

**TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE HAWAII ASSOCIATION FOR JUSTICE (HAJ) IN OPPOSITION TO S.B. NO. 1007, SD 1**

Date: Friday, February 22, 2013

Time: 9:00 am – Decision Making

To: Chairman David Ige and Members of the Senate Committee on Ways and Means:

My name is Bob Toyofuku and I am presenting this testimony on behalf of the Hawaii Association for Justice (HAJ) in OPPOSITION to S.B. No. 1007, SD 1 relating to Public Land Liability. HAJ also **suggests amending 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.

**HAJ 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 submit comments in  
OPPOSITION to this measure.

To: Chair Ige, Vice Chair Kidani, and members of the Senate Ways and Means Committee

Re: Senate Bill 1007 decision making by WAM on Friday, February 22<sup>nd</sup> in room 221 at 9:00 AM

From: Carl Poster

### **Testimony in SUPPORT of SB 1007**

I am writing to support Senate Bill 1007 which clarifies the definition of “improved public lands” under Act 82, Session Laws of Hawaii 2003, to limit liability for public entities based on their duty to warn of dangers on public lands. Across Hawaii, recreationists display their desires to explore the natural wonders and beauty of the islands, whether they find State maintained trails or not. Hikers, hunters, climbers, and other users frequently choose to establish their own networks of trails to access every hidden gem they find across the islands, in both remote and not-so-remote locations. Currently, unclear language creates some confusion as to when and where the State should be liable for warning of dangers upon public land; and when users of “voluntary trails” must be held accountable for their own safety.

The Na Ala Hele trail network welcomes and invites residents and visitors alike to explore the breathtaking, abundant, and awe-inspiring natural beauty of the Hawaiian islands. On these trails, clearly the state has a duty to warn of dangers since the State actively takes responsibility for the safety of these trails by maintaining them and inviting people to use them. However, when individuals choose to establish side trails off of State maintained trails, or entirely new trails apart from existing networks, the State cannot be expected to warn of dangers that it probably doesn't even know about. Since “voluntary trails” are currently considered to be part of “improved public lands” for which the State takes responsibility, the State has the impossible tasks of monitoring trails that have not yet been created and warning of dangers of which they have no knowledge.

The massive \$15 million judgment against the State as a result of *Brem, et al. v. State of Hawaii*, Civil No. 07-1-0176, Fifth Circuit Court, State of Hawaii should be a sufficient wake-up call to the people of Hawaii. Deficient and ambiguous liability laws need to be bolstered and amended. When people choose to explore dangerous wilderness areas, they must be held accountable for their own decisions and actions.

In the minds of Hawaiian voters, *Brem* will serve as a landmark settlement which will motivate one of two outcomes: an overprotective 'nanny state' that continues to close down public lands and that is tasked with warning the public about every danger that anyone discovers in the wilderness; or a paradigm shift toward a more reasonable level of personal responsibility for the inherent risks of exploring nature, and a shift away from the overly litigious mentality that has plagued Hawaii as of late. Please pass this bill to ensure the latter outcome and protect the taxpayers of Hawaii from any more catastrophic lawsuits. Thank you for the opportunity to provide this testimony.

Sincerely,  
Carl Poster

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [WAM Testimony](#)  
**Cc:** [1988xjchief@gmail.com](mailto:1988xjchief@gmail.com)  
**Subject:** Submitted testimony for SB1007 on Feb 22, 2013 09:00AM  
**Date:** Thursday, February 21, 2013 7:56:57 AM

---

SB1007

Submitted on: 2/21/2013

Testimony for WAM on Feb 22, 2013 09:00AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Dave Fahrenwald	Individual	Support	No

Comments: I support SB1007 which attempts to limit liability to the State of Hawaii when people engage in hazardous recreational activities on State land. The bill strikes the proper balance between negligence and personal responsibility. The bill does not eliminate negligence when the State of Hawaii is remiss and clarifies that when a person engages in dangerous recreational activities on State land that the person is personally responsible for his or her own injury or death. It's common sense! Dave Fahrenwald Not So Great Hiking Blog

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)

February 20, 2013

Senate Ways and Means Committee  
Hearing Scheduled for February 22, 2013 at 9:00 AM

Testimony in Support of SB 1007 SD 1, "Relating to Public Land Liability"  
From Deborah Chang, Hawai'i Island Resident

Aloha Chair Ige, Vice Chair Kidani and Members of the Senate Ways and Means Committee:

I ask for your support of SB 1007 SD 1, "Relating to Public Land Liability." This bill excludes "voluntary trails" from the definition of "improved public lands." It would protect the state and county from liability when people venture on public lands using "voluntary trails" that are not approved, managed or maintained for public use. The Acts that are amended by SB 1007 SD 1 would relieve public landowners from a duty to warn of "dangerous natural conditions on unimproved public lands" similar to the liability protection given to private landowners in Chapter 520, HRS.

Rock climbers have lobbied in support of this bill, but the bill's liability protections apply to other forms of recreation as well. The State is the largest landowner in Hawai'i. Public land management agencies lack the staff and funds to monitor all of the public lands that are identified in guidebooks and websites as having fabulous waterfalls, swimming holes, spectacular views, breathtaking cliffs, etc. It is impossible to guard every entry point and challenge every web posting.

As a taxpayer and outdoor recreationist, I see the addition of "voluntary trails" and the other clarifications proposed in this bill as helping to (1) protect limited government resources from costly litigation when people are injured on public lands, which are not "improved" and managed for public recreational use, and (2) reinforce the "enter at your own risk" responsibility that every recreationist (not just rock climbers) should be prepared to assume when he/she makes the decision to enter lands that are not being maintained, inspected, posted, or monitored for hazardous conditions.

In earlier hearings on this bill the Hawaii Association for Justice has suggested that the proposed definition of "voluntary trails" should indicate that voluntary trails "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." I strongly disagree with this suggestion, because it would not limit the State or county's liability over voluntary trails that persist no matter what land managers do to discourage their use. Often poorly constructed, hazardous, and potentially miles in length, these unofficial, connecting trails should be posted as "closed" and re-naturalized. However, in the event that the undesirable trail use persists (and this is not uncommon), the State or county should not bear any liability and duty to warn of hazards on closed trails.

Mahalo for your consideration of my testimony.

