SB 1007

SB1007

Measure Title:	RELATING TO PUBLIC LAND LIABILITY.
Report Title:	Public Land Liability
Description:	Amends 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.
Companion:	HB777
Package:	Gov
Current Referral:	WTL/PSM/JDL, WAM
Introducer(s):	KIM (Introduced by request of another party)

Sort by Date		Status Text
1/24/2013	S	Introduced.
1/24/2013	S	Passed First Reading.
1/24/2013	S	Referred to WTL/PSM/JDL, WAM.
2/1/2013	S	The committee(s) on WTL/PSM/JDL has scheduled a public hearing on 02-05-13 1:35PM in conference room 225.

S = Senate | **H** = House | **D** = Data Systems | **$** = Appropriation measure | **ConAm** = Constitutional Amendment
Some of the above items require Adobe Acrobat Reader. Please visit Adobe's download page for detailed instructions.

NEIL ABERCROMBIE
GOVERNOR OF HAWAII

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

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

Testimony of
WILLIAM J. AILA, JR.
Chairperson

Before the Senate Committees on
WATER AND LAND
and
PUBLIC SAFETY, INTERGOVERNMENTAL AND MILITARY AFFAIRS,
and
JUDICIARY AND LABOR

Tuesday, February 5, 2013
1:35 PM
State Capitol, Conference Room 225

In consideration of
SENATE BILL 1007
RELATING TO PUBLIC LAND LIABILITY

Senate Bill 1007 proposes to amend Act 82, Session Laws of Hawaii (SLH) 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.**

Act 82, SLH 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 Administrative measure, as 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.

TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SEVENTH LEGISLATURE, 2013

ON THE FOLLOWING MEASURE:
S.B. NO. 1007, RELATING TO PUBLIC LAND LIABILITY.

BEFORE THE: Senate
SENATE COMMITTEES ON WATER AND LAND; PUBLIC SAFETY, INTERGOVERNMENTAL AND MILITARY AFFAIRS; JUDICIARY AND LABOR

DATE: Tuesday, February 5, 2013 **TIME:** 1:35 p.m.

LOCATION: State Capitol, Room 225

TESTIFIER(S): David M. Louie, Attorney General, or
Robin Kishi, Deputy Attorney General

Chairs Solomon, Espero and Hee and Members of the Committees:

The Department of the Attorney General strongly supports this bill.

The purpose of this bill is to clarify that the definition of the term "improved public lands" in Act 82, Session Laws of Hawaii 2003, as amended will ensure that the intent of the legislature to limit the liability of the State, as well as to preserve the natural beauty of the parks for the use and enjoyment of the public, is carried out. This bill is identical to H.B. No. 2462, which the Department of the Attorney General proposed during the 2012 legislative session.

Act 82 establishes a process by which certain areas located on improved state and county properties are identified and evaluated for hazards and risks of injury or death. The Board of Land and Natural Resources (Board) then decides whether to post warning signs at those sites and, if they choose to do so, the Board selects site and hazard appropriate signs for posting, as well as locations for where those signs should be posted. Thereafter, the State is afforded the legal presumption of having provided adequate warning to people who enter those sites.

Act 82 declared that a governmental entity has no duty to warn of dangerous natural conditions on unimproved state of county property.

Section 184-6, Hawaii Revised Statutes (HRS), mandates the Department of Land and Natural Resources (DLNR) to preserve the parks and parkways in the state park system in their natural condition to retain their natural scenic, historic, and wildlife values for the use and enjoyment of the public. To that end, the vast majority of the park system is left in its scenic and natural condition, along with its multitude of inherent but natural hazards and risks of injury or death.

At present, "improved public lands" includes the entire state park system. The park system includes 33,857 acres of land, only a very small percentage (approximately 2 percent) of which is actually developed by or maintained by the State.

Unfortunately, when members of the public access state parks, they do not restrict their access to those areas which are developed or maintained by the State, such as the official statewide trail system. In fact, more often than not, local residents as well as visitors stray far from those areas that can be effectively monitored and maintained by park staff, and many of them need to be extricated by county rescue personnel when they become lost or injured.

In addition, local residents and visitors continue to create "voluntary trails" (also known as "social trails") by continued use of a multitude of locations within the park system. The public continues to create new "voluntary trails" at so many locations that park staff cannot regularly discover and identify them.

The decision in a recent lawsuit against the State brought to light the deficiency in the original definition of "improved public lands." In Brem, et al. v. State of Hawaii, Civil No. 07-1-0176, Fifth Circuit Court, State of Hawaii, the Court found the State 100 percent at fault for the deaths of two tourists who attempted to climb down to the waterfall at Opaekaa Falls on Kauai. At the site there is a "voluntary trail" to the left that local residents and visitors have created and used for many years to climb to the bottom of the falls. The tourists went toward an area where park staff and other witnesses stated they themselves would not have ventured. The tourists went beyond the end of what had been described as a "pig trail" or the beginning of a "voluntary trial" that ended at a steep slope that was open and obvious. That "trail" to the right may have existed at the site for just a few months before the accident. In 2012 the case settled in the amount of $15,425,000.00, just short of $5,460,000.00 of which was funded by the State, and the remaining nearly $10,000,000.00, funded by the State's excess insurance carrier.

