

SB 1167

RELATING TO LIMITED LIABILITY FOR MOUNTAIN CLIMBING, ROCK CLIMBING, RAPPELLING, AND BOULDERING ON GOVERNMENT LAND

Clarifies that no public entity or public employee shall be liable to any person for injury or damage sustained on government land when engaged in mountain climbing, rock climbing, rappelling, and bouldering.

WTL/JDL, WAM

the climb, the more attractive it likely becomes to climbing enthusiasts. However, as evidenced by the testimony of the climbing community, they are willing to assume the risk of any dangers inherent in these activities.

The solution is not to close off sites, prohibit access, and impose fines when the public access a prohibited area, but there may not be much choice if the State can be sued for every injury that occurs as a result of these climbing activities. Rather, this bill limits the State's unfettered liability for injuries and accidents that it cannot control or prevent and relies on the willing members of the climbing community to exercise personal responsibility and to assume the risk of what they know to be an inherently dangerous activity.

However, the House Committee on Water and Land has recommended the passage of H.B. No. 625, H.D. 1, which would meet the same goals of S.B. No. 1167, S.B. No. 1168, and S.B. No. 1286 in one bill. Therefore, we request that this bill be amended to contain the same language of H.B. No. 625, H.D. 1.



SB1166
RELATING TO THE CONVEYANCE TAX
Senate Committee on Water and Land
Senate Committee on Energy and Environment

February 5, 2013

1:20 p.m.

Room 225

The Office of Hawaiian Affairs' **SUPPORTS** SB1166, which seeks to increase revenues for the Natural Area Reserves Fund to protect and restore watershed areas for the benefit of Hawai'i's natural areas and future water supply.

Fresh water is unquestionably one of Hawai'i's most valuable resources. The importance of fresh water to Hawai'i and its people is reflected in the 'ōlelo no'eau, "Ola i ka Wai (Water is Life)." Accordingly, traditional water sharing and management practices reflected the critical nature of fresh water to these islands and helped to ensure sufficient fresh water for food production, drinking, and other domestic uses, as well as numerous ecological services. Fortunately, despite the disruption of these traditional practices and many mauka-to-makai surface water resources, the discovery and utilization of Hawai'i's groundwater aquifer system has continued to bless its residents with potable fresh water of the highest quality.

Unfortunately, our ever-growing agricultural and municipal water needs and practices, coupled with development- and climate-based impacts to the recharge rate of our groundwater aquifers, have begun to raise the possibility of fresh water shortfalls for many regions within these islands. The possibility for fresh water shortfalls is substantial in the very near future and probable in the long-term. The consequences and costs of such shortfalls counsel critical and timely examination of our water use and watershed conservation practices.

This bill will accordingly provide necessary funding to further the efforts of the Department of Land & Natural Resources to explore, develop, and implement short- and long-term plans to ensure the continued sustainability of our islands' precious and ever-more limited groundwater resources. The conveyance tax increases that will support these necessary investments will also only affect real estate transactions involving properties with values greater than \$2 million, ensuring that these added investments involve only those entities who have already obtained the most value from the resources of our islands.

Therefore, OHA urges the committees to **SUPPORT** SB1166. Mahalo for the opportunity to testify on this important matter.



**Testimony of the Hawaii Green Growth Initiative
In Support of HB 935/SB 1136 Relating to Environmental Protection**

**Senate Committee on Water and Land
Senate Committee on Energy and Environment**

5 February 2013, 1:20pm
Conference Room 225

Audrey Newman
Hawaii Green Growth Initiative
P.O. Box 535
Hoolehua, Hawai'i 96729

Aloha:

I am writing on behalf of the Hawaii Green Growth Initiative (HGG) in support of **HB 935/SB 1136 to provide critical funding for watershed protection and invasive species management through a strategic increase in the real estate conveyance tax**. HGG brings leaders from the energy, food and environmental sectors together to achieve Hawaii's sustainability goals and to be a model for building a green economy. HGG's members include more than 40 leaders from government, private, and non-profit organizations in Hawai'i.