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [WAM Testimony](#)  
**Cc:** [Dbondocoy@yahoo.com](mailto:Dbondocoy@yahoo.com)  
**Subject:** Submitted testimony for SB1007 on Feb 22, 2013 09:00AM  
**Date:** Thursday, February 21, 2013 8:09:34 AM

---

SB1007

Submitted on: 2/21/2013

Testimony for WAM on Feb 22, 2013 09:00AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Dennis bondocoy	Individual	Support	No

Comments: I support to limit the liability of state

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [WAM Testimony](#)  
**Cc:** [james.derek.hamilton@gmail.com](mailto:james.derek.hamilton@gmail.com)  
**Subject:** Submitted testimony for SB1007 on Feb 22, 2013 09:00AM  
**Date:** Wednesday, February 20, 2013 12:42:10 PM  
**Attachments:** [SB1007\\_Testimony.txt](#)

---

**SB1007**

Submitted on: 2/20/2013

Testimony for WAM on Feb 22, 2013 09:00AM in Conference Room 211

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Derek hamilton	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)



To: Chair Ige, Vice Chair Kidani, and members of the Senate Ways and Means Committee

Re: Senate Bill 1007 decision making by WAM on Friday, February 22<sup>nd</sup> in room 221 at 9:00 AM

From: \*\*\*\*\* \*\*\*\*\*

### **Testimony in SUPPORT of SB 1007**

I am writing to support Senate Bill 1007 which clarifies the definition of “improved public lands” under Act 82, Session Laws of Hawaii 2003, to limit liability for public entities based on their duty to warn of dangers on public lands. Across Hawaii, recreationists display their desires to explore the natural wonders and beauty of the islands, whether they find State maintained trails or not. Hikers, hunters, climbers, and other users frequently choose to establish their own networks of trails to access every hidden gem they find across the islands, in both remote and not-so-remote locations. Currently, unclear language creates some confusion as to when and where the State should be liable for warning of dangers upon public land; and when users of “voluntary trails” must be held accountable for their own safety.

The Na Ala Hele trail network welcomes and invites residents and visitors alike to explore the breathtaking, abundant, and awe-inspiring natural beauty of the Hawaiian islands. On these trails, clearly the state has a duty to warn of dangers since the State actively takes responsibility for the safety of these trails by maintaining them and inviting people to use them. However, when individuals choose to establish side trails off of State maintained trails, or entirely new trails apart from existing networks, the State cannot be expected to warn of dangers that it probably doesn't even know about. Since “voluntary trails” are currently considered to be part of “improved public lands” for which the State takes responsibility, the State has the impossible tasks of monitoring trails that have not yet been created and warning of dangers of which they have no knowledge.

The massive \$15 million judgment against the State as a result of Brem, et al. v. State of Hawaii, Civil No. 07-1-0176, Fifth Circuit Court, State of Hawaii should be a sufficient wake-up call to the people of Hawaii. Deficient and ambiguous liability laws need to be bolstered and amended. When people choose to explore dangerous wilderness areas, they must be held accountable for their own decisions and actions.

In the minds of Hawaiian voters, Brem will serve as a landmark settlement which will motivate one of two outcomes: an overprotective 'nanny state' that continues to close down public lands and that is tasked with warning the public about every danger that anyone discovers in the wilderness; or a paradigm shift toward a more reasonable level of personal responsibility for the inherent risks of exploring nature, and a shift away from the overly litigious mentality that has plagued Hawaii as of late. Please pass this bill to ensure the latter outcome and protect the taxpayers of Hawaii from any more catastrophic lawsuits. Thank you for the opportunity to provide this testimony.

Sincerely,  
Rita Ryan

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

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [WAM Testimony](#)  
**Cc:** [italysweets@gmail.com](mailto:italysweets@gmail.com)  
**Subject:** Submitted testimony for SB1007 on Feb 22, 2013 09:00AM  
**Date:** Wednesday, February 20, 2013 7:12:59 PM

---

SB1007

Submitted on: 2/20/2013

Testimony for WAM on Feb 22, 2013 09:00AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Elizabeth Barney	Individual	Support	No

Comments: To: Chair Ige, Vice Chair Kidani, and members of the Senate Ways and Means Committee Re: Senate Bill 1007 decision making by WAM on Friday, February 22nd in room 221 at 9:00 AM From: Elizabeth Barney Testimony in SUPPORT of SB 1007 I am writing to support Senate Bill 1007 which clarifies the definition of "improved public lands" under Act 82, Session Laws of Hawaii 2003, to limit liability for public entities based on their duty to warn of dangers on public lands. Across Hawaii, recreationists display their desires to explore the natural wonders and beauty of the islands, whether they find State maintained trails or not. Hikers, hunters, climbers, and other users frequently choose to establish their own networks of trails to access every hidden gem they find across the islands, in both remote and not-so-remote locations. Currently, unclear language creates some confusion as to when and where the State should be liable for warning of dangers upon public land; and when users of "voluntary trails" must be held accountable for their own safety. The Na Ala Hele trail network welcomes and invites residents and visitors alike to explore the breathtaking, abundant, and awe-inspiring natural beauty of the Hawaiian islands. On these trails, clearly the state has a duty to warn of dangers since the State actively takes responsibility for the safety of these trails by maintaining them and inviting people to use them. However, when individuals choose to establish side trails off of State maintained trails, or entirely new trails apart from existing networks, the State cannot be expected to warn of dangers that it probably doesn't even know about. Since "voluntary trails" are currently considered to be part of "improved public lands" for which the State takes responsibility, the State has the impossible tasks of monitoring trails that have not yet been created and warning of dangers of which they have no knowledge. The massive \$15 million judgment against the State as a result of Brem, et al. v. State of Hawaii, Civil No. 07-1-0176, Fifth Circuit Court, State of Hawaii should be a sufficient wake-up call to the people of Hawaii. Deficient and ambiguous liability laws need to be bolstered and amended. When people choose to explore dangerous wilderness areas, they must be held accountable for their own decisions and actions. In the minds of Hawaiian voters, Brem will serve as a landmark settlement which will motivate one of two outcomes: an overprotective 'nanny state' that continues to close down public lands and that is tasked with warning the public about every danger that anyone discovers in the wilderness; or a

paradigm shift toward a more reasonable level of personal responsibility for the inherent risks of exploring nature, and a shift away from the overly litigious mentality that has plagued Hawaii as of late. Please pass this bill to ensure the latter outcome and protect the taxpayers of Hawaii from any more catastrophic lawsuits. Thank you for the opportunity to provide this testimony. Sincerely, Elizabeth Barney

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)

To: Chair Ige, Vice Chair Kidani, and members of the Senate Ways and Means Committee

Re: Senate Bill 1007 decision making by WAM on Friday, February 22<sup>nd</sup> in room 221 at 9:00 AM

From: Eric Varley

### **Testimony in SUPPORT of SB 1007**

I am writing to support Senate Bill 1007 which clarifies the definition of “improved public lands” under Act 82, Session Laws of Hawaii 2003, to limit liability for public entities based on their duty to warn of dangers on public lands. Across Hawaii, recreationists display their desires to explore the natural wonders and beauty of the islands, whether they find State maintained trails or not. Hikers, hunters, climbers, and other users frequently choose to establish their own networks of trails to access every hidden gem they find across the islands, in both remote and not-so-remote locations. Currently, unclear language creates some confusion as to when and where the State should be liable for warning of dangers upon public land; and when users of “voluntary trails” must be held accountable for their own safety.

