

lowen1-Kyli

From: Michael Bishop [michaelbishop1981@gmail.com]
Sent: Friday, February 01, 2013 2:30 PM
To: lowen1-Kyli
Subject: Written testimony to WAL/OMH in support of HB550 on Friday, February 1st at 8:00 AM
Attachments: Testimony hb550.doc

Aloha Representative Lowen,

I testified in person at this morning's 8:00 AM WAL/OMH hearing in support of HB550. I was instructed to email a copy of that testimony to you. Please find attached a written copy of my testimony.

Thank you for your attention to this important bill and for allowing me to testify!

Sincerely,
Michael Bishop

Co-Chairs Cindy Evans and Faye Hanohano, and the members of the joint committees on Water and Land; and Ocean, Marine Resources, & Hawaiian Affairs

Testimony on HB550

Friday, February 1st at 8:00 AM in conference room 325

First, I'd like to thank co-chairs Evans and Hanohano and the members of this joint committee for allowing me to present my testimony, as this is a matter of great importance not only to me, but to the entire community – at least the portions of the community which pursue outdoor recreation... or pay any taxes whatsoever.

We live in a culture which permits, tolerates, and often even glorifies a wide range of recreational activities, many of which are inherently dangerous. We treasure our big wave surfers, yet we allow them to accept the risks associated with their actions. We would never dream of telling them that a given day is too big to paddle out; or a particular reef is too shallow, too sharp, or too dangerous to surf. Instead, we have established the appropriate legal statutes (such as acts 82, 170, and 190) to protect the state, and the taxpayers, from any claims resulting from such recreation.

Hiking mountain trails and rock climbing, in its various forms, have both continued to become incredibly popular here in Hawaii. We should treasure these hikers and climbers as incredible athletes as well. Instead, out of fear of litigation, our state DLNR has systematically taken away the resources that allow these groups to participate in their chosen forms of recreation. Oversight of all the possible locations for these activities isn't even remotely possible – the practitioners of these activities must be allowed to take responsibility for their own actions, just as big wave surfers are. This bill is one step in that direction.

Therefore, passing hb550 to amend the definition of improved lands will protect the State from liability potentially resulting from the use of “voluntary trails” popular amongst hikers and climbers, thereby returning access to *deeply treasured* natural resources to the community. Times have changed since the recreational use statutes in Hawaii were created and they are in desperate need of revision to keep up with the types of outdoor activities which are rapidly proliferating in Hawaii. I humbly request that the legislature act to protect my right to pursue outdoor recreation without having to fight tooth and nail to maintain access to public lands.

Thank you for your consideration,
Michael Bishop

February 1, 2012 Testimony in Support of HB550

submitted by:
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As a resident and registered voter of Honolulu since 1995, I am urging strong support for **HB550**. My perspective is that of an active recreational enthusiast passionate about hiking, mountain biking, and rock climbing in Hawaii's beautiful mountains.

As I see it, the purpose of **HB550** partially addresses a great need to amend State of Hawaii laws and regulations concerning State liability for those that engaged in recreational activities on State of Hawaii and other public lands.

Before we begin, I would like to ask everyone in the room to ask the following questions of themselves:

1. How many of you have in the past or do presently appreciate the opportunity to engage in activities including hiking, climbing, biking, and hunting on public lands?
2. How many of you have in the past or do presently pursue and engage in outdoor activities on 'voluntary trails' on public lands?

Concerning failed attempts on the part of certain Hawaii legislators to revise State laws affecting State liability on State and public lands each of the ten years between 2002 through and 2012:

1. Why is it that only trial attorneys representing the interests of the Hawaii Association of Justice (www.clh.org) (formerly the Consumer Lawyers Hawaii), oppose these measures?
2. Do trial attorneys in Hawaii oppose attempts to revise our State liability laws because they better understand the dangers of hazardous recreational activities than anyone else, including us in this room?
3. Do trial attorneys in Hawaii oppose attempts to revise our State liability laws because they are more concerned about public safety than anyone else?

Regarding the immunity granted to the State of Hawaii by Act 190 (in effect since 1996) for liability from ocean and beach related injuries and deaths:

1. Why did Hawaii enact Act 190, protecting itself from ocean and beach liability?

2. Is it because ocean activities and open beaches (as opposed to closed beaches) are so essential to Hawaii's tourism and tourism image?
3. Is it because the importance of unrestricted beach access and opportunity to enjoy ocean activities outweigh and are greater than the interests of Hawaii's trail attorneys?
4. Is it because ocean and beach activities are so closely tied to notions of past Hawaiian and present day Hawaii culture?
5. Does anyone believe that the opportunity to engage in and enjoy activities such as hiking, biking, paragliding, and ecosystem tourism in general are unimportant to Hawaii's tourism and the well-being of its residents?
6. Are the activities such as hiking, biking, paragliding, and ecosystem tourism in general becoming increasingly important to Hawaii's tourism and tourism image?
7. Why, again, do we not have legislation similar to Act 190 to protect the State against liability for those that assume responsibility for engaging in non-ocean-related hazardous sports?

Hawaii has essentially no hazardous recreational use statute (except for Chapter 520 which only applies to private landowners and has remained unchanged since 1969). In comparison, approximately 16 States have fairly comprehensive recreational use statutes protecting their taxpayers from the excessive liability surrounding lawsuits involving hazardous recreational activities.

1. Is there something extra complicated or special about the situation in Hawaii that precludes us from passing similar legislation which would protect Hawaii's taxpayers and keep public areas open to the public?
2. Are the taxpayers and recreational enthusiasts of Hawaii being held hostage by the special interests of Hawaii's trial attorneys?

Consider the March 20, 2012, \$15.4 million State settlement with the families of two women who tragically fell to their deaths in 2006 from the trail leading to Opaekaa Falls. According to the 44 page findings on the case, the attorneys for the women's families provided compelling evidence that prior to the accident DLNR did know of the dangers of the site and probably did not do enough to warn the public of dangers involved in visiting the site. Conversely, we should ask ourselves to consider the following questions:

1. Can we think of better ways to have spent \$15.4 million in the State of Hawaii? Could \$15.4 million have benefitted for example, watershed protection, education, or simple maintenance and upkeep of park facilities and restrooms?
2. Is it possible for DLNR or other public agencies to protect from and warn the public of every possible danger that can be encountered in the 'Great Outdoors'?

3. Consider the vast number of hiking and related sports injuries, deaths, and rescues that occur with alarming frequency in Hawaii's mountains every month of every year. Are the existing laws preventing these incidents from occurring?
4. Even if it were financially and logistically feasible for DLNR to accomplish, would we want to see warning signs along the entire length of every trail, on every scenic overlook, and within every valley?
5. Where do we draw the line for assumption of risk to engage in hazardous recreational activities?

In summary

I urge Hawaii's legislators to take action in 2013 and bring this hostage crisis to an end. There is no better time than now to say no to Hawaii's trial attorneys, and amend our State liability laws to protect Hawaii's taxpayers and the visitors and residents of Hawaii who require open trails and public places to engage in the recreational pursuits.

I am an active, registered voter and I will carefully note and share information with my vast network of friends regarding those legislators that do and do not support **HB550** and related bills.