



Protect America's Climbing

February 20, 2013

Hawaii State Capitol
415 South Beretania St.
Honolulu, HI 96813

RE: Access Fund Testimony in Support of SB 1168

Dear WAM Committee Members,

I, R.D. Pascoe, Policy Director for the Access Fund, am writing in support of Senate Bill 1168. The Access Fund is the only national advocacy organization whose mission keeps climbing areas open and conserves the climbing environment. A 501(c)3 non-profit supporting and representing over 2.3 million climbers nationwide in all forms of climbing—rock climbing, ice climbing, mountaineering, and bouldering—Access Fund is the largest US climbing organization with over 11,000 members and affiliates. We currently hold memorandums of understanding with the Bureau of Land Management, National Park Service, and Forest Service to help define rules for how climbing will be managed on federal land.¹ The Access Fund works with public land managers and local climbers across the country to develop and implement management strategies to alleviate concerns over liability and resource conservation. Many of our members regularly climb in Hawaii. For more information about the Access Fund, visit www.accessfund.org.

TESTIMONY

This testimony is in addition to the testimony I previously submitted in support of SB 1168, incorporated herein by reference. Based on my experience working nationally with land managers and local climbers across the country, climbing's popularity is rising throughout the US. Hawaii's climbing resources are unique and draw local, mainland, and international climbers from near and afar. Outdoor recreation is an important economic force nationally and for individual states. According to the Outdoor Industry Association's report *The Outdoor Recreation Economy 2012*² outdoor recreation provides: 6.1 million direct American jobs; \$646 billion in direct consumer spending each year; \$39.9 billion in federal tax revenue; and \$39.7 billion in state/local tax revenue. According to OIA's *State Recreation Economy Reports*,³ in Hawaii outdoor recreation generates: \$67 billion in consumer spending; 65K direct Hawaiian jobs; \$2.1 billion in wages and salaries; and, \$478 million on state and local tax revenue.

In addition to its economic value, outdoor recreation connects people to the natural world in a healthy and positive manner. People who recreate care deeply for the places they use and are often the best stewards. SB 1168 provides DNLR the protection they feel is necessary to re-open

Oahu's public lands to climbing. Given the budget constraints and disperse nature of rock climbing on Oahu, it is difficult for DNLR to manage climbing without some assurance that they will not be held liable for the inherent risk knowingly encountered by all climbers.

Overview of Landowner Immunity Statutes

In today's litigious society, private landowners and public land managers must concern themselves with the issue of liability. The fear of a lawsuit is often enough to prevent private landowners from opening their land to recreation even though they would like to share their land with the public. Public land managers must also deal with the issue of liability and may even use it as one reason to restrict access, such as DNLR has done. Most states have enacted laws that greatly limit both private and public landowner liability. On the private side, these laws are called Recreational Use Statutes. For public land, the governing law is usually the state's Governmental Immunity Act or State Tort Claims Act.

These laws are important for the future of outdoor recreation as they shift the burden of responsibility to recreationists and away from private landowners and public land managers. Private landowners and public land managers are more likely to welcome recreational activities such as climbing if they are protected from liability. Access Fund has always stressed personal responsibility for climbing and this notion is supported by these laws and SB 1168. While most states currently have laws that limit landowner liability, these laws can vary greatly from state to state. The purpose of the following information is to provide a general picture of how these laws work regarding public landowner liability.

Public Landowner Liability

Liability is a concern for public landowners (e.g. city or state owned parks), however the laws affecting their liability are more complex and less consistent on a state by state basis than those concerning private landowners. In recent decades, the very old doctrine of "sovereign immunity" has been abolished in almost every state. The idea of sovereign immunity dates back to the English notion that "the King can do no wrong." Therefore, under the doctrine of sovereign immunity, an injured party could not bring a negligence lawsuit against federal, state, or to a limited extent, local governments.

Unfortunately, the demise of sovereign immunity coupled with record numbers of people using public land has resulted in more and more lawsuits against public parks and recreation sites. Public land managers are therefore acutely aware of liability and necessarily take steps to minimize their chances of being sued. This can ultimately result in restricting access to recreationists as public land managers seek ways to avoid potential injuries and subsequent lawsuits. Fortunately, there are laws in each state that define the scope of governmental liability.

Laws affecting public landowner liability

In the absence of sovereign immunity, every state has enacted some form of a State Tort Claims Act or Governmental Immunity Act which serves as the primary basis for tort liability for municipal, county, school, and state governmental bodies. On the federal level, the Federal Tort Claims Act serves as a basis for liability. Many state Tort Claims Acts follow the same format as the federal one. What this basically means is that each state has enacted a law that outlines the limit or extent of its liability. In other words, some states are "always subject to liability unless", while others are "never subject to liability unless..." To further confuse the issue, some state courts have held that the state Recreational Use Statute was applicable to governmental entities so as to relieve the government of liability for injuries sustained by users of recreational areas. Whether or not a Recreational Use Statute applies to public land depends on the language of the statute and on the case law of each individual state.

State Tort Claims Acts (Governmental Immunity Statutes)

A state's tort claims act defines the scope of governmental liability (usually on a state, county, and municipal level). Some states follow the Federal Tort Claims Act and hold public agencies to the same negligence standards as private individuals. (e.g. Nebraska, New Jersey, North Dakota, Ohio, Pennsylvania) In these states, it is likely that the courts have interpreted this to mean that public entities are entitled to the same legal defenses that a private property owner would have in the same circumstances including the state's Recreational Use Statute. Therefore, in some states, public agencies may use recreational use statutes and governmental immunity statutes to escape liability for recreation user injuries.

Some states, however, do not hold public entities to the same standards as private individuals. For instance, some courts reject the applicability of recreational use statutes to public entities if the Recreational Use Statute is inconsistent with other statutes that specifically limit or extend landowner liability to public entities. In other words, if there is a specific statute (i.e. a State Tort Claims Act) that addresses public landowner liability, it will most likely be interpreted to govern even if a recreational use statute also seems to provide liability protection to a public landowner. If the Recreational Use Statute is silent on the issue, the State Tort Claims Act may control. Again, this varies from state to state.