The Na Ala Hele trail network welcomes and invites residents and visitors alike to explore the breathtaking, abundant, and awe-inspiring natural beauty of the Hawaiian islands. On these trails, clearly the state has a duty to warn of dangers since the State actively takes responsibility for the safety of these trails by maintaining them and inviting people to use them. However, when individuals choose to establish side trails off of State maintained trails, or entirely new trails apart from existing networks, the State cannot be expected to warn of dangers that it probably doesn't even know about. Since “voluntary trails” are currently considered to be part of “improved public lands” for which the State takes responsibility, the State has the impossible tasks of monitoring trails that have not yet been created and warning of dangers of which they have no knowledge.

The massive \$15 million judgment against the State as a result of Brem, et al. v. State of Hawaii, Civil No. 07-1-0176, Fifth Circuit Court, State of Hawaii should be a sufficient wake-up call to the people of Hawaii. Deficient and ambiguous liability laws need to be bolstered and amended. When people choose to explore dangerous wilderness areas, they must be held accountable for their own decisions and actions.

In the minds of Hawaiian voters, Brem will serve as a landmark settlement which will motivate one of two outcomes: an overprotective 'nanny state' that continues to close down public lands and that is tasked with warning the public about every danger that anyone discovers in the wilderness; or a paradigm shift toward a more reasonable level of personal responsibility for the inherent risks of exploring nature, and a shift away from the overly litigious mentality that has plagued Hawaii as of late. Please pass this bill to ensure the latter outcome and protect the taxpayers of Hawaii from any more catastrophic lawsuits. Thank you for the opportunity to provide this testimony.

Sincerely,  
Eric Varley

**To: Committee Members**

**From: Eva Bosch RN, Individual Rock Climber**

**Hearing: February 22, 2013, 9:00am Conference Room 211**

**RE: SB1007**

**Dear Committee Members,**

**As an avid rock climber and outdoor adventurer,** I am writing to support Senate Bill 1007 which clarifies the definition of “improved public lands” under Act 82, Session Laws of Hawaii 2003, to limit liability for public entities based on their duty to warn of dangers on public lands. Across Hawaii, recreationists display their desires to explore the natural wonders and beauty of the islands, whether they find State maintained trails or not. Hikers, hunters, climbers, and other users frequently choose to establish their own networks of trails to access every hidden gem they find across the islands, in both remote and not-so-remote locations. Currently, unclear language creates some confusion as to when and where the State should be liable for warning of dangers upon public land; and when users of “voluntary trails” must be held accountable for their own safety.

**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 HAJ lawyers group in opposition, has a fair bit of interest in keeping it written as is due to monetary incentives. In a post published on Bostwick&Peterson, LLP it reads, “oftentimes warning and closures happen too late – after someone has been seriously injured or dies while hiking an unsafe trail. If you or a loved one has been injured – or if you have lost a loved one in a hiking accident - it is important to seek the advice of an experienced Hawaii personal injury attorney right away.”**

The Na Ala Hele trail network welcomes and invites residents and visitors alike to explore the breathtaking, abundant, and awe-inspiring natural beauty of the Hawaiian islands. On these trails, clearly the state has a duty to warn of dangers since the State actively takes responsibility for the safety of these trails by maintaining them and inviting people to use them. However, when individuals choose to establish side trails off of State maintained trails, or entirely new trails apart from existing networks, the State cannot be expected to warn of dangers that it probably doesn't even know about. Since “voluntary trails” are currently considered to be part of “improved public lands” for which the State takes responsibility, the State has the impossible tasks of monitoring trails that have not yet been created and warning of dangers of which they have no knowledge.

**I urge you to pass this bill out of committee and am happy to answer any questions.**

**Sincerely,**



**Eva Bosch**

From: [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
To: [WAM Testimony](#)  
Cc: [Dreamisrael@gmail.com](mailto:Dreamisrael@gmail.com)  
Subject: Submitted testimony for SB1007 on Feb 22, 2013 09:00AM  
Date: Wednesday, February 20, 2013 7:28:38 PM

---

SB1007

Submitted on: 2/20/2013

Testimony for WAM on Feb 22, 2013 09:00AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Israella Samonte	Individual	Support	Yes

Comments: To: Chair Ige, Vice Chair Kidani, and members of the Senate Ways and Means Committee Re: Senate Bill 1007 decision making by WAM on Friday, February 22nd in room 221 at 9:00 AM From: Israella Samonte Testimony in SUPPORT of SB 1007 I am writing to support Senate Bill 1007 which clarifies the definition of "improved public lands" under Act 82, Session Laws of Hawaii 2003, to limit liability for public entities based on their duty to warn of dangers on public lands. Across Hawaii, recreationists display their desires to explore the natural wonders and beauty of the islands, whether they find State maintained trails or not. Hikers, hunters, climbers, and other users frequently choose to establish their own networks of trails to access every hidden gem they find across the islands, in both remote and not-so-remote locations. Currently, unclear language creates some confusion as to when and where the State should be liable for warning of dangers upon public land; and when users of "voluntary trails" must be held accountable for their own safety. The Na Ala Hele trail network welcomes and invites residents and visitors alike to explore the breathtaking, abundant, and awe-inspiring natural beauty of the Hawaiian islands. On these trails, clearly the state has a duty to warn of dangers since the State actively takes responsibility for the safety of these trails by maintaining them and inviting people to use them. However, when individuals choose to establish side trails off of State maintained trails, or entirely new trails apart from existing networks, the State cannot be expected to warn of dangers that it probably doesn't even know about. Since "voluntary trails" are currently considered to be part of "improved public lands" for which the State takes responsibility, the State has the impossible tasks of monitoring trails that have not yet been created and warning of dangers of which they have no knowledge. The massive \$15 million judgment against the State as a result of Brem, et al. v. State of Hawaii, Civil No. 07-1-0176, Fifth Circuit Court, State of Hawaii should be a sufficient wake-up call to the people of Hawaii. Deficient and ambiguous liability laws need to be bolstered and amended. When people choose to explore dangerous wilderness areas, they must be held accountable for their own decisions and actions. In the minds of Hawaiian voters, Brem will serve as a landmark settlement which will motivate one of two outcomes: an overprotective 'nanny state' that continues to close down public lands and that is tasked with warning the public about every danger that anyone discovers in the wilderness; or a

paradigm shift toward a more reasonable level of personal responsibility for the inherent risks of exploring nature, and a shift away from the overly litigious mentality that has plagued Hawaii as of late. Please pass this bill to ensure the latter outcome and protect the taxpayers of Hawaii from any more catastrophic lawsuits. Thank you for the opportunity to provide this testimony. Sincerely, Israella Samonte

