITION TO H.B. NO. 550

Date: Friday, February 1, 2013
Time: 8:00 am

To: Chairpersons Cindy Evans and Faye Hanohano; and Members of the House
Committees on Water & Land and Ocean, Marine Resources & Hawaiian Affairs:

My name is Bob Toyofuku and I am presenting this testimony on behalf of the Hawaii Association for Justice (HAJ) in OPPOSITION to H.B. No. 550, relating to Public Land Liability and suggesting language to address the concerns raised in the measure while balancing the public's safety.

The issue raised in this measure is the extent to which government should expend resources to discover and monitor "voluntary trails" created by members of the public on government lands that are independent of official trails created and/or maintained or monitored by the government or part of the statewide trail and access system. The competing factors are the burden to government to find and maintain voluntary trails which may be located in remote locations versus the public safety benefit of safely maintaining trails and/or warning of hazardous conditions. At the extremes, it becomes impractical, if not impossible, for government to find and maintain rarely used trails in the middle of nowhere. At the other extreme, it is not only practical but essential that popular trails that are part of official trail systems or located in close proximity must be adequately monitored and maintained to provide reasonably safe recreational activities for the public.

The importance of measures which define minimum standards for governmental entities related to trails must be viewed in the context that they exist for the benefit of the

general public, not for experienced hikers or hunters. Although the required warnings are for everyone using these trails, experienced hikers/hunters are more capable of adequately assessing their situation whether on or off official trails. The ordinary urban dweller, on the other hand, may use the trail system once every few years. Parents taking their young children on an occasional easy hike, tourists drawn to Hawaii's scenic paradise or retirees getting exercise on a stroll through the forest using popular established trails.

HAI agrees that government should not be expected or required to affirmatively seek and discover voluntary trails in remote locations as the cost greatly outweighs the benefit. On the other hand, where voluntary trails are a part of official trails or so close in proximity that they appear to the general public to be a part of the official trail there is no great burden for government to comply with existing requirements because they are there inspecting and maintaining the official trails anyway. Uninitiated members of the general public will not know that a voluntary trail that is a part of the official trail was established by common usage rather than officially cut by the government. To an ordinary citizen, these look like they are part of the official trail and there is no reason for them to believe otherwise.

Therefore, it is suggested that the following or similar language be added at the end of the definition for "voluntary trails": "but do not include trails, paths, or routes that are connected to an official trail constructed, developed, or maintained by the State or county or so close in proximity so as to appear to be a part of an official trail or access system." This should be added on page 1 line 15 and page 2 line 10.

This language protects the public while imposing minimal burden on government because it applies only to trails that are obvious and in close proximity to the official trails that they regularly maintain and monitor as a matter of course.

The proposed addition of the phrases: “which are developed or maintained by the State” and “which are developed or maintained by the county” should be deleted because they are unnecessary and may lead to unintended confusion. The specific exemption of voluntary trails adequately addresses government’s concern about responsibility for unknown and essentially undiscoverable trails created in remote locations. Adding the requirement that land be “maintained” by government before it is subject to Act 82 can be interpreted as meaning that if government fails to maintain a trail (as required by Act 82) it is no longer subject to Act 82 because the trail is not “maintained” by the State or county. We believe this is an unintended but literal result of the proposed language. It should therefore be deleted.

Thank you very much for allowing me to testify in OPPOSITION to this measure as currently drafted. We appreciate consideration of our concerns and suggested amendment. Please feel free to contact me should you have any questions or desire additional information.

lowen1-Kyli

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, January 31, 2013 12:49 PM
To: waltestimony
Cc: csmiyasakiDVM@Hotmail.com
Subject: Submitted testimony for HB550 on Feb 1, 2013 08:00AM
Attachments: testimony.doc

HB550

Submitted on: 1/31/2013

Testimony for WAL/OMH on Feb 1, 2013 08:00AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Christine Miyasaki	Individual	Support	No

Comments:

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I am writing in support of HB550. The state has felt compelled to close many locations that locals and tourists alike have enjoyed for years due to concerns for public safety and liability. I feel that this vastly limits the people's right to enjoy the natural beauty and treasures of our islands. I understand that safety is of utmost concern and feel that adequate signage clearly warning the public of the specific dangers of an area should be considered sufficient to promote safety and reduce the state's liability. Thank you for your time and consideration.

lowen1-Kyli

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, January 31, 2013 12:24 PM
To: waltestimony
Cc: jmui99@yahoo.com
Subject: Submitted testimony for HB550 on Feb 1, 2013 08:00AM

HB550

Submitted on: 1/31/2013

Testimony for WAL/OMH on Feb 1, 2013 08:00AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Jennifer Mui	Individual	Comments Only	No