Some states have gone beyond the Recreational Use Statute and enacted recreational liability immunity legislation specifically for public agencies. (e.g. Virginia, Kansas, Minnesota) Similarly, California's State Tort Claims Act specifically provides immunity on public unimproved lands and was the basis of another bill due in front of this committee, SB 1285. Public landowner liability undoubtedly affects all users of public land. Most governmental immunity statutes address recreational users as a whole without singling out climbing. Colorado, Tennessee, Alabama, Vermont, Virginia, Washington, New Hampshire, and Wisconsin specifically list rock climbing in their recreational use statute.

Conclusion

Unfortunately, Hawaii's recreational use statute specifically excludes state lands and therefore provides DNLR with no protection against suits. SB 1168 provides addition language to SECTION 1, Chapter 662 (State Tort Liability Act) of Hawaii Revised Statutes that states: "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." Ultimately, SB 1168 does not change the State or Counties current duties, it simply clarifies the types of injuries that are not reasonable for the State or Counties to protect against while providing a means for reducing the cost of defense, which can be substantial. SB 1168 is a reasonable measure that will allow DNLR to re-open public lands to climbing and will bring Hawaiian law up to date with other states that all generally allow rock climbing on state lands.

Please feel free to utilize the Access Fund as a resource as SB 1168 moves forward.

Best Regards,



R.D. Pascoe
Policy Director
Access Fund

¹ http://www.accessfund.org/site/c.tmL5KhNWLrH/b.5000797/k.40E2/Collaboration_with_federal_agencies.htm

² http://www.outdoorindustry.org/research/economicimpact.php?action=detail&research_id=167

³ <http://www.outdoorindustry.org/advocacy/recreation/economy.html>

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

Re: Senate Bill 1168 decision making by WAM on Friday, February 22nd in room 221 at 9:00 AM

From: Carl Poster

Testimony in SUPPORT of Senate Bill 1168

I am writing to support SB 1168 which pertains to limited liability for the activities of mountain climbing, rock climbing, rappelling, and bouldering. These activities deserve to have limited liability in line with Hawaii's skateboarding, watersport, and ocean activity statutes for a number of critical reasons including: the legal climate in Hawaii, the inherent risk of rock climbing activities, the total inability of the State to oversee them, and the ongoing DLNR practice of closing public lands out of fear of litigation.

First, landowner liability laws in Hawaii are drastically in need of clarification to keep pace with the types of outdoor recreation that are rapidly burgeoning throughout the islands. Gaps in the Hawaii Revised Statutes continue to allow tax dollars to hemorrhage out of the general fund due to lawsuits. The legal climate that has been engendered by consumer lawyers has allowed these lawsuits to persist and to succeed. Many of these judgments against the State seem utterly ludicrous and can only be seen as results of the prodigious cleverness of the lawyers who continue to pilfer the State's coffers. The legislature must take action to protect the rights of recreationists to utilize public lands as they choose, rather than protecting the ability of trial lawyers to sue the State every time someone is injured or killed.

Additionally, Hawaii offers a bountiful array of recreational activities, and we as a society must accept that reasonable people who pursue these activities (such as mountain climbing, rock climbing, rappelling, and bouldering) accept all natural and inherent risks that come along with them. Whenever someone participates in these climbing activities, there are immediate and obvious risks which are essential qualities of these activities that cannot be entirely removed or mitigated; there should be no legal grounds for holding the State liable for damages resulting from such risks. Banning participation in these activities (as the DLNR has done at a number of areas) cannot be the solution; rock climbing is a "welcomed and historic use" of public lands according to the National Park Service, and we must seek to protect it as such.

The nature of mountain climbing, rock climbing, rappelling, and bouldering are such that the practitioners of these activities will always be seeking out new areas to explore and enjoy. This completely precludes any attempts by DLNR to regulate or oversee these activities; the climbers will always be two steps ahead, often establishing self-maintained trails and climbing areas well off the beaten path. Potential proposed solutions of posting signage or setting up permitting programs are completely untenable unless we wish to see thousands of new signs throughout the islands, and establish paperwork for every new climbing site that is established. DLNR doesn't have the resources or staff to enact such programs, and the public doesn't want government oversight of rock climbing areas. By maintaining the stance that climbing is

allowed but not regulated, the State will not need to pursue such wasteful measures.

This brings us to the final critical point regarding rock climbing liability: the DLNR's actions. Since a rockfall injury occurred in June of 2012 at a climbing wall in Mokuleia, the DLNR has closed down the two largest, most well-developed climbing areas on the island of Oahu; their actions prompted the DHHL to close down a third extremely popular climbing site as well. In more than twenty years of organized rock climbing in Hawaii there has never been a lawsuit filed against the State as a result of rock climbing activities; these area closures are purely the result of paranoid speculation. As long as the threat of unrighteous lawsuits exists, the DLNR will not allow rock climbing at these areas. This intractable position has led to eight months of efforts by local climbers to try to regain access to these public lands, including: appealing to neighborhood boards, repeated offers to the by national nonprofit organization the Access Fund to insure the State against climbing injuries, and requests from local climbers to assume stewardship and land management of the climbing areas; all these efforts have been endlessly stymied by DLNR officials.

Action by the legislature is required to solve this patently absurd situation wherein a “welcomed and historic use” of public lands has been banned, and a whole community has been disenfranchised due to the threat of lawsuits arising from participation in an inherently dangerous activity. We the people need the legislature to remove the threat of lawsuits from the Hawaiian legal climate so that DLNR can rescind its draconian stance toward a safe, healthy, and fulfilling activity and way of life and allow Hawaii's climbers to regain and maintain access to the public lands they treasure. Please pass Senate Bill 1168 to resolve this situation. Thank you for allowing me to present this testimony.