HGG asks you to support HB 935/SB 1136 because it creates an innovative funding source to expand protection of Hawaii's watersheds and water supply, and to address our most pressing invasive pest species.

HGG recognizes the critical importance of Hawaii's watersheds and water supply to the long-term sustainability of our island economy, culture and environment. Watershed protection and restoration paired with invasive species removal significantly increases water availability by ensuring that our forests function to effectively absorb rain, deliver it into streams and aquifers, and decrease erosion and siltation, which also benefits our reefs and fisheries. Healthy watersheds also help to mitigate climate change and assist in the Hawaii Clean Energy Initiative's target by absorbing greenhouse gases.

The real estate conveyance tax provides an appropriate source for funding: the development and sale of real estate is driver of Hawaii's economy, but also strains our natural resources, including water supplies. Allocation of conveyance tax revenue to the Natural Areas Reserve Fund would increase much needed support for watershed protection though critical forest management programs, invasive species control, land acquisition, and other conservation programs.

We ask for your strong support of this bill. Protecting Hawaii's watersheds is the most cost-effective way to protect Hawaii's fresh water supply - this water is essential for Hawaii's residents, agriculture, environment, and energy (with the emerging potential for investment in biofuels). Implementation of this bill is an important investment in Hawaii's future.

As a partnership representing Hawaii's leaders in environment, food and energy, HGG asks for your support of HB 935/SB 1136. Mahalo nui for your time and consideration,

A handwritten signature in black ink that reads "Audrey Newman". The signature is fluid and cursive, written in a professional style.

Audrey Newman
Senior Advisor, Global Island Partnership (GLISPA)
Promoting action for island conservation and sustainable livelihoods. www.glispa.org

TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE HAWAII ASSOCIATION FOR JUSTICE (HAJ) IN OPPOSITION TO S.B. NO. 1167

Date: Tuesday, February 5, 2013

Time: 1:15 pm

To: Chairperson Malama Solomon and Chairman Clayton Hee and Members of the Senate Committee on Water and Land and the Senate Committee on 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. 1167, Relating to Limited Liability For Mountain Climbing, Rock Climbing, Rappelling, and Bouldering on Government Land.

Chapter 520, known as the Recreational Use law, grants private landowners limited liability from injuries and deaths that occur on private property if they open their lands to the public for recreational use at no charge. The purpose of the recreational use law is to encourage private landowners to open private lands to the public that would otherwise be unavailable for public use. It does not apply to government lands because public land is already open to the public and the additional incentive offered by the recreational use law is not needed.

The provision in this bill creates a direct conflict within HRS Chapter 520. The recreational use exception was created to offset the loss of private property rights relinquished when landowners agree to open their property to the general public at no charge. It is a different story with government.

Sound public policy requires that all landowners, private and governmental, exercise reasonable care in maintaining their property in a safe condition for those

reasonably expected to be on the property for the safety of the general public because maintaining public lands for public use is a core governmental function.

It appears that the concern of the state and other government entities regarding the activities set forth in this bill is not warranted. If the government knows that government land is being used for these activities, especially if the land is part of a state or county park, it clearly has a duty to keep the property safe and/or put up proper warning signs. As we have stated before, government already has protection by various legislation previously enacted.

The other issue is that this bill is very broad in its scope and would apply to all government lands whether improved or unimproved, whether it is a state park or not, and provides for absolute immunity.

Further, there is a misconception that the state and counties must keep ALL unimproved lands safe and that it would be held liable if someone is injured on such unimproved land that is located in remote unmanaged areas.

Thank you very much for allowing me to testify in OPPOSITION to this measure. Please feel free to contact me should you have any questions or desire additional information.