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [WAM Testimony](#)  
**Cc:** [palmtree7@earthlink.net](mailto:palmtree7@earthlink.net)  
**Subject:** Submitted testimony for SB1007 on Feb 22, 2013 09:00AM  
**Date:** Wednesday, February 20, 2013 12:18:35 PM

---

**SB1007**

Submitted on: 2/20/2013

Testimony for WAM on Feb 22, 2013 09:00AM in Conference Room 211

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
janice palma-glenie	Individual	Support	No

Comments: This measure will improve public access and use of public lands and natural resources.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)

To: Chair Ige, Vice Chair Kidani, and members of the Senate Ways and Means Committee

Re: Senate Bill 1007 decision making by WAM on Friday, February 22<sup>nd</sup> in room 221 at 9:00 AM

From: Jennie Zhu

### **Testimony in SUPPORT of SB 1007**

I am writing to support Senate Bill 1007 which clarifies the definition of “improved public lands” under Act 82, Session Laws of Hawaii 2003, to limit liability for public entities based on their duty to warn of dangers on public lands. Across Hawaii, recreationists display their desires to explore the natural wonders and beauty of the islands, whether they find State maintained trails or not. Hikers, hunters, climbers, and other users frequently choose to establish their own networks of trails to access every hidden gem they find across the islands, in both remote and not-so-remote locations. Currently, unclear language creates some confusion as to when and where the State should be liable for warning of dangers upon public land; and when users of “voluntary trails” must be held accountable for their own safety.

The Na Ala Hele trail network welcomes and invites residents and visitors alike to explore the breathtaking, abundant, and awe-inspiring natural beauty of the Hawaiian islands. On these trails, clearly the state has a duty to warn of dangers since the State actively takes responsibility for the safety of these trails by maintaining them and inviting people to use them. However, when individuals choose to establish side trails off of State maintained trails, or entirely new trails apart from existing networks, the State cannot be expected to warn of dangers that it probably doesn't even know about. Since “voluntary trails” are currently considered to be part of “improved public lands” for which the State takes responsibility, the State has the impossible tasks of monitoring trails that have not yet been created and warning of dangers of which they have no knowledge.

The massive \$15 million judgment against the State as a result of Brem, et al. v. State of Hawaii, Civil No. 07-1-0176, Fifth Circuit Court, State of Hawaii should be a sufficient wake-up call to the people of Hawaii. Deficient and ambiguous liability laws need to be bolstered and amended. When people choose to explore dangerous wilderness areas, they must be held accountable for their own decisions and actions.

In the minds of Hawaiian voters, Brem will serve as a landmark settlement which will motivate one of two outcomes: an overprotective 'nanny state' that continues to close down public lands and that is tasked with warning the public about every danger that anyone discovers in the wilderness; or a paradigm shift toward a more reasonable level of personal responsibility for the inherent risks of exploring nature, and a shift away from the overly litigious mentality that has plagued Hawaii as of late. Please pass this bill to ensure the latter outcome and protect the taxpayers of Hawaii from any more catastrophic lawsuits. Thank you for the opportunity to provide this testimony.

Sincerely,

Jennie Zhu

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [WAM Testimony](#)  
**Cc:** [kokuna@me.com](mailto:kokuna@me.com)  
**Subject:** Submitted testimony for SB1007 on Feb 22, 2013 09:00AM  
**Date:** Tuesday, February 19, 2013 11:09:50 PM  
**Attachments:** [SB1007\\_Testimony.txt](#)

---

**SB1007**

Submitted on: 2/19/2013

Testimony for WAM on Feb 22, 2013 09:00AM in Conference Room 211

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Keith Okuna	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)

To: Chair Ige, Vice Chair Kidani, and members of the Senate Ways and Means Committee

Re: Senate Bill 1007 decision making by WAM on Friday, February 22nd in room 221 at 9:00 AM

From: Kevin Nesnow

Citizen of the State of Hawaii, resident of Oahu

Testimony in SUPPORT of SB 1007

I am writing to support Senate Bill 1007 which clarifies the definition of “improved public lands” under Act 82, Session Laws of Hawaii 2003, to limit liability for public entities based on their duty to warn of dangers on public lands. Across Hawaii, recreationists display their desires to explore the natural wonders and beauty of the islands, whether they find State maintained trails or not. Hikers, hunters, climbers, and other users frequently choose to establish their own networks of trails to access every hidden gem they find across the islands, in both remote and not-so-remote locations. Currently, unclear language creates some confusion as to when and where the State should be liable for warning of dangers upon public land; and when users of “voluntary trails” must be held accountable for their own safety.

The Na Ala Hele trail network welcomes and invites residents and visitors alike to explore the breathtaking, abundant, and awe-inspiring natural beauty of the Hawaiian islands. On these trails, clearly the state has a duty to warn of dangers since the State actively takes responsibility for the safety of these trails by maintaining them and inviting people to use them. However, when individuals choose to establish side trails off of State maintained trails, or entirely new trails apart from existing networks, the State cannot be expected to warn of dangers that it probably doesn't even know about. Since “voluntary trails” are currently considered to be part of “improved public lands” for which the State takes responsibility, the State has the impossible tasks of monitoring trails that have not yet been created and warning of dangers of which they have no knowledge.

The massive \$15 million judgment against the State as a result of Brem, et al. v. State of Hawaii, Civil No. 07-1-0176, Fifth Circuit Court, State of Hawaii should be a sufficient wake-up call to the people of Hawaii. Deficient and ambiguous liability laws need to be bolstered and amended. When people choose to explore dangerous wilderness areas, they must be held accountable for their own decisions and actions.

In the minds of Hawaiian voters, Brem will serve as a landmark settlement which will motivate one of two outcomes: an overprotective 'nanny state' that continues to close down public lands and that is tasked with warning the public about every danger that anyone discovers in the wilderness; or a paradigm shift toward a more reasonable level of personal responsibility for the inherent risks of exploring nature, and a shift away from the overly litigious mentality that has plagued Hawaii as of late. Please pass this bill to ensure the latter outcome and protect the taxpayers of Hawaii from any more catastrophic lawsuits. Thank you for the opportunity to provide this testimony.