Sincerely,
Carl Poster

From: mailinglist@capitol.hawaii.gov
To: [WAM Testimony](#)
Cc: sledge77@hotmail.com
Subject: *Submitted testimony for SB1168 on Feb 22, 2013 09:00AM*
Date: Wednesday, February 20, 2013 9:17:39 PM

SB1168

Submitted on: 2/20/2013

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

Submitted By	Organization	Testifier Position	Present at Hearing
Chris Bruns	Individual	Support	No

Comments:

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

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From: mailinglist@capitol.hawaii.gov
To: [WAM Testimony](#)
Cc: 1988xjchief@gmail.com
Subject: Submitted testimony for SB1168 on Feb 22, 2013 09:00AM
Date: Thursday, February 21, 2013 7:57:28 AM

SB1168

Submitted on: 2/21/2013

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

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

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

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February 20, 2013

Dawn B. Bruns
58-044 Kapuai Place
Haleiwa, HI 96712

Senator David Ige, Chair, Ways and Means Committee
And Members of the Ways and Means Committee, Hawaii State Legislature

Dear Senators:

I am writing to ask you to support SB1168, relating to limiting State liability related to rock climbing. Last year, Governor Abercrombie's administration closed the world-class Mokuleia rock climbing area near my home on the North Shore of Oahu due to liability concerns and it is my understanding that climbing would be permitted at Mokuleia if this bill is passed into law. Before its closure, I used to spend Sunday afternoons up at the Mokuleia rock climbing area with my climbing friends. I'm a biologist and my weekly Sunday afternoon rock climbing friends include an archaeologist, an event planner at an exclusive resort, a UH professor, a KTUH DJ, an appliance repair man, a home inspector, a couple of retired people, a building contractor, a handful of Army men and women, a registered nurse, a professional dancer, a cancer lab pathologist, and others who are less familiar to me. We work hard and I feel like the loss of access to climbing has significantly affected my finances, my health (and my related productivity at work).

The climbing ban affects my personal budget and to the extent that visits from mainland climbers affect the local economy, passage of this bill will further boost the economy. Each year, two or three friends of mine from the mainland used to visit to climb in Hawaii for about a week in the winter. Since the Mokuleia rock climbing area closure, I've had to take my vacation time on the mainland in order to climb. On a related note, we used to attract very skilled medical doctors and RNs who would agree to work stints in Oahu hospitals because of our world class climbing.

I'm less physically fit because I'm not climbing and this affects my health, sick leave, and productivity. My diet and exercise during the week are less healthy because I'm not in training for climbing. I live on the North Shore for its world class rock climbing and my husband is a local windsurfer and towsurfer. I'm a top roper (the rope is always supporting my harness so the rope catches me and I hang without falling, safe). Climbing at the Mokuleia crag is a safe and enjoyable. I assume the risks inherent to rock climbing - the Mokuleia crag is so clean and well-maintained, I climb there without a second thought. My primary care physician has noted my reduced fitness and I recently missed three days of work because I pulled a muscle in my back at home (which I attribute directly to my reduced core strength due to the lack of climbing activity).

I am writing to ask you to pass SB1168 in favor of the 500 local climbers and 1000+ worldwide climbers who fly here to climb, whose lives are adversely affected by the Governor's closure of the Mokuleia climbing area, and in favor the State, which should be protected from liability (as other states are) by a reasonable up-to-date liability law such as this one.

*Mahalo,
Dawn B. Bruns*

February 19, 2013

To: Senator David Ige, Chair, Ways and Means Committee
From: Debora Halbert, Individual
RE: SB1168, SD1 – Related to Limited Liability for Rock Climbing

I am pleased to submit testimony in favor of SB1168, SD1, which limits state liability for rock climbing on state lands. The provision under consideration is specific to the recreational activity of rock climbing and as the report submitted with the bill attests, it is necessary because the state cannot take on the significant responsibility of managing and regulating all the possible places where hazardous recreational activities such as rock climbing, bouldering, rappelling, and so forth take place.

The Water and Land Committee, as well as the Judiciary Committee, have unanimously and favorably voted for this measure. The climbing community is in favor of this measure, as is DLNR. Attached to past testimony I have submitted (and referred to in the report out of the other committees) are petitions from Change.org including the names of over 1500 individuals in support of continued access to climbing in Hawaii and whatever legislation is necessary to ensure access.

I would like to specifically take up the issues of cost to the state in my testimony, which is of primary concern to the Ways and Means committee.

First, as a matter of policy, this measure will cost the state nothing. In fact, by passing this measure, the state can save the unnecessary and costly act of trying regulate and manage climbing in Hawaii or posting signage all over the Island. Instead, they can work with the local climbing community to clarify dangers and otherwise remove responsibility for management of climbing. In the 20 year history of climbing on the island, the local climbing community has maintained the climbing trails, picked up trash in and around the climbing areas, including the roads and beaches, maintained all the routes, invested in thousands of dollars of safety gear, and much more. These are best done privately and passage of this legislation will allow for the status quo arrangement to continue. The DLNR is already stretched thin and they support this legislation, as well as more comprehensive liability reform.

Second, failure to pass this legislation could result in significant costs to the State. Let me be clear that in the 20-year history of climbing in Hawaii, there has not been a single lawsuit for rock climbing or its associated activities. However, the DLNR closed down access to the primary climbing on Oahu because of the fear of future litigation. They have reason to be concerned after the family of a hiker who fell to her death on Kauai was awarded \$15 million. As members of the Ways and Means Committee, such sizable awards such as this should be of great concern and every effort should be made to assure that balanced and reasonable limited liability for hazardous recreational use are in place. This law is a first step in that direction.

As a climber, hiker, trail runner, and avid outdoors enthusiast, I personally support much broader liability protection for the state, as introduced in SB 1285. However, in lieu of this broader protection for the state, which I hope will someday become law, I am in full support of this limited exclusion from liability for rock climbing on state land. Much like skateboard parks, which have an exclusion in the statute, those engaged in the hazardous recreational use of rock climbing should not seek fault in the state for their pursuits. Thus, passing this legislation will allow the state to avoid the fear of future lawsuits and of course save the state from the expensive litigation and possible awards such as those associated with the hikers on Kauai.