Testimony to the Senate Committees on Water and Land, and Energy and Environment
Tuesday, February 5, 2013
1:20 p.m.
State Capitol - Conference Room 225

RE: SENATE BILL NO. 1166, RELATING TO CONVEYANCE TAX

Chairs Solomon and Gabbard and Vice Chairs Shimabukuro and Ruderman, and members of the committees:

The Chamber of Commerce of Hawaii **opposes S.B. No. 1166**. The bill proposes to increase the Conveyance Tax on certain real estate transactions and to direct an additional ten per cent of Conveyance Tax proceeds to the Natural Area Reserve Fund for watershed protection and invasive species control.

The Chamber is the largest business organization in Hawaii, representing more than 1,000 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of its members, which employ more than 200,000 individuals, to improve the state's economic climate and to foster positive action on issues of common concern.

We are deeply troubled by the manner in which the Conveyance Tax has been and is being applied. There is no rational nexus between the real estate transactions that are being taxed at the time of its sale, and the uses identified in HRS 247 as the beneficiaries of the tax.

The Conveyance Tax was created to cover the administrative costs of recording the real estate transactions, such as those performed by the Bureau of Conveyance. With the recent amendments to the statutes, a portion of the conveyance tax is deposited into the general fund after certain percentages have been allocated into the following funds:

1. Land Conservation Fund;
2. Rental Housing Trust Fund; and
3. Natural Area Reserve Fund, which includes funding of the following programs:
 - a. Natural Area Partnership and Forest Stewardship Programs;
 - b. Projects undertaken in accordance with:
 - i. Watershed management plans; or,
 - ii. Watershed management plans negotiated with private landowners; and,
 - iii. Management of the natural area reserves system;
 - c. The youth conservation corps.

We do not believe that the funds generated from the conveyance (sale or transfer of real estate) should be used to fund natural resource management programs and the rental housing trust fund. We understand that raising the conveyance tax is a convenient way to generate additional funds because it is difficult if not impossible to organize a group of future buyers/sellers of property, and, more importantly, the beneficiaries of these conveyance tax increases have lobbied the legislature effectively to fund these worthwhile programs.

While we strongly support the various programs receiving funding from the revenues generated by the Conveyance Tax, we do not believe that the conveyance tax is the appropriate means to fund these programs. The proposed bill only exacerbates the current problem. We suggest that these beneficiaries be funded from other means more closely related to their purposes.

Thank you for the opportunity to express our views on this matter.

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

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

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

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

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

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

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

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

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

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

To: Committee on Water and Land

From: Eric Phillips, individual rock climber

Hearing: February 5th, 2013, 1:15 PM Conference Room 225

RE: SB1167 & SB1168

Dear Committee on Water and Land,

As an avid rock climber and outdoor adventurer, **I STRONGLY SUPPORT the passage of SB1007 and SB1008**, which limits liability for state and country employees for rock climbing, mountaineering, bouldering, and rappelling on state lands.

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.

Many people think of rock climbing as a sport that encourages reckless behavior in the mountains that leads to very frequent injury and death. This is a huge misconception propagated by hollywood that almost exclusively shows rock climbers "free soloing" (that is, climbing without a rope or safety equipment) in movies and television (see "Vertical Limit", "Cliffhanger" etc). The truth is, a vast majority of climbers are extremely obsessed with safety. If you look up "rock climbing gear" on an internet search, you will find a plethora of very specific equipment with extremely high safety tolerance. Climbers know the importance of this equipment and spend nearly as much of their free time endeavoring to better understand it as they do actually climbing.

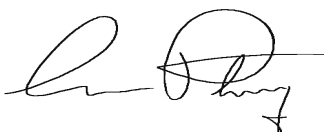
Beyond individual safety gear, climbers look out for each other. They always climb in pairs so the person on the ground can manage the rope for the person climbing (also known as belaying). Climbers will also check each other's equipment before **each** climb so as not to become complacent and assume everything is worn correctly. Likewise, the climbing community collectively volunteers hundreds of hours each year to keep climbing areas safe (by installing unobtrusive protection into the cliff), clean (by packing out trash and organizing clean up days at areas that receive high traffic such as trailheads and beachside cliffs) and enjoyable for everyone.