Yours,

~ Kevin Nesnow

To: Chair Ige, Vice Chair Kidani, and members of the Senate Ways and Means Committee

Re: Senate Bill 1007 decision making by WAM on Friday, February 22<sup>nd</sup> in room 221 at 9:00 AM

From: Marina Batham

### **Testimony in SUPPORT of SB 1007**

I am writing to support Senate Bill 1007 which clarifies the definition of “improved public lands” under Act 82, Session Laws of Hawaii 2003, to limit liability for public entities based on their duty to warn of dangers on public lands. Across Hawaii, recreationists display their desires to explore the natural wonders and beauty of the islands, whether they find State maintained trails or not. Hikers, hunters, climbers, and other users frequently choose to establish their own networks of trails to access every hidden gem they find across the islands, in both remote and not-so-remote areas. Currently, unclear language creates some confusion as to when and where the State should be liable for warning of dangers upon public land; and when users of “voluntary trails” must be held accountable for their own safety.

The Na Ala Hele trail network welcomes and invites residents and visitors alike to explore the breathtaking, abundant, and awe-inspiring natural beauty of the Hawaiian islands. On these trails, clearly the state has a duty to warn of dangers, since the State actively takes responsibility for the safety of these trails by maintaining them and inviting people to use them. However, when individuals choose to establish side trails off of State maintained trails or entirely new trails apart from existing networks, the State cannot be expected to warn of dangers that it probably doesn't even know about. Since “voluntary trails” are currently considered to be part of “improved public lands” for which the State takes responsibility, the State has the impossible task of monitoring trails that have not yet been created and warning of dangers of which they have no knowledge.

The massive \$15 million judgment against the State as a result of Brem, et al. v. State of Hawaii, Civil No. 07-1-0176, Fifth Circuit Court, State of Hawaii should be a sufficient wake-up call to the people of Hawaii. Deficient and ambiguous liability laws need to be bolstered and amended. When people choose to explore dangerous wilderness areas, they must be held accountable for their own decisions and actions.

In the minds of Hawaiian voters, Brem will serve as a landmark settlement which will motivate one of two outcomes: an overprotective 'nanny state' that continues to close down public lands and that is tasked with warning the public about every danger that anyone discovers in the wilderness; or a paradigm shift toward a more reasonable level of personal responsibility for the inherent risks of exploring nature, and a shift away from the overly litigious mentality that has plagued Hawaii as of late. Please pass this bill to ensure the latter outcome and protect the taxpayers of Hawaii from any more catastrophic lawsuits. Thank you for the opportunity to provide this testimony.

Sincerely,  
Marina Batham  
582 Hoene St., Makawao, HI 96768



To: Chair Ige, Vice Chair Kidani, and members of the Senate Ways and Means Committee

Re: Senate Bill 1007 decision making by WAM on Friday, February 22<sup>nd</sup> in room 221 at 9:00 AM

From: Michael Bishop

### **Testimony in SUPPORT of SB 1007**

I am writing to support Senate Bill 1007 which clarifies the definition of “improved public lands” under Act 82, Session Laws of Hawaii 2003, to limit liability for public entities based on their duty to warn of dangers on public lands. Across Hawaii, recreationists display their desires to explore the natural wonders and beauty of the islands, whether they find State maintained trails or not. Hikers, hunters, climbers, and other users frequently choose to establish their own networks of trails to access every hidden gem they find across the islands, in both remote and not-so-remote locations. Currently, unclear language creates some confusion as to when and where the State should be liable for warning of dangers upon public land; and when users of “voluntary trails” must be held accountable for their own safety.

The Na Ala Hele trail network welcomes and invites residents and visitors alike to explore the breathtaking, abundant, and awe-inspiring natural beauty of the Hawaiian islands. On these trails, clearly the state has a duty to warn of dangers since the State actively takes responsibility for the safety of these trails by maintaining them and inviting people to use them. However, when individuals choose to establish side trails off of State maintained trails, or entirely new trails apart from existing networks, the State cannot be expected to warn of dangers that it probably doesn't even know about. Since “voluntary trails” are currently considered to be part of “improved public lands” for which the State takes responsibility, the State has the impossible tasks of monitoring trails that have not yet been created and warning of dangers of which they have no knowledge.

The massive \$15 million judgment against the State as a result of *Brem, et al. v. State of Hawaii*, Civil No. 07-1-0176, Fifth Circuit Court, State of Hawaii should be a sufficient wake-up call to the people of Hawaii. Deficient and ambiguous liability laws need to be bolstered and amended. When people choose to explore dangerous wilderness areas, they must be held accountable for their own decisions and actions.

In the minds of Hawaiian voters, *Brem* will serve as a landmark settlement which will motivate one of two outcomes: an overprotective 'nanny state' that continues to close down public lands and that is tasked with warning the public about every danger that anyone discovers in the wilderness; or a paradigm shift toward a more reasonable level of personal responsibility for the inherent risks of exploring nature, and a shift away from the overly litigious mentality that has plagued Hawaii as of late. Please pass this bill to ensure the latter outcome and protect the taxpayers of Hawaii from any more catastrophic lawsuits. Thank you for the opportunity to provide this testimony.

Sincerely,  
Michael Bishop

## February 20, 2013 Testimony in Support of Senate Bill 1007

To: Chair Ige, Vice Chair Kidani, and members of the Senate Ways and Means Committee

Re: Senate Bill 1007 decision making by WAM on Friday, February 22<sup>nd</sup> in room 221 at 9:00 AM

submitted by:  
Michael Richardson, resident of Honolulu  
2241 Noah St.  
Honolulu, HI 96816  
(808) 387-7825  
[bugman@climbaloha.com](mailto:bugman@climbaloha.com)

As a registered voter, small business owner, and resident of Honolulu since 1995, I am urging strong support for **SB1007**. My perspective is that of an active recreational enthusiast passionate about hiking, mountain biking, and rock climbing in Hawaii's beautiful mountains. I am in support of **SB1007** because it is my hope that sensible legislation like this bill will address the Department of Land and Natural Resources' (DLNR) fear of liability stemming from the possibility of someone getting injured while rock climbing on State lands. This fear of liability prompted the DLNR to close all Oahu rock climbing sites in June of 2012 when a teenage girl was injured at one of the sites. The June 2012 incident which prompted the closures was the first and only serious rock climbing accident in the 22 year history of climbing on the island of Oahu. I challenge anyone to identify a single other sport with a better safety record than that of the rock climbing community. So while DLNR's fear of liability is not due to any reasonable expectation (based upon our historical safety record) that climbers will continue to be seriously injured climbing, it is not unreasonable for DLNR to fear liability itself (recall the \$15.4 million Brem case) because our liability laws are out of date and favors Hawaii's trial attorneys. The fact that only the Hawaii Association for Justice opposes this bill speaks volumes.