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

Sincerely,

Debora Halbert

SB1168 Testimony

To: Chair Ige, Vice Chair Kidani, and members of the Senate Ways and Means Committee
Re: Senate Bill 1168 decision making by WAM on Friday, February 22nd in room 221 at 9:00 AM

From: Derek Hamilton

Testimony in SUPPORT of Senate Bill 1168

I am writing to support SB 1168 which pertains to limited liability for the activities of mountain climbing, rock climbing, rappelling, and bouldering. These activities deserve to have limited liability in line with Hawaii's skateboarding, watersport, and ocean activity statutes for a number of critical reasons including: the legal climate in Hawaii, the inherent risk of rock climbing activities, the total inability of the State to oversee them, and the ongoing DLNR practice of closing public lands out of fear of litigation.

First, landowner liability laws in Hawaii are drastically in need of clarification to keep pace with the types of outdoor recreation that are rapidly burgeoning throughout the islands. Gaps in the Hawaii Revised Statutes continue to allow tax dollars to hemorrhage out of the general fund due to lawsuits. The legal climate that has been engendered by consumer lawyers has allowed these lawsuits to persist and to succeed. Many of these judgments against the State seem utterly ludicrous and can only be seen as results of the prodigious cleverness of the lawyers who continue to pilfer the State's coffers. The legislature must take action to protect the rights of recreationists to utilize public lands as they choose, rather than protecting the ability of trial lawyers to sue the State every time someone is injured or killed.

Additionally, Hawaii offers a bountiful array of recreational activities, and we as a society must accept that reasonable people who pursue these activities (such as mountain climbing, rock climbing, rappelling, and bouldering) accept all natural and inherent risks that come along with them. Whenever someone participates in these climbing activities, there are immediate and obvious risks which are essential qualities of these activities that cannot be entirely removed or mitigated; there should be no legal grounds for holding the State liable for damages resulting from such risks. Banning participation in these activities (as the DLNR has done at a number of areas) cannot be the solution; rock climbing is a "welcomed and historic use" of public lands according to the National Park Service, and we must seek to protect it as such.

The nature of mountain climbing, rock climbing, rappelling, and bouldering are such that the practitioners of these activities will always be seeking out new areas to explore and enjoy. This completely precludes any attempts by DLNR to regulate or oversee these activities; the climbers will always be two steps ahead, often establishing self-maintained trails and climbing areas well off the beaten path. Potential proposed solutions of posting signage or setting up permitting programs are completely untenable unless we wish to see thousands of new signs throughout the islands, and establish paperwork for every new climbing site that is established. DLNR doesn't have the resources or staff to enact such programs, and the public doesn't want government oversight of rock climbing areas. By maintaining the stance that climbing is allowed but not regulated, the State will not need to pursue such wasteful measures.

This brings us to the final critical point regarding rock climbing liability: the DLNR's actions. Since a rockfall injury occurred in June of 2012 at a climbing wall in Mokuleia, the DLNR has closed down the two largest, most well-developed climbing areas on the island of Oahu; their actions prompted the DHHL to close down a third extremely popular climbing site as well. In more than twenty years of organized rock climbing in Hawaii there has never been a lawsuit filed against the State as a result of rock climbing activities; these area closures are purely the result of paranoid speculation. As long as the threat of unrighteous lawsuits exists, the DLNR will not allow rock climbing at these areas. This

SB1168 Testimony

intractable position has led to eight months of efforts by local climbers to try to regain access to these public lands, including: appealing to neighborhood boards, repeated offers to the by national nonprofit organization the Access Fund to insure the State against climbing injuries, and requests from local climbers to assume stewardship and land management of the climbing areas; all these efforts have been endlessly stymied by DLNR officials.

Action by the legislature is required to solve this patently absurd situation wherein a "welcomed and historic use" of public lands has been banned, and a whole community has been disenfranchised due to the threat of lawsuits arising from participation in an inherently dangerous activity. We the people need the legislature to remove the threat of lawsuits from the Hawaiian legal climate so that DLNR can rescind its draconian stance toward a safe, healthy, and fulfilling activity and way of life and allow Hawaii's climbers to regain and maintain access to the public lands they treasure. Please pass Senate Bill 1168 to resolve this situation. Thank you for allowing me to present this testimony.

On a more personal note, as someone who does not live in Hawaii, the restrictions on Hawaii's climbing affects my decision-making when I'm looking for my next vacation destination. Rock climbing is how I spend my time outside of work and family. It's my hobby and something that I thoroughly enjoy. If Hawaii continues to restrict rock climbing, it is unlikely that I will visit and spend my tourism dollars there. While this may not seem like much, the sport of rock climbing continues to grow worldwide, even to the point where it is being considered for the 2020 Olympics. Imagine the amount of additional tourism dollars this could mean.

Sincerely,
Derek Hamilton

February 19, 2013

To: Senator David Ige, Chair, Ways and Means Committee
From: Douglas Noyes, Individual
RE: SB1168, SD1 – Related to Limited Liability for Rock Climbing

I am pleased to submit testimony in favor of SB1168, SD1, which limits state liability for rock climbing on state lands. Hawaii offers a bountiful array of recreational activities, and we as a society must accept that reasonable people who pursue these activities (such as mountain climbing, rock climbing, rappelling, and bouldering) accept all natural and inherent risks that come along with them. Whenever someone participates in these climbing activities, there are immediate and obvious risks, which are essential qualities of these activities that cannot be entirely removed or mitigated; there should be no legal grounds for holding the State liable for damages resulting from such risks. Banning participation in these activities (as the DLNR has done at a number of areas) cannot be the solution; rock climbing is a “welcomed and historic use” of public lands according to the National Park Service, and we must seek to protect it as such.