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-renowned 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.

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,



To: Committee Members

From: Eva Bosch RN, individual rock climber

Hearing: February 5, 2013, 1:15pm Conference Room 225

RE: SB1167

Dear Committee on Water and Land,

As an avid rock climber and outdoor adventurer, I am writing this letter in support of the passage of SB1167, which limits liability of rockclimbing, mountain climbing, bouldering and rappelling 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 of interest in keeping it written as is due to monetary incentives.

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

unencumbered state lands.

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: [Gil Riviere](#)
To: [WTLTestimony](#)
Subject: Strong Support SB1167 and SB1168
Date: Monday, February 04, 2013 9:49:15 AM

Aloha, Senator Solomon and committee members.

I STRONGLY SUPPORT SB1167 and SB1168.

I was the State Representative for Kaena last year when a child on a YMCA outing was struck by a falling rock. Since that unfortunate incident, the state has strictly prohibited all rock climbing activities in the area. Month after month, I was told by DLNR that rules were being developed and that a public meeting would be scheduled on the North Shore to gather feedback. This process did not occur, presumably because of legal considerations.

Once upon a time, children fell off see-saws and nobody thought about suing. Rock climbers understand the risks of what they are doing. The state should not be liable every time somebody engages in an activity that has obvious risk of injury. These measures restore some common sense.

Please pass SB1167 and SB1168

Respectfully,

Gil Riviere
Waialua, HI 96791

From: mailinglist@capitol.hawaii.gov
To: [WTLTestimony](#)
Cc: climber.webb@gmail.com
Subject: Submitted testimony for SB1167 on Feb 5, 2013 13:15PM
Date: Monday, February 04, 2013 1:45:41 PM

SB1167

Submitted on: 2/4/2013

Testimony for WTL/JDL on Feb 5, 2013 13:15PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Hunter Webb	Individual	Support	No

Comments: I believe that climbing has become its own culture. We must embrace this. Seeing as Hawaii is such a beautiful place to climb, it is only fair to allow it. Climbing has kept me out of drugs, alcohol, and a whole lot of trouble. I only want the same for the kids of Hawaii. Let us climb!

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.

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From: mailinglist@capitol.hawaii.gov
To: [WTLTestimony](#)
Cc: mendezj@hawaii.edu
Subject: *Submitted testimony for SB1167 on Feb 5, 2013 13:15PM*
Date: Friday, February 01, 2013 1:50:03 PM

SB1167

Submitted on: 2/1/2013

Testimony for WTL/JDL on Feb 5, 2013 13:15PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Javier Mendez-Alvarez	Individual	Support	No

Comments:

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From: mailinglist@capitol.hawaii.gov
To: [WTLTestimony](#)
Cc: jeffengel@wynedge.com
Subject: *Submitted testimony for SB1167 on Feb 5, 2013 13:15PM*
Date: Monday, February 04, 2013 12:40:59 PM

SB1167

Submitted on: 2/4/2013

Testimony for WTL/JDL on Feb 5, 2013 13:15PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Jeff Engel	Individual	Support	No

Comments:

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From: mailinglist@capitol.hawaii.gov
To: [WTLTestimony](#)
Cc: jmui99@yahoo.com
Subject: Submitted testimony for SB1167 on Feb 5, 2013 13:15PM
Date: Monday, February 04, 2013 1:23:05 PM

SB1167

Submitted on: 2/4/2013

Testimony for WTL/JDL on Feb 5, 2013 13:15PM in Conference Room 225

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

Comments: I support SB1167. As a rock climber who has climbed in Hawaii, I know that the climbing community there has always put safety first. We know and understand the risks, and we also accept the responsibilities. Closing down rock climbing areas will not solve any liability issues. This bill would allow the State to limit liability, and thus re-open the land for recreational activities. Please understand that if you do not pass these bills, not only will you be harming an ever-growing population of outdoor enthusiasts on the island, you would also be discouraging visitors who go to Hawaii to enjoy the hikes and climbing areas. Personally, if these bills are not passed, it is likely I will instead vacation in other states where I can enjoy the mountains.