### Testimony in SUPPORT of SB 1007

I am writing to support Senate Bill 1007 which clarifies the definition of "improved public lands" under Act 82, Session Laws of Hawaii 2003, to limit liability for public entities based on their duty to warn of dangers on public lands. Across Hawaii, recreationists display their desires to explore the natural wonders and beauty of the islands, whether they find State maintained trails or not. Hikers, hunters, climbers, and other users frequently choose to establish their own networks of trails to access every hidden gem they find across the islands, in both remote and not-so-remote areas. Currently, unclear language creates some confusion as to when and where the State should be liable for warning of dangers upon public land; and when users of "voluntary trails" must be held accountable for their own safety.

The Na Ala Hele trail network welcomes and invites residents and visitors alike to explore the breathtaking, abundant, and awe-inspiring natural beauty of the Hawaiian Islands. On these trails, clearly the state has a duty to warn of dangers, since the State actively takes responsibility for the safety of these trails by maintaining them and inviting people to use them. However, when individuals choose to establish side trails off of State maintained trails or entirely new trails apart from existing networks, the State cannot be expected to warn of dangers that it probably doesn't even know about. Since "voluntary trails" are currently considered to be part of "improved public lands" for which the State

takes responsibility, the State has the impossible task of monitoring trails that have not yet been created and warning of dangers of which they have no knowledge.

The massive \$15 million judgment against the State as a result of *Brem, et al. v. State of Hawaii*, Civil No. 07-1-0176, Fifth Circuit Court, State of Hawaii should be a sufficient wake-up call to the people of Hawaii. Deficient and ambiguous liability laws need to be bolstered and amended. When people choose to explore dangerous wilderness areas, they must be held accountable for their own decisions and actions.

In the minds of Hawaiian voters, *Brem* will serve as a landmark settlement which will motivate one of two outcomes: an overprotective 'nanny state' that continues to close down public lands and that is tasked with warning the public about every danger that anyone discovers in the wilderness; or a paradigm shift toward a more reasonable level of personal responsibility for the inherent risks of exploring nature, and a shift away from the overly litigious mentality that has plagued Hawaii as of late. Please pass this bill to ensure the latter outcome and protect the taxpayers of Hawaii from any more catastrophic lawsuits. Thank you for the opportunity to provide this testimony and please feel free to contact me if you have any questions.

Sincerely,  
Michael Richardson

February 21, 2013  
Testimony in Support of SB1007

Nathan Yuen  
91-233 Hanapouli Cir #29T  
Ewa Beach, Hawaii 96706

Dear Sirs:

I support SB1007 which attempts to limit liability to the State of Hawaii when people engage in hazardous recreational activities on State land. The bill strikes the proper balance between negligence and personal responsibility. The does not eliminate negligence when the State of Hawaii is remiss and clarifies that when a person engages in dangerous recreational activities on State land that the person is personally responsible for his or her own injury or death.

Nathan Yuen  
Hiker-Blogger  
HawaiianForest.Com

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [WAM Testimony](#)  
**Cc:** [pat\\_trick@hotmail.com](mailto:pat_trick@hotmail.com)  
**Subject:** Submitted testimony for SB1007 on Feb 22, 2013 09:00AM  
**Date:** Wednesday, February 20, 2013 8:32:55 AM  
**Attachments:** [sb1007testimony.txt](#)

---

**SB1007**

Submitted on: 2/20/2013

Testimony for WAM on Feb 22, 2013 09:00AM in Conference Room 211

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Patrick Karjala	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)

To: Chair Ige, Vice Chair Kidani, and members of the Senate Ways and Means Committee

Re: Senate Bill 1007 decision making by WAM on Friday, February 22<sup>nd</sup> in room 221 at 9:00 AM

From: \*\*\*\*\* \*\*\*\*\*

### **Testimony in SUPPORT of SB 1007**

I am writing to support Senate Bill 1007 which clarifies the definition of “improved public lands” under Act 82, Session Laws of Hawaii 2003, to limit liability for public entities based on their duty to warn of dangers on public lands. Across Hawaii, recreationists display their desires to explore the natural wonders and beauty of the islands, whether they find State maintained trails or not. Hikers, hunters, climbers, and other users frequently choose to establish their own networks of trails to access every hidden gem they find across the islands, in both remote and not-so-remote locations. Currently, unclear language creates some confusion as to when and where the State should be liable for warning of dangers upon public land; and when users of “voluntary trails” must be held accountable for their own safety.

The Na Ala Hele trail network welcomes and invites residents and visitors alike to explore the breathtaking, abundant, and awe-inspiring natural beauty of the Hawaiian islands. On these trails, clearly the state has a duty to warn of dangers since the State actively takes responsibility for the safety of these trails by maintaining them and inviting people to use them. However, when individuals choose to establish side trails off of State maintained trails, or entirely new trails apart from existing networks, the State cannot be expected to warn of dangers that it probably doesn't even know about. Since “voluntary trails” are currently considered to be part of “improved public lands” for which the State takes responsibility, the State has the impossible tasks of monitoring trails that have not yet been created and warning of dangers of which they have no knowledge.

The massive \$15 million judgment against the State as a result of Brem, et al. v. State of Hawaii, Civil No. 07-1-0176, Fifth Circuit Court, State of Hawaii should be a sufficient wake-up call to the people of Hawaii. Deficient and ambiguous liability laws need to be bolstered and amended. When people choose to explore dangerous wilderness areas, they must be held accountable for their own decisions and actions.

In the minds of Hawaiian voters, Brem will serve as a landmark settlement which will motivate one of two outcomes: an overprotective 'nanny state' that continues to close down public lands and that is tasked with warning the public about every danger that anyone discovers in the wilderness; or a paradigm shift toward a more reasonable level of personal responsibility for the inherent risks of exploring nature, and a shift away from the overly litigious mentality that has plagued Hawaii as of late. Please pass this bill to ensure the latter outcome and protect the taxpayers of Hawaii from any more catastrophic lawsuits. Thank you for the opportunity to provide this testimony.

Sincerely,  
Rita Ryan

20 FEBRUARY 2013

ATTENTION:

COMMITTEE CHAIR DAVID Y. IGE

AND MEMBERS OF THE COMMITTEE ON WAYS & MEANS

STATE SENATE

HAWAII STATE CAPITOL

415 SOUTH BERETANIA STREET

HONOLULU, HAWAII 96813

RE: SB1007 SD1, RELATING TO PUBLIC LAND LIABILITY

TESTIMONY OF SUPPORT

Dear Committee Chair and Committee Members,

I, Robert M. Anderson, STRONGLY SUPPORT SB1007 SD1, which seeks to amend and clarify 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, and urge its passing during this session of the Hawaii State Legislature.