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become law, I am in full support of this limited exclusion from liability for rock climbing on state land. Much like skateboard parks, which have an exclusion in the statute, those engaged in the hazardous recreational use of rock climbing should not seek fault in the state for their pursuits. Thus, passing this legislation will allow the state to avoid the fear of future lawsuits and of course save the state from the expensive litigation.

I urge you to pass this bill out of committee.

Sincerely,

Douglas Noyes

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

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From: ***** *****

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Sincerely,
Dr. Paul Ryan

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

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

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

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

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

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

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

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

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

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

Sincerely,

Duc Ong

From: mailinglist@capitol.hawaii.gov
To: [WAM Testimony](#)
Cc: italysweets@gmail.com
Subject: Submitted testimony for SB1168 on Feb 22, 2013 09:00AM
Date: Wednesday, February 20, 2013 6:43:31 PM

SB1168

Submitted on: 2/20/2013

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

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

Comments: To: Senator David Ige, Chair, Ways and Means Committee From: Elizabeth Barney, Individual RE: SB1168, SD1 – Related to Limited Liability for Rock Climbing I am pleased to submit testimony in favor of SB1168, SD1, which limits state liability for rock climbing on state lands. The provision under consideration is specific to the recreational activity of rock climbing and as the report submitted with the bill attests, it is necessary because the state cannot take on the significant responsibility of managing and regulating all the possible places where hazardous recreational activities such as rock climbing, bouldering, rappelling, and so forth take place. The Water and Land Committee, as well as the Judiciary Committee, have unanimously and favorably voted for this measure. The climbing community is in favor of this measure, as is DLNR. Attached to past testimony I have submitted (and referred to in the report out of the other committees) are petitions from Change.org including the names of over 1500 individuals in support of continued access to climbing in Hawaii and whatever legislation is necessary to ensure access. I would like to specifically take up the issues of cost to the state in my testimony, which is of primary concern to the Ways and Means committee. First, as a matter of policy, this measure will cost the state nothing. In fact, by passing this measure, the state can save the unnecessary and costly act of trying regulate and manage climbing in Hawaii or posting signage all over the Island. Instead, they can work with the local climbing community to clarify dangers and otherwise remove responsibility for management of climbing. In the 20 year history of climbing on the island, the local climbing community has maintained the climbing trails, picked up trash in and around the climbing areas, including the roads and beaches, maintained all the routes, invested in thousands of dollars of safety gear, and much more. These are best done privately and passage of this legislation will allow for the status quo arrangement to continue. The DLNR is already stretched thin and they support this legislation, as well as more comprehensive liability reform. Second, failure to pass this legislation could result in significant costs to the State. Let me be clear that in the 20-year history of climbing in Hawaii, there has not been a single lawsuit for rock climbing or its associated activities. However, the DLNR closed down access to the primary climbing on Oahu because of the fear of future litigation. They have reason to be concerned after the family of a hiker who fell to her death on Kauai was awarded \$15 million. As members

of the Ways and Means Committee, such sizable awards such as this should be of great concern and every effort should be made to assure that balanced and reasonable limited liability for hazardous recreational use are in place. This law is a first step in that direction. As a climber, hiker, trail runner, and avid outdoors enthusiast, I personally support much broader liability protection for the state, as introduced in SB 1285. However, in lieu of this broader protection for the state, which I hope will someday become law, I am in full support of this limited exclusion from liability for rock climbing on state land. Much like skateboard parks, which have an exclusion in the statute, those engaged in the hazardous recreational use of rock climbing should not seek fault in the state for their pursuits. Thus, passing this legislation will allow the state to avoid the fear of future lawsuits and of course save the state from the expensive litigation and possible awards such as those associated with the hikers on Kauai. I urge you to pass this bill out of committee and am happy to answer and and all questions. Sincerely, Elizabeth Barney

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

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

Re: Senate Bill 1168 decision making by WAM on Friday, February 22nd in room 221 at 9:00 AM

From: Eric Phillips, individual rock climber

Testimony in SUPPORT of Senate Bill 1168

I am writing to support SB 1168 which pertains to limited liability for the activities of mountain climbing, rock climbing, rappelling, and bouldering. These activities deserve to have limited liability in line with Hawaii's skateboarding, watersport, and ocean activity statutes for a number of critical reasons including: the legal climate in Hawaii, the inherent risk of rock climbing activities, the total inability of the State to oversee them, and the ongoing DLNR practice of closing public lands out of fear of litigation.

The Water and Land Committee, as well as the Judiciary Committee, have unanimously and favorably voted for this measure. The climbing community is in favor of this measure, as is DLNR. Petitions from Change.org have gained the support of over 1500 individuals for of continued access to climbing in Hawaii and whatever legislation is necessary to ensure access.

First, landowner liability laws in Hawaii are drastically in need of clarification to keep pace with the types of outdoor recreation that are rapidly burgeoning throughout the islands. Gaps in the Hawaii Revised Statutes continue to allow tax dollars to hemorrhage out of the general fund due to lawsuits. The legal climate that has been engendered by consumer lawyers has allowed these lawsuits to persist and to succeed. Many of these judgments against the State seem utterly ludicrous and can only be seen as results of the prodigious cleverness of the lawyers who continue to pilfer the State's coffers. The legislature must take action to protect the rights of recreationists to utilize public lands as they choose, rather than protecting the ability of trial lawyers to sue the State every time someone is injured or killed.

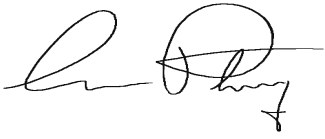
Additionally, Hawaii offers a bountiful array of recreational activities, and we as a society must accept that reasonable people who pursue these activities (such as mountain climbing, rock climbing, rappelling, and bouldering) accept all natural and inherent risks that come along with them. Whenever someone participates in these climbing activities, there are immediate and obvious risks which are essential qualities of these activities that cannot be entirely removed or mitigated; there should be no legal grounds for holding the State liable for damages resulting from such risks. Banning participation in these activities (as the DLNR has done at a number of areas) cannot be the solution; rock climbing is a "welcomed and historic use" of public lands according to the National Park Service, and we must seek to protect it as such.