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February 1, 2013

I, John C. Miller of Honolulu Hawaii for the last 10+ years am in support of this bill. I have been an avid hiker for many years and a recent rock climber until the closure of the climbing routes. I can't imagine Hawaii without trails to run on, walls to climb or mountains to hike. Please pass this bill today and end the long delays the climbing community here in Oahu have had to endure. I feel the state's delays in acting on this sooner have been unfair to the climbing community and the businesses, employees and families that rely on the income from the sports.

Sincerely,

A handwritten signature in cursive script that reads "John C. Miller". The ink is black and the signature is fluid and legible.

John C. Miller

7115 Kukii Street, Honolulu, HI 96825

Testimony in Support of SB1167
Hearing Date: February 5, 2013

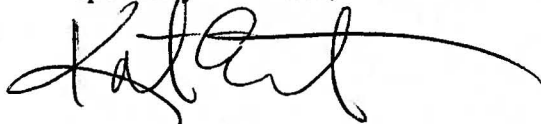
Thank you Chair Solomon, Chair Hee and members of the committees on Water and Land and Judiciary and Labor for scheduling the hearing of this bill.

I am in **strong support of SB1167** "Relating to Limited Liability for Mountain Climbing, Rock Climbing, Rappelling, and Bouldering on Government Land." Unfortunately, the State is frequently cited for accidents and/or injuries that occur on government land. This has historically led to closures and restricted access to areas that were once open for recreational use. By freeing the State from liability, this piece of legislation can help mitigate future closures and arguably foster a better relationship between the State and members of the climbing community.

Climbers are well aware of the risks they undertake when engaging in these types of activities. The State and any other government entity should not be held responsible for the risks assumed by those who freely choose to recreate outdoors.

There are a number of bills related to rock climbing and liability that were introduced this year, which articulates the need to enact legislation that will prompt solutions rather than create burdens for the State. This bill offers up a solution to a recurring problem. I hope you will listen to mana'o of the climbing community and make the right choice. Please support SB1167.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Katie C. Ersbak', with a long horizontal flourish extending to the right.

Katie C. Ersbak
Senate District 10

I, Keith Okuna, SUPPORT SB1167. Climbing is a fantastic, safe hobby that should be available to anyone who wants to learn it. It is not fair or reasonable to outlaw climbing, and I am in full support of any bill that serves to make climbing legal and accessible.

Sincerely,
Keith Okuna

From: mailinglist@capitol.hawaii.gov
To: [WTLTestimony](#)
Cc: Stardustsparklin@gmail.com
Subject: Submitted testimony for SB1167 on Feb 5, 2013 13:15PM
Date: Monday, February 04, 2013 11:08:22 AM

SB1167

Submitted on: 2/4/2013

Testimony for WTL/JDL on Feb 5, 2013 13:15PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Kevin Nesnow	Individual	Support	Yes

Comments: SUPPORT SB1167 I'm writing in support of SB1167. This bill is an important step to ensuring access to public lands for recreational use and for protecting the State from unnecessary and unjust litigation. As an avid outdoor enthusiast, rock climber, and concerned citizen I'm appalled our State government has not yet acted on measures to protect our access to the great outdoors and protect us as taxpayers from unethical litigation. We are the people and we deserve access to our public lands without fear of prosecution or litigation. The State is not responsible for protecting its people from every known danger. Restricting access to trails and mountains in an attempt to protect us from all potential and natural threats is asinine. Moreover, the State is incapable of doing so anyway. This bill is an important step to protecting our access to public lands for recreational use and protecting us as citizens from unrighteousness litigation. Mahalo, ~ Kevin Nesnow