I have been participating in outdoor activities in our great state of Hawaii for the entire 13 years I have lived here. I hike in our forests, swim in our oceans, and play in our parks on a regular basis, enjoying the wonderful environment and natural beauty of our islands. One of my favorite ways to spend an afternoon is rock climbing at the Mokuleia Crag in Kaena Point State Park. However, this joy and personal liberty has recently been taken away from me and many other outdoor enthusiasts with the closure of this area by the State Department of Land and Natural Resources (DLNR). It is also important to note that this closure not only affects rock climbers, but any and all user groups. So whether one would like to go hiking, rock climbing, paragliding, or pay homage to their ancient Hawaiian relatives anywhere mauka of Farrington Highway past the end of Dillingham Airfield, the iron fist of the DLNR states a resounding "NO!"

Furthermore, this closure was enacted without any sort of public meeting or hearings, and no official statements, notices, or press releases have been dispersed. Park users were simply left to hopefully hear the news through the grapevine, or risk running into an enforcement officer and receiving a costly citation (as several of our climber friends had happen to them). This very draconian action and stance by DLNR is not only terrible public policy, but also a completely unprofessional way to run an official government department. Since the closure, it has been nearly impossible and totally fruitless trying to work with DLNR to get Mokuleia reopened, as



the efforts of our group, the North Shore Neighborhood Board, and other folks have all been met with cold shoulders.

As I have always seen and understood it, the mission of the DLNR is to facilitate the safe and effective usage, as well as the good stewardship, of our treasured environmental resources. Their objective should NOT be to close areas, restrict access, and enforce hefty fines for violations of their unreasonable regulations. The closure of Mokuleia is a dangerous precedent to set in realm of public policy. If the DLNR's actions are allowed to stand, will they then be able to close any and all public lands on a whim, whenever the mood strikes them and they arbitrarily decide a place in "too dangerous for the public?" Already one other location on Oahu, the popular Mariner's Ridge hike, has been inexplicably closed by the DLNR. What public recreation area is next?

I understand that fear of liability is at the root of many of their recent actions, but many of these concerns could be alleviated if there were better liability protection legislation in place. Without comprehensive consideration and passage of liability legislation, the State and its agencies keep the doors open to the public for frivolous, lengthy, and often costly lawsuits. It is because the state legislature has failed to enact adequate protections for the DLNR and other state entities that the DLNR has been driven to such extreme closures and restrictions. I have rock climbed in dozens of other places from Colorado, Utah, and New Mexico, to New Hampshire and Oregon. I've ice climbed in Alaska and even Switzerland. All of these places have found a way to limit liability so that the people of that area can enjoy the natural environment around them. Why has Hawaii not? We have here in the islands an extensive list of liability protection for the State when it comes to waterborne activities, but not for those involving land. We never hear of the families of drowned surfers or divers suing the State for damages, but we annually pay millions of dollars from state coffers to lawsuits from injured hikers and park users. Just recently, we paid \$15.4 million dollars for an accident involving the deaths of two hikers on Kauai. How much could we have done with \$15.4 million to improve our parks, rather than to let it float through the cracks of faulty legislation, never to be seen by the State of Hawaii again? And again, all these closures and wasted money happen simply because the legislature fails to act. This is an issue every single taxpayer and voter in Hawaii has a right to be furious about.

For many, the Mokuleia closure has also had extensive consequences greater than deprivation of outdoor adventure. I, as well as many of my friends and outdoor industry colleagues, have seen a drastic decline in business since the closures began last summer. Several outdoor gear stores, including local entrepreneurships Climb Aloha and SoulTrex, have seen profits drop significantly. Local gas stations, convenience stores, and restaurants such as Cholo's, the Otake Store, Paalaa Kai Bakery, and the Coffee Gallery (all local, homegrown businesses located on the road to Mokuleia) have all surely seen a few dozen less familiar faces

in their shops over the last couple months. I have spoken with several families and individuals who have chosen not to vacation in Hawaii solely because of restricted rock climbing and outdoor recreation access. These people will not be staying in our hotels, shopping in our stores, or even recommending visiting Hawaii to their friends because of the bitter taste left in their mouths by DLNR's actions. All of these lost business profits mean less taxes being paid (taxes that could be used to maintain our parks), compounding and translating to tens, if not hundreds, of thousands of dollars a year in lost income for the State of Hawaii.

It is the hope of myself and the rest of the Hawaii climbing community that the passage of SB1007 SD1 will help lead to the reopening of the Mokuleia Crag for climbing access, and the rest of Kaena State Park to all recreational users. While SB1007 SD1 is not a magical "silver bullet" needed to solve all liability and climbing access concerns, we strongly believe it is a solid step in the right direction. One of the main things SB1007 SD1 can do to help our cause is to release the State of Hawaii from liability on specifically "voluntary" trails, such as those used by climbers. This places the responsibility and burden of liability on individuals, not on the state. There is no way the State, DLNR, or any other entity for that matter would be willing or capable of regulating, signing, and being responsible for an infinite number of voluntary trails. "Voluntary trails" are unable to be documented or maintained almost simply by definition. It only makes sense for the State to want to relinquish responsibility and not be held accountable for the unknown and unpredictable. There is no reason why the State of Hawaii, the DLNR, or any other entity for that matter would want to, or be capable of regulating and micro-managing rock climbing in the islands. The passage of SB1007 SD1 would relieve the State of the burden and responsibility of that additional liability. By limiting liability for the State of Hawaii and closing some of the open doors for frivolous lawsuits from the public, state agencies should be able to relax and lessen some of their restrictions. This is could only be described as a win-win situation for both the State and outdoor enthusiasts. All this will lead to not only better land management practices, but more people being able to safely enjoy all the beautiful natural resources our state has to offer.

For these reasons, I **STRONGLY SUPPORT** SB1007 SD1, and urge its passing during this session of the Hawaii State Legislature. Let it also be known that I support HB777 and HB550, SB1007 SD1's companion legislation in the House of Representatives. Thank you immensely for your time and consideration.

Sincerely,

Robert M. Anderson  
Independent Rock Climber, Outdoor Enthusiast, and Concerned Citizen  
Voting Member of Senate District 18, Vice-Chair Kidani's District

(808) 358-9439

To: Chair Ige, Vice Chair Kidani, and members of the Senate Ways and Means Committee

Re: Senate Bill 1007 decision making by WAM on Friday, February 22<sup>nd</sup> in room 221 at 9:00 AM

From: Sayar Kuchenski

### **Testimony in SUPPORT of SB 1007**

I am writing to support Senate Bill 1007 which clarifies the definition of “improved public lands” under Act 82, Session Laws of Hawaii 2003, to limit liability for public entities based on their duty to warn of dangers on public lands. Across Hawaii, recreationists display their desires to explore the natural wonders and beauty of the islands, whether they find State maintained trails or not. Hikers, hunters, climbers, and other users frequently choose to establish their own networks of trails to access every hidden gem they find across the islands, in both remote and not-so-remote locations. Currently, unclear language creates some confusion as to when and where the State should be liable for warning of dangers upon public land; and when users of “voluntary trails” must be held accountable for their own safety.