The nature of mountain climbing, rock climbing, rappelling, and bouldering are such that the practitioners of these activities will always be seeking out new areas to explore and enjoy. This completely precludes any attempts by DLNR to regulate or oversee these activities; the climbers will always be two steps ahead, often establishing self-maintained trails and climbing areas well off the beaten path. Potential proposed solutions of posting signage or setting up permitting programs are completely untenable unless we wish to see thousands of new signs throughout the islands, and establish paperwork for every new climbing site that is established. DLNR doesn't have the resources or staff to enact such programs, and the public doesn't want government oversight of rock climbing areas. By maintaining the stance that climbing is allowed but not regulated, the State will not need to pursue such wasteful measures.

This brings us to the final critical point regarding rock climbing liability: the DLNR's actions. Since a rockfall injury occurred in June of 2012 at a climbing wall in Mokuleia, the DLNR has closed down the two largest, most well-developed climbing areas on the island of Oahu; their actions prompted the DHHL to close down a third extremely popular climbing site as well. In more than twenty years of organized rock climbing in Hawaii there has never been a lawsuit filed against the State as a result of rock climbing activities; these area closures are purely the result of paranoid speculation. As long as the threat of unrighteous lawsuits exists, the DLNR will not allow rock climbing at these areas. This intractable position has led to eight months of efforts by local climbers to try to regain access to these public lands, including: appealing to neighborhood boards, repeated offers the by national nonprofit organization the Access Fund to insure the State against climbing injuries, and requests from local climbers to assume stewardship and land management of the climbing areas; all these efforts have been endlessly stymied by DLNR officials.

Action by the legislature is required to solve this patently absurd situation wherein a “welcomed and historic use” of public lands has been banned, and a whole community has been disenfranchised due to the threat of lawsuits arising from participation in an inherently dangerous activity. We the people need the legislature to remove the threat of lawsuits from the Hawaiian legal climate so that DLNR can rescind its draconian stance toward a safe, healthy, and fulfilling activity and way of life and allow Hawaii's climbers to regain and maintain access to the public lands they treasure. Please pass Senate Bill 1168 to resolve this situation. Thank you for allowing me to present this testimony.

Sincerely,

A handwritten signature in black ink, appearing to be 'L. D. King', written in a cursive style.

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

Re: Senate Bill 1168 decision making by WAM on Friday, February 22nd in room 221 at 9:00 AM

From: Eric Varley

Testimony in SUPPORT of Senate Bill 1168

I am writing to support SB 1168 which pertains to limited liability for the activities of mountain climbing, rock climbing, rappelling, and bouldering. These activities deserve to have limited liability in line with Hawaii's skateboarding, watersport, and ocean activity statutes for a number of critical reasons including: the legal climate in Hawaii, the inherent risk of rock climbing activities, the total inability of the State to oversee them, and the ongoing DLNR practice of closing public lands out of fear of litigation.

First, landowner liability laws in Hawaii are drastically in need of clarification to keep pace with the types of outdoor recreation that are rapidly burgeoning throughout the islands. Gaps in the Hawaii Revised Statutes continue to allow tax dollars to hemorrhage out of the general fund due to lawsuits. The legal climate that has been engendered by consumer lawyers has allowed these lawsuits to persist and to succeed. Many of these judgments against the State seem utterly ludicrous and can only be seen as results of the prodigious cleverness of the lawyers who continue to pilfer the State's coffers. The legislature must take action to protect the rights of recreationists to utilize public lands as they choose, rather than protecting the ability of trial lawyers to sue the State every time someone is injured or killed.

Additionally, Hawaii offers a bountiful array of recreational activities, and we as a society must accept that reasonable people who pursue these activities (such as mountain climbing, rock climbing, rappelling, and bouldering) accept all natural and inherent risks that come along with them. Whenever someone participates in these climbing activities, there are immediate and obvious risks which are essential qualities of these activities that cannot be entirely removed or mitigated; there should be no legal grounds for holding the State liable for damages resulting from such risks. Banning participation in these activities (as the DLNR has done at a number of areas) cannot be the solution; rock climbing is a "welcomed and historic use" of public lands according to the National Park Service, and we must seek to protect it as such.

The nature of mountain climbing, rock climbing, rappelling, and bouldering are such that the practitioners of these activities will always be seeking out new areas to explore and enjoy. This completely precludes any attempts by DLNR to regulate or oversee these activities; the climbers will always be two steps ahead, often establishing self-maintained trails and climbing areas well off the beaten path. Potential proposed solutions of posting signage or setting up permitting programs are completely untenable unless we wish to see thousands of new signs throughout the islands, and establish paperwork for every new climbing site that is established. DLNR doesn't have the resources or staff to enact such programs, and the public doesn't want government oversight of rock climbing areas. By maintaining the stance that climbing is allowed but not regulated, the State will not need to pursue such wasteful measures.

This brings us to the final critical point regarding rock climbing liability: the DLNR's actions. Since a rockfall injury occurred in June of 2012 at a climbing wall in Mokuleia, the DLNR has closed down the two largest, most well-developed climbing areas on the island of Oahu; their actions

prompted the DHHL to close down a third extremely popular climbing site as well. In more than twenty years of organized rock climbing in Hawaii there has never been a lawsuit filed against the State as a result of rock climbing activities; these area closures are purely the result of paranoid speculation. As long as the threat of unrighteous lawsuits exists, the DLNR will not allow rock climbing at these areas. This intractable position has led to eight months of efforts by local climbers to try to regain access to these public lands, including: appealing to neighborhood boards, repeated offers by the national nonprofit organization the Access Fund to insure the State against climbing injuries, and requests from local climbers to assume stewardship and land management of the climbing areas; all these efforts have been endlessly stymied by DLNR officials.