If the proposed language had been a part of Act 82 at the time of the Brem accident, the State would have been protected from the acts of those who created the "voluntary trail" as well as from those who voluntarily assumed the risks of taking that trail. In addition, this legislative body can be certain that the $5,000,000 in general funds used to settle the case could have been better spent by DLNR. This body can also be certain that the State will be paying considerably

higher premiums for the excess insurance coverage for years to come, as the result of the settlement in Brem.

Since the accident described above, the Board has closed off this site. Although signs have been posted notifying the public of the closure, local residents and visitors still access the site. The installation of fencing at this site is not feasible.

It is impossible for the park staff to monitor all 33,857 acres within its park system. Although DLNR has for many years made available to the public its official statewide trail maps and brochures that contain warnings regarding a variety of hazardous conditions, through publication as well as through its website, it is impossible for the park staff to force the public to exercise reasonable care for their own safety.

It is not possible to identify, nor feasible to fence off from public access, each and every inherently dangerous natural condition within the park system. Because it is not desirable to do so, the public will continue to gain access throughout the park system, and continue to create "voluntary trails" near waterfalls, ledges, and other natural sites that offer scenic or adventurous experiences, but which also present hazardous conditions. Because local residents and visitors will continue to access the park system, injuries, or worse, are inevitable. In fact, since the Brem settlement, just last summer alone, there were a number of incidents statewide in which hikers strayed from the official trails, fell, sustained serious injuries and had to be rescued.

The State will continue to be sued for injuries or deaths that occur at such sites. One-by-one, the Board will continue to post warnings signs at each site and close or fence off such sites where feasible. Some of these sites may have native cultural significance, and be used by locals as traditional bathing, fishing and gathering sites. Eventually, there will be little left of the "natural scenic, historic and wildlife values (of the park system) for the use and enjoyment of the public" that the State was mandated to preserve under section 184-6, HRS.

This bill amends Act 82 in order to better achieve the legislative intent that the State be able to balance its interests in posting warnings at developed and maintained locations where it expects public access against the competing interest of preserving access to the natural beauty of the undeveloped areas of the park system by limiting the State's liability consistent therewith.

We respectfully and strongly request that this bill be passed.

DEPARTMENT OF THE CORPORATION COUNSEL
CITY AND COUNTY OF HONOLULU
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KIRK CALDWELL
MAYOR

DIANE T. KAWAUCHI
ACTING CORPORATION COUNSEL

February 4, 2013

The Honorable Malama Solomon, Chair
and Members of the Committee on Water and Land
The Honorable Will Espero, Chair
and Members of the Committee on Public Safety,
Intergovernmental and Military Affairs
The Honorable Clayton Hee, Chair
and Members of the Committee on Judiciary and Labor
State Senate
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Solomon, Chair Espero, Chair Hee and Committee Members:

Subject: Senate Bill 1007, Relating to Public Land Liability

The City and County of Honolulu ("City") supports S.B. 1007 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 are unimproved and not maintained. Passage of S.B. 1007 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. S.B. 1007 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 S.B. 1007 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 counties, 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 falling within 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 S.B. 1007 to delete the foregoing language would correct the general misconception that public beach parks fall within the 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 S.B. 1007 to include the foregoing revision and passing S.B. 1007.

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

Very truly yours,

Diane T. Kawauchi

DIANE T. KAWAUCHI
Acting Corporation Counsel

DTK:ey

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

Date: Tuesday, February 5, 2013
Time: 1:35 pm

To: Chairperson Malama Solomon, Chairman Wil Espero, and Chairman Clayton Hee and Members of the Senate Committees on Water & Land, Public Safety, Intergovernmental and Military Affairs and Judiciary and Labor:

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, 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 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.

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 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.

February 4, 2013

Dear Committee Members,

I am writing in support of SB 1007, 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 SB 1007, 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.

Given that Sect 520 dealing with landowner liability currently does not protect the state from possible lawsuits, and given that the state recently had to pay over $15 million to the family of a hiker who fell off on an unofficial trail while hiking on Kauai, we hope the committee will recognize the need for this legislation.

Sincerely,

Debora Halbert

February 3, 2013

To: Honorable Chairs and Members of the Senate Water and Land Committee, Public Safety, Intergovernmental and Military Affairs Committee and the Committee on Judiciary and Labor

From: Deborah Chang, Hawai`i Island Resident

Subject: Support of SB 1007 “Relating to Public Land Liability”

I ask for your support of SB 1007, which amends and clarifies the definition of “improved public lands” in Act 82 (SLH 2003), an important law which has been amended several times and is due to sunset in June 2014 (Act 81- SLH 2009).