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To: Committee on Water and Land

From: Kitt Turner

Hearing: February 05, 2013, 1:15 PM Conference Room 225

RE: SB 1167

Dear Committee on Water and Land,

As someone who has experienced the joy of rock climbing for many years, I STRONGLY SUPPORT the passage of SB 1167. This legislation will help reduce the states liability pertaining to rock climbing related injuries sustained on state land. The passage of the legislation will help to reopen safe rock climbing areas for everyone to enjoy.

As an avid climber I understand that I must assume risk for my own welfare when engaging in potentially hazardous recreational activity. The climbing community on Oahu is quite large, and for many of us a way of life. We have unfortunately seen the closure of our most beloved climbing areas due to liability concerns, and it is in best interest of everyone to pass SB 1167.

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

This bill is important to allow access to those of us who participate in climbing, bouldering, canyoneering, etc. These are outstanding pioneer markets for eco-tourism and a great low impact way to add value to our natural resources. There are climbers and outdoor enthusiasts all over the world who would support our natural resources if they were allowed to enjoy them.

Additionally, there is a strong history of climbing in Hawaiian culture. The phrase "Kau i uka o Nihoa" or "climbing the cliffs of Nihoa" has long been a term for overcoming adversity. Climbing the cliffs of Nihoa was also one of the trials faced by practitioners of Lua, the Hawaiian fighting art. Climbing on Lanai, climbing author John Long found an altar placed on the top of a spire which was so hard he couldn't climb it, yet Hawaiians had free soloed it carrying enough rock to build the altar!

Climbing has a rich history in Hawaii and we, the climbing community would like to continue that tradition.

Co-Chairs Senator Malama Solomon & Senator Clayton Hee, and the members of the joint WTL (Water and Land) & JDL (Judiciary and Labor) committees.
Tuesday, February 5th WTL/JDL hearing at 1:15 PM in room 225.

Testimony of Michael Bishop (Haleiwa resident and constituent of Senator Hee)
in SUPPORT of SB 1167

First, I would like to thank Co-Chairs Solomon and Hee, and the members of this joint committee for the opportunity to present this testimony. It is a matter of great importance to the very frustrated and disenfranchised, but optimistic rock climbing community of Oahu.

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 closed down public hiking and climbing areas. Oversight of all the possible locations for these activities isn't even remotely possible – the only feasible option is to allow climbers to take responsibility for their own actions, just as big wave surfers do. This bill will provide the climbing community with the same reasonable opportunities for recreation that surfers currently have.

Mr. Toyofuku will present the case that the state already has protection for these types of activities under act 82, but too much gray area remains. He has spoken out against broad scope liability reduction measures by testifying against hb 625, stating that specific cases require statutory exemptions; such as in the cases of skateparks, beaches, and areas containing unexploded ordinance. However, he also spoke out against hb 936, (the companion to sb 1167) which specifically addressed rock climbing liability, by asserting that the state already has protection in some circumstances. The intent of his testimony appears to be to ensure that the state has NO liability protection in general or specific cases. If the state already has protection, there should be no opposition to clarifying exactly what it is - so that there is no gray area or uncertainty which leads to area closures.

Mr Toyofuku has also mentioned in public testimony (against hb937) that proponents of liability reducing measures should provide you, the legislature, with data on all the lawsuits resulting from such liability. However, here he is missing the point: because the *threat* of lawsuit exists, despite the fact that rock climbing has never resulted in a single lawsuit against the state of Hawaii, the DLNR has closed public lands – specifically, unencumbered state lands accessed using unmaintained trails.