Action by the legislature is required to solve this patently absurd situation wherein a “welcomed and historic use” of public lands has been banned, and a whole community has been disenfranchised due to the threat of lawsuits arising from participation in an inherently dangerous activity. We the people need the legislature to remove the threat of lawsuits from the Hawaiian legal climate so that DLNR can rescind its draconian stance toward a safe, healthy, and fulfilling activity and way of life and allow Hawaii's climbers to regain and maintain access to the public lands they treasure. Please pass Senate Bill 1168 to resolve this situation. Thank you for allowing me to present this testimony.

Sincerely,
Eric Varley

To: Committee Members

From: Eva Bosch RN, Individual Rock Climber

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

RE: SB1168

Dear Committee Members,

As an avid rock climber and outdoor adventurer, I am writing this letter in support of the passage of SB1168, which limits liability of rock climbing, 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. 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.

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

I would like to specifically take up the issues of cost to the state in my testimony, which is of primary concern to the Ways and Means committee.

First, as a matter of policy, this measure will cost the state nothing. In fact, by passing this measure, the state can save the unnecessary and costly act of trying regulate and manage climbing in Hawaii or posting signage all over the Island. Instead, they can work with the local climbing community to clarify dangers and otherwise remove responsibility for management of climbing. In the 20 year history of climbing on the island, the local climbing community has maintained the climbing trails, picked up trash in and around the climbing areas, including the roads and beaches, maintained all the routes, invested in thousands of dollars of safety gear, and much more. These are best done privately and passage of this legislation will allow for the status quo arrangement to continue. The DLNR is already stretched thin and they support this legislation, as well as more comprehensive liability

reform.

Second, failure to pass this legislation could result in significant costs to the State. Let me be clear that in the 20-year history of climbing in Hawaii, there has not been a single lawsuit for rock climbing or its associated activities. However, the DLNR closed down access to the primary climbing on Oahu because of the fear of future litigation. They have reason to be concerned after the family of a hiker who fell to her death on Kauai was awarded \$15 million. As members of the Ways and Means Committee, such sizable awards such as this should be of great concern and every effort should be made to assure that balanced and reasonable limited liability for hazardous recreational use are in place. This law is a first step in that direction.

As a climber, hiker, trail runner, and avid outdoors enthusiast, I personally support much broader liability protection for the state, as introduced in SB 1285. However, in lieu of this broader protection for the state, which I hope will someday become law, I am in full support of this limited exclusion from liability for rock climbing on state land. Much like skateboard parks, which have an exclusion in the statute, those engaged in the hazardous recreational use of rock climbing should not seek fault in the state for their pursuits. Thus, passing this legislation will allow the state to avoid the fear of future lawsuits and of course save the state from the expensive litigation and possible awards such as those associated with the hikers on Kauai.

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

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

Re: Senate Bill 1168 decision making by WAM on Friday, February 22nd in room 221 at 9:00 AM

From: Heather Kina

Testimony in SUPPORT of Senate Bill 1168

I am writing to support SB 1168 which pertains to limited liability for the activities of mountain climbing, rock climbing, rappelling, and bouldering. These activities deserve to have limited liability in line with Hawaii's skateboarding, watersport, and ocean activity statutes for a number of critical reasons including: the legal climate in Hawaii, the inherent risk of rock climbing activities, the total inability of the State to oversee them, and the ongoing DLNR practice of closing public lands out of fear of litigation.

First, landowner liability laws in Hawaii are drastically in need of clarification to keep pace with the types of outdoor recreation that are rapidly burgeoning throughout the islands. Gaps in the Hawaii Revised Statutes continue to allow tax dollars to hemorrhage out of the general fund due to lawsuits. The legal climate that has been engendered by consumer lawyers has allowed these lawsuits to persist and to succeed. Many of these judgments against the State seem utterly ludicrous and can only be seen as results of the prodigious cleverness of the lawyers who continue to pilfer the State's coffers. The legislature must take action to protect the rights of recreationists to utilize public lands as they choose, rather than protecting the ability of trial lawyers to sue the State every time someone is injured or killed.

Additionally, Hawaii offers a bountiful array of recreational activities, and we as a society must accept that reasonable people who pursue these activities (such as mountain climbing, rock climbing, rappelling, and bouldering) accept all natural and inherent risks that come along with them. Whenever someone participates in these climbing activities, there are immediate and obvious risks which are essential qualities of these activities that cannot be entirely removed or mitigated; there should be no legal grounds for holding the State liable for damages resulting from such risks. Banning participation in these activities (as the DLNR has done at a number of areas) cannot be the solution; rock climbing is a "welcomed and historic use" of public lands according to the National Park Service, and we must seek to protect it as such.

The nature of mountain climbing, rock climbing, rappelling, and bouldering are such that the practitioners of these activities will always be seeking out new areas to explore and enjoy. This completely precludes any attempts by DLNR to regulate or oversee these activities; the climbers will always be two steps ahead, often establishing self-maintained trails and climbing areas well off the beaten path. Potential proposed solutions of posting signage or setting up permitting programs are completely untenable unless we wish to see thousands of new signs throughout the islands, and establish paperwork for every new climbing site that is established. DLNR doesn't have the resources or staff to enact such programs, and the public doesn't want government oversight of rock climbing areas. By maintaining the stance that climbing is allowed but not regulated, the State will not need to pursue such wasteful measures.

This brings us to the final critical point regarding rock climbing liability: the DLNR's actions. Since a rockfall injury occurred in June of 2012 at a climbing wall in Mokuleia, the DLNR has closed down the two largest, most well-developed climbing areas on the island of Oahu; their actions

prompted the DHHL to close down a third extremely popular climbing site as well. In more than twenty years of organized rock climbing in Hawaii there has never been a lawsuit filed against the State as a result of rock climbing activities; these area closures are purely the result of paranoid speculation. As long as the threat of unrighteous lawsuits exists, the DLNR will not allow rock climbing at these areas. This intractable position has led to eight months of efforts by local climbers to try to regain access to these public lands, including: appealing to neighborhood boards, repeated offers by the national nonprofit organization the Access Fund to insure the State against climbing injuries, and requests from local climbers to assume stewardship and land management of the climbing areas; all these efforts have been endlessly stymied by DLNR officials.