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 venture on public lands that are not being maintained, inspected, posted, or monitored for hazardous conditions.

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.

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 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, the State or county should not bear the same level of liability and duty to warn of hazards on closed trails, as they do for improved trails.

Act 82 (SLH 2003)and its amendments offer significant liability protections of public landowners that are long overdue. Chapter 520, HRS, Hawai`i’s Recreational Use Statute, provides liability protection to private landowners and has been law since 1969. Forty-four years later, isn’t it about time we similarly protect public landowners?

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 are 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

To: Committee Members

From: Eva Bosch RN, Individual Rock Climber

Hearing: February 5, 2013, 1:35pm Conference Room 225

RE: SB1007

Dear Committee Members,

As an avid rock climber and outdoor adventurer, I am writing this letter in support of the passage of SB1007, which defines improved public lands and limits liability for our 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. 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."

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.

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

From: mailinglist@capitol.hawaii.gov
To: WTLTestimony
Cc: jmui99@yahoo.com
Subject: Submitted testimony for SB1007 on Feb 5, 2013 13:35PM
Date: Monday, February 04, 2013 1:36:29 PM

SB1007
Submitted on: 2/4/2013
Testimony for WTL/PSM/JDL on Feb 5, 2013 13:35PM in Conference Room 225

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

Comments: I support SB1007. It is important to 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. This will ensure that there will be no ambiguity when it comes to any issues that arise on public lands. In conjunction with SB1167 and SB1168, this bill will enable the State to limit their liability for activities like rock climbing and rappelling. The climbing community in Hawaii has grown enormously over the past couple of years, and will only continue to grow. Closing all access to mountains will not be a solution. The only solution is for the State to start passing legislation that will limit their liability. Such legislation would enable residents and visitors to receive fair warning with signage, after which we would engage in climbing and rappelling at our own risk.

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

To: Committee on Water and Land

From: Kitt Turner

Hearing: February 05, 2013, 1:35 PM Conference Room 225

RE: SB 1007

Dear Committee on Water and Land,

As an avid hiker and rock climber, I support the passage of SB 1007. 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 SB 1007.

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

Co-Chairs Senator Malama Solomon, Senator Will Espero, and Senator Clayton Hee; and the members of the joint Senate committees on Water and Land (WTL); Public Safety, Intergovernmental, and Military Affairs (PSM); and Judiciary and Labor (JDL).

Testimony of Michael Bishop (Haleiwa resident and constituent of Senator Hee)
in SUPPORT of SB 1007.
Tuesday, February 5th at 1:35 PM in conference room 225

First, I'd like to thank co-chairs Solomon, Espero, and Hee as well as 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 sb 1007 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 (Haleiwa resident and constituent of Senator Hee)

February 4, 2012 Testimony in Support of SB1007

submitted by:
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As a resident and registered voter 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 concerns of DLNR over fear of liability that could occur as a result of someone getting injured while rock climbing or through some similarly hazardous recreational activity on State lands. In 2012, DLNR closed all rock climbing areas on Oahu out of fear of liability. Besides my desire to be able to rock climb again on Oahu and share my love of this sport with friends and my two young sons, I am alarmed about the possibility of DLNR closing additional public trails or other recreation sites because our liability laws are not up to date with other States, and in fact have not been updated since 1969.

Concerning this Bill:
As I see it, the purpose of **SB1007** 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 request that everyone 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?

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 trial 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 on non-beach and ocean public lands?

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? For example, consider that hiking blogs as of February 2013 indicate that people are still hiking down to Opaekaa Falls. Is DLNR to monitor this site 24/7 to keep people from entering the area?

6. Lastly, to counter some of the arguments of Consumer Lawyers Hawaii in their opposition for sensible liability legislation:

-Many voluntary trails and recreational sites are not remote; indeed many voluntary trails are located within the boundaries of State parks and with Honolulu's urban core and they are **constantly** changing.

-In evaluating whether to ride an elevator or cross a highway bridge in one's car, one would need to be a structural and or mechanical engineer to properly assess their safety. Furthermore, we (the people) must rely on the safety of our everyday infrastructure and we often have no choice in the matter whether to use or not use this infrastructure. In deciding to hike down to a waterfall, it is a personal choice and not a requirement, and it does not require an engineering degree to gauge the safety of such an endeavor. Why would we require that DLNR be responsible for making that decision for us? What is the incentive for DLNR to keep any park or any public land open if they are also responsible for telling everyone what is safe and what is not?

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 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 **SB1007** and related bills.

February 4, 2013

To: Committee Members

From: Sayar Kuchenski, Resident Group

Hearing: Feb 5, 2013 1:35 PM Conference Room 225

Sub: SB1007

Dear Committee Members,

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