Comments: As an avid outdoor enthusiast, I am upset over the closures of hiking trails and rock climbing areas in Hawaii. I would like to see legislation passed that would define or limit the State's liability for injuries and accidents that occur on these trails. Having this legislation in place would protect the State from lawsuits and would remove the need to close down trails as an only means of protection. I used to live on Oahu, and as a hiker and rock climber, I knew full well the risks and responsibilities I had any time I entered the mountains. I have now moved off-island and must admit that as much as I would love to visit Hawaii again, I hesitate to spend my vacation dollars here if I cannot even enjoy the beautiful mountains as I used to. Please pass this legislation. The hiking and climbing community has grown enormously over the past few years. It is only common sense to have this legislation in place to define and limit Hawaii's liabilities, instead of closing everything down.

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lowen1-Kyli

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, January 31, 2013 1:17 PM
To: waltestimony
Cc: john.guris@live.com
Subject: Submitted testimony for HB550 on Feb 1, 2013 08:00AM
Attachments: HB550 Guris Testimony.docx

HB550

Submitted on: 1/31/2013

Testimony for WAL/OMH on Feb 1, 2013 08:00AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
John Guris	Individual	Support	No

Comments:

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This testimonial is submitted to the Hawaii state legislature in support of HB 550. Hawaii's means of risk management, avoidance, with regards to climbing on State owned lands has a detrimental impact on small business and the public's right to enjoy Hawaii's natural resources.

Climbing is an expensive sport and money spent in training, guiding and equipping goes into the local economy. As pointed out in the Pacific Business News article "Hawaii ranks low among states for small business and entrepreneurs" ..." it is important to remember that policies at the state level have a major effect on entrepreneurs and businesses for better or for worse". Small business in Hawaii are hurting because of current policy by the state. The passing of HB 550 will help aid small business.

As a parent I enjoy climbing and bouldering with my son and wife. However, I am unable to due to the closure of state lands to climbing. I watch other parents pass on skills to their kiekeie, such as surfing, swimming or football. All of these activities have risks associated with them, however, it is the responsibility of the individual and parent to asses risk to self and family, not the state. HB 550 will help remove liabilities for the state and enable people to enjoy the beauty of Hawaii's natural resources.

lowen1-Kyli

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, January 31, 2013 12:59 PM
To: waltestimony
Cc: r.annaho@gmail.com
Subject: Submitted testimony for HB550 on Feb 1, 2013 08:00AM
Attachments: testimony.doc

HB550

Submitted on: 1/31/2013

Testimony for WAL/OMH on Feb 1, 2013 08:00AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Rosanna Ho	Individual	Support	No

Comments:

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I have lived on & off Oahu for 8 years and hold a BA degree from UH Manoa. I am employed as a licensed professional to serve the community, am an avid rock climber, and am a state taxpayer. Not only has climbing influenced me to appreciate the beautiful outdoors, but has also motivated me to live a healthier lifestyle. It has made my life more fulfilling by pushing me to challenge my physical and mental limits. I have seen myself develop into a stronger and healthier individual and at the same time, I have seen it positively influence the lives of others as well. To choose to rock climb, an individual is well aware and responsible for their own actions—the State should not be liable for an individual's action. The state should also not ban rock climbing access to prevent an individual from enjoying a healthy active sport. To add insult to injury, the state should also not enforce criminal penalties for those trying to access participation in a healthy active sport.

I fully support the following statement:

As advocates for all forms of outdoor recreation, Oahu's 500+ climbers are writing to put full support behind legislation recently brought to you by the DLNR that would waive State liability for recreational activities on State land, including rock climbing, mountaineering, bouldering, and rappelling. Such legislation is needed because despite virtually no injuries in the 22 years residents and visitors have climbed at Mokuleia and other areas on Oahu, a single injury in June of 2012 has prompted the DLNR to essentially ban all climbing, impose harsh financial and criminal penalties, and confiscate community-owned safety equipment that had been donated and in-place at our climbing areas for community use.

I hope very much to see this bill pass in the next session so rock climbers can resume climbing, which to us is as important as surfing is to surfers. I wish to extend our full support to help get this legislation passed. Over 1,000 people have already signed a petition requesting that the DLNR reopen the area and I believe I can generate even greater support in favor of these bills. I am fully in support of a specific limit on liability for rock climbing in Hawaii, something that would be consistent with how 45 other States approach this recreational activity.