Action by the legislature is required to solve this patently absurd situation wherein a “welcomed and historic use” of public lands has been banned, and a whole community has been disenfranchised due to the threat of lawsuits arising from participation in an inherently dangerous activity. We the people need the legislature to remove the threat of lawsuits from the Hawaiian legal climate so that DLNR can rescind its draconian stance toward a safe, healthy, and fulfilling activity and way of life and allow Hawaii's climbers to regain and maintain access to the public lands they treasure. Please pass Senate Bill 1168 to resolve this situation. Thank you for allowing me to present this testimony.

Sincerely,
Heather Kina

From: mailinglist@capitol.hawaii.gov
To: [WAM Testimony](#)
Cc: dreamisrael@gmail.com
Subject: Submitted testimony for SB1168 on Feb 22, 2013 09:00AM
Date: Wednesday, February 20, 2013 7:35:48 PM

SB1168

Submitted on: 2/20/2013

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

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

Comments: To: Chair Ige, Vice Chair Kidani, and members of the Senate Ways and Means Committee Re: Senate Bill 1168 decision making by WAM on Friday, February 22nd in room 221 at 9:00 AM From: Israella Samonte Testimony in SUPPORT of Senate Bill 1168 I am writing to support SB 1168 which pertains to limited liability for the activities of mountain climbing, rock climbing, rappelling, and bouldering. These activities deserve to have limited liability in line with Hawaii's skateboarding, watersport, and ocean activity statutes for a number of critical reasons including: the legal climate in Hawaii, the inherent risk of rock climbing activities, the total inability of the State to oversee them, and the ongoing DLNR practice of closing public lands out of fear of litigation. First, landowner liability laws in Hawaii are drastically in need of clarification to keep pace with the types of outdoor recreation that are rapidly burgeoning throughout the islands. Gaps in the Hawaii Revised Statutes continue to allow tax dollars to hemorrhage out of the general fund due to lawsuits. The legal climate that has been engendered by consumer lawyers has allowed these lawsuits to persist and to succeed. Many of these judgments against the State seem utterly ludicrous and can only be seen as results of the prodigious cleverness of the lawyers who continue to pilfer the State's coffers. The legislature must take action to protect the rights of recreationists to utilize public lands as they choose, rather than protecting the ability of trial lawyers to sue the State every time someone is injured or killed. Additionally, Hawaii offers a bountiful array of recreational activities, and we as a society must accept that reasonable people who pursue these activities (such as mountain climbing, rock climbing, rappelling, and bouldering) accept all natural and inherent risks that come along with them. Whenever someone participates in these climbing activities, there are immediate and obvious risks which are essential qualities of these activities that cannot be entirely removed or mitigated; there should be no legal grounds for holding the State liable for damages resulting from such risks. Banning participation in these activities (as the DLNR has done at a number of areas) cannot be the solution; rock climbing is a "welcomed and historic use" of public lands according to the National Park Service, and we must seek to protect it as such. The nature of mountain climbing, rock climbing, rappelling, and bouldering are such that the practitioners of these activities will always be seeking out new areas to explore and enjoy. This completely precludes

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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: [WAM Testimony](#)
Cc: mendezj@hawaii.edu
Subject: *Submitted testimony for SB1168 on Feb 22, 2013 09:00AM*
Date: Tuesday, February 19, 2013 10:56:51 AM

SB1168

Submitted on: 2/19/2013

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

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

Comments:

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

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From: mailinglist@capitol.hawaii.gov
To: [WAM Testimony](#)
Cc: greyhat@att.net
Subject: Submitted testimony for SB1168 on Feb 22, 2013 09:00AM
Date: Wednesday, February 20, 2013 8:24:59 AM

SB1168

Submitted on: 2/20/2013

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

Submitted By	Organization	Testifier Position	Present at Hearing
Jeffrey West	Individual	Comments Only	No

Comments: VERMONT Statute, Status and Description The Vermont limited liability statute is found in Title 12 (Court Procedure): Chapter 203: (Limitations to Landowner Liability), Sections 5791-5795. It was substantially revised in 1997. 12 V.S.A. § 5791 (2006) § 5791. Purpose The purpose of this chapter is to encourage owners to make their land and water available to the public for no consideration for recreational uses by clearly establishing a rule that an owner shall have no greater duty of care to a person who, without consideration, enters or goes upon the owner's land for a recreational use than the owner would have to a trespasser. § 5792. Definitions As used in this chapter: (1) "Consideration" means a price, fee or other charge paid to or received by the owner in return for the permission to enter upon or to travel across the owner's land for recreational use. Consideration shall not include: (A) compensation paid to or a tax benefit received by the owner for granting a permanent recreational use easement; (B) payment or provision for compensation to be paid to the owner for damage caused by recreational use; or (C) contributions in services or other consideration paid to the owner to offset or insure against damages sustained by an owner from the recreational use or to compensate the owner for damages from recreational use. (2) (A) "Land" means: (i) open and undeveloped land, including paths and trails; (ii) water, including springs, streams, rivers, ponds, lakes and other water courses; (iii) fences; or (iv) structures and fixtures used to enter or go upon land, including bridges and walkways. (B) "Land" does not include: (i) areas developed for commercial recreational uses, (ii) equipment, machinery or personal property, and (iii) structures and fixtures not described in subdivision (2)(A)(iii) or (iv) of this section. (3) "Owner" means a person who owns, leases, licenses or otherwise controls ownership or use of land, and any employee or agent of that person. (4) "Recreational use" means an activity undertaken for recreational, educational or conservation purposes, and includes hunting, fishing, trapping, guiding, camping, biking, in-line 12 skating, jogging, skiing, swimming, diving, water sports, rock climbing, hang gliding, caving, boating, hiking, riding an animal or a vehicle, picking wild or cultivated plants, picnicking, gleanng, rock collecting, nature study, outdoor sports, visiting or