The Na Ala Hele trail network welcomes and invites residents and visitors alike to explore the breathtaking, abundant, and awe-inspiring natural beauty of the Hawaiian islands. On these trails, clearly the state has a duty to warn of dangers since the State actively takes responsibility for the safety of these trails by maintaining them and inviting people to use them. However, when individuals choose to establish side trails off of State maintained trails, or entirely new trails apart from existing networks, the State cannot be expected to warn of dangers that it probably doesn't even know about. Since “voluntary trails” are currently considered to be part of “improved public lands” for which the State takes responsibility, the State has the impossible tasks of monitoring trails that have not yet been created and warning of dangers of which they have no knowledge.

The massive \$15 million judgment against the State as a result of *Brem, et al. v. State of Hawaii*, Civil No. 07-1-0176, Fifth Circuit Court, State of Hawaii should be a sufficient wake-up call to the people of Hawaii. Deficient and ambiguous liability laws need to be bolstered and amended. When people choose to explore dangerous wilderness areas, they must be held accountable for their own decisions and actions.

In the minds of Hawaiian voters, *Brem* will serve as a landmark settlement which will motivate one of two outcomes: an overprotective 'nanny state' that continues to close down public lands and that is tasked with warning the public about every danger that anyone discovers in the wilderness; or a paradigm shift toward a more reasonable level of personal responsibility for the inherent risks of exploring nature, and a shift away from the overly litigious mentality that has plagued Hawaii as of late. Please pass this bill to ensure the latter outcome and protect the taxpayers of Hawaii from any more catastrophic lawsuits. Thank you for the opportunity to provide this testimony.

Sincerely,  
Sayar Kuchenski

February 21, 2013  
RE: Testimony in Support of SB1007  
Scott E. Hovey, Jr. Esq.  
1830 Liholiho Street, Apt 608  
Honolulu Hawaii 96822

Dear Sirs:

I support SB1007 which attempts to limit liability to the State of Hawaii when people engage in hazardous recreational activities on State land. The bill strikes the proper balance between negligence and personal responsibility. The bill does not eliminate negligence when the State of Hawaii is remiss and clarifies that when a person engages in dangerous recreational activities on State land that the person is personally responsible for his or her own injury or death.

I must add that hiking and enjoying Hawaii's "back country" has saved my life. I was on a path of morbid obesity and a sedentary life. Hiking was my savior. I set goals to do hikes, like Haiku Stairs, and I worked and walked and hiked until I was physically able to do the hikes I had only dreamed of. Closing off hazardous recreational activities on State lands in some over-bearing nanny state action will only harm our residence and people like me who only want to be healthy.

Scott E. Hovey, Jr. Esq.  
[www.kiapolo.com](http://www.kiapolo.com)

To: Chair Ige, Vice Chair Kidani, and members of the Senate Ways and Means Committee

Re: Senate Bill 1007 decision making by WAM on Friday, February 22<sup>nd</sup> in room 221 at 9:00 AM

From: Sue Donaldson

### **Testimony in SUPPORT of SB 1007**

I am writing to support Senate Bill 1007 which clarifies the definition of “improved public lands” under Act 82, Session Laws of Hawaii 2003, to limit liability for public entities based on their duty to warn of dangers on public lands. Across Hawaii, recreationists display their desires to explore the natural wonders and beauty of the islands, whether they find State maintained trails or not. Hikers, hunters, climbers, and other users frequently choose to establish their own networks of trails to access every hidden gem they find across the islands, in both remote and not-so-remote locations. Currently, unclear language creates some confusion as to when and where the State should be liable for warning of dangers upon public land; and when users of “voluntary trails” must be held accountable for their own safety.

The Na Ala Hele trail network welcomes and invites residents and visitors alike to explore the breathtaking, abundant, and awe-inspiring natural beauty of the Hawaiian islands. On these trails, clearly the state has a duty to warn of dangers since the State actively takes responsibility for the safety of these trails by maintaining them and inviting people to use them. However, when individuals choose to establish side trails off of State maintained trails, or entirely new trails apart from existing networks, the State cannot be expected to warn of dangers that it probably doesn't even know about. Since “voluntary trails” are currently considered to be part of “improved public lands” for which the State takes responsibility, the State has the impossible tasks of monitoring trails that have not yet been created and warning of dangers of which they have no knowledge.

The massive \$15 million judgment against the State as a result of *Brem, et al. v. State of Hawaii*, Civil No. 07-1-0176, Fifth Circuit Court, State of Hawaii should be a sufficient wake-up call to the people of Hawaii. Deficient and ambiguous liability laws need to be bolstered and amended. When people choose to explore dangerous wilderness areas, they must be held accountable for their own decisions and actions.

In the minds of Hawaiian voters, *Brem* will serve as a landmark settlement which will motivate one of two outcomes: an overprotective 'nanny state' that continues to close down public lands and that is tasked with warning the public about every danger that anyone discovers in the wilderness; or a paradigm shift toward a more reasonable level of personal responsibility for the inherent risks of exploring nature, and a shift away from the overly litigious mentality that has plagued Hawaii as of late. Please pass this bill to ensure the latter outcome and protect the taxpayers of Hawaii from any more catastrophic lawsuits. Thank you for the opportunity to provide this testimony.

Sincerely,

Sue Donaldson  
Honolulu, HI 96815

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [WAM Testimony](#)  
**Cc:** [taborn@my.hpu.edu](mailto:taborn@my.hpu.edu)  
**Subject:** Submitted testimony for SB1007 on Feb 22, 2013 09:00AM  
**Date:** Wednesday, February 20, 2013 11:55:17 PM

---

SB1007

Submitted on: 2/20/2013

Testimony for WAM on Feb 22, 2013 09:00AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Travis Aborn	Individual	Support	No

Comments: I believe it is important to preserve Hawaii's beauty by encouraging outdoor sports. When people surf, hike, swim, bird watch, they hopefully gain a respect for Hawaii and may become more conscious in protecting the islands. Rock climbing is a sport that brings the community together and often encourages people to take care of the land. I hope that whoever reads this will understand that we who rock climb love these islands and want to continue to do what we are passionate about. Rock climbing for many of us is a lifestyle, so I ask that you do not deprive us of such enjoyment. Mahalo! Travis

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)