While I await the passage of this legislation, *I would also encourage you to request that the DLNR immediately reopen Mokuleia and other popular climbing sites located in the mountains above and accessed through Kaena State Park.* The Access Fund, a national rock climbing advocacy group, has offered to enter into a management agreement for these climbing sites with the DLNR that would provide some liability insurance coverage for the DLNR while we work out the legislative issues. The goal of this offer is to allow the areas to be re-opened immediately while the climbing community and the DLNR work out a viable and long-term plan. So far, the DLNR has been unwilling to even discuss this possibility with us, but I would hope you could convince them to do so.

Furthermore, instead of banning climbing outright, I seek your support in convincing the DLNR to remove the monetary and criminal penalties for climbing. I feel that the warning signs at the bottom of the trail informing hikers and climbers of the dangers of

possible rock fall are sufficient to absolve the State from liability similar to DLNR's use of Chapter 82 in placing warning signage in other State locales. It makes no sense that the State would criminalize outdoor adventurers because they enjoy the natural environment. It is our understanding that current rules regarding the provision to recreational users with fair warning are sufficient.

While climbing is not entirely risk-free, climbing is at least as safe as other State-approved outdoor activities such as surfing, kiteboarding, or paragliding. Indeed, our climbing areas have been voluntarily maintained and there are self-imposed safety measures not seen in any other climbing area in the world. Certainly, minor accidents do happen, yet when compared to the accidental death and injury rate occurring in the oceans almost daily, there is no significant threat from rock climbing in Hawaii. Hawaii does have the second highest drowning rate in the nation and yet the beaches remain open to water activities. It is unclear why a different approach would be taken with a far less dangerous activity in the mountains. Imagine the uproar of the surfing community if the State closed Sunset Beach and Pipeline - Oahu's climbers feel no less passionately about access to Mokuleia and our other Northshore climbing sites. The unilateral closure of all of our Oahu climbing sites has been devastating to our climbing community.

I understand I live in a litigious world where everyone is afraid of lawsuits. However, I also live in a world where people seek to explore, push their physical limits, and live outside the boundaries of personal safety. The State's solution should not be to close public lands to public access because of a fear of liability or injury. The laws and policies in Hawaii should be framed in such a way that assumed risk is clearly emphasized and the State's job ought to be to ensure the basic maintenance of our public trails and park systems.

Since the early 1990s, Oahu's climbing community has carefully stewarded our few climbing sites, emplaced world-renown safety measures at these sites, coordinated with the local fire department and external experts on review of our safety measures, and coordinated with DLNR regarding our activities while seeking approval. Climbers in Hawaii and around the world are an avid and dedicated community - it is as much a lifestyle as it is a sport. To be in the mountains and to climb is more than a physical exercise - it is a spiritual awakening to the flow of mind and body. To be deprived of access does direct and personal harm to those of us who depend upon climbing to free our minds and bodies amid the wonder that is our natural world.

I urge you to pass the legislation, direct DLNR to open climbing again with the insurance policy offered by the Access Fund, and also to invite climbers to play a role in developing management plans for recreational use.

Sincerely,

Rosanna Ho

lowen1-Kyli

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, January 31, 2013 2:16 PM
To: waltestimony
Cc: kicker117@live.com
Subject: Submitted testimony for HB550 on Feb 1, 2013 08:00AM
Attachments: HB550.docx

HB550

Submitted on: 1/31/2013

Testimony for WAL/OMH on Feb 1, 2013 08:00AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Sayar Kuchenski	Individual	Support	Yes

Comments:

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January 31, 2013

To: Committee on Water and Land; Committee on Ocean, Marine Resources, & Hawaiian Affairs

From: Sayar Kuchenski, Resident Group

Hearing: February 1, 2013, 8:00 AM Conference Room 325

Sub: HB550

Dear Committee on Water and Land; Committee on Ocean, Marine Resources, & Hawaiian Affairs,

I strongly urge you to vote in SUPPORT of HB550. In essence, HB550 limits the liability of the State by removing the requirement that they somehow maintain every improved and unimproved trail in the state. The current requirement that they maintain unimproved trails is a ridiculous notion because the State cannot possibly know where every unimproved trail is. Furthermore, even if it were physically possible for the State to maintain every unimproved trail in existence, it would be financially inconceivable to do so. The amount of money required to monitor and maintain every trail would be astronomical.

Likewise, even though the State is not physically capable of monitoring and maintaining all the unimproved trails in the state, the courts still hold the State legally accountable for damages any incident that may occur on unimproved trails. When this happens the taxpayers pay big. Taxpayers have better things to spend their tax money on than fallacy lawsuits.

I hope you agree with me that it is time for Hawaii to move forward and put behind us silly notions that Uncle Sam is somehow responsible for maintaining hundreds of miles of trail that they do not, and cannot, know about.

With Deepest Respects,

Sayar Kuchenski