Mr. Toyofuku and those who oppose this bill do not have the greater public good in mind. They wish to see a legal climate within which lawsuits against the state are viable; in such a climate, the State DLNR is ostensibly forced to restrict the activities of the public, infringing upon our freedoms.

I am here asking you to protect me; not by protecting my right to sue, but by protecting my right to use

public lands. Please pass Senate Bill 1167, as it is the most straightforward way to allow the DLNR to return access to *deeply treasured* natural resources to the public. 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. Thank you for your consideration.

Sincerely,
Michael Bishop
Haleiwa resident and constituent of Senator Clayton Hee

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

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

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

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

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

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

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

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

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

I support this bill which limits liability for mountain climbing, rock climbing, rappelling, and bouldering. The 2012 closure of the safest and most developed rock climbing crags in Hawaii has been detrimental to the climbing community. Prohibition does not stop individuals from pursuing what they love to do. Rather, the state's fear of liability is unjustly penalizing these individuals (doctors, professors, students, engineers, licensed professionals, etc.) as criminals for trying to practice on the safest climbing areas on the island. Any reasonable person is aware of the consequences of participating in inherently risky activities. It is inconceivable for the state to be liable for something they do not have the resources to manage. Not only will this bill reduce tax payer dollars on defending actions against the State, but it will allow the public to resume their rights on pursuing spiritual, physical, and mental growth through these activities.

February 4, 2013

To: Committee Members

From: Sayar Kuchenski, Resident Group Leader

Hearing: Feb 5, 2013 1:15 PM Conference Room 225

Sub: SB1167

Dear Committee Members,

I am writing on behalf of over 500 Hawaii residents in SUPPORT of SB1167. In essence, SB1167 provides limited liability mitigation to the State for rock climbing related activities on State land. Residents of Hawaii desperately need SB1167 because the State has systematically closed down large portions of public land for recreational usage in fear of lawsuits arising from injuries sustained on State land from rock climbing activities. Without some form of liability protection, the State will not reopen these areas.

Some may claim that the State already has protection from liability under Act 82. Act 82 does not protect the State from climbing-related injuries for three reasons: it only applies to improved trails (all climbing locations are off unimproved trails,) the State does not recognize vertical climbing as hiking (Act 82 only applies to hiking), and DLNR does not recognize Act 82 as an appropriate form of liability mitigation. Furthermore, AB1168 does not provide complete immunity to the State. It only provides the State with protection against one sport in which they cannot possibly manage or mitigate risk. It does not make any logical sense to hold the State responsible for injuries arising from an activity that they cannot possibly manage or mitigate.

Others may claim that the State has a duty to protect its citizens from danger. The State cannot protect rock climbers from the inherent risks of rock climbing, just as they cannot protect skydivers or surfers

from the risks involved in those activities. Furthermore, the State is not qualified to manage rock climbing. They have openly admitted that they know nothing about climbing. Rock climbing is inherently risky and it is not possible for the State to mitigate all possible risks. Neither the State nor the climbers want each other to be involved with rock climbing.

Do not be lead into the fallacy that this bill is not in the best interest of the public. Another testimony submitter has submitted two petitions with a combined 1,700 signatures on them urging for the passage of this type of liability protection, and the reopening of Oahu's rock climbing areas. As is clear from the abundance of supportive testimony, this bill is in the best interest of the public.

With Deepest Respects,

Sayar Kuchenski

From: mailinglist@capitol.hawaii.gov
To: [WTLTestimony](#)
Cc: srhiga@hawaii.edu
Subject: Submitted testimony for SB1167 on Feb 5, 2013 13:15PM
Date: Saturday, February 02, 2013 10:33:52 PM

SB1167

Submitted on: 2/2/2013

Testimony for WTL/JDL on Feb 5, 2013 13:15PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Sterling Higa	Individual	Support	No

Comments: This measure empowers responsible climbers and others to use the rich resource that is our land. Our community is a rich and safe one, and access to lands free of restriction is an important one.

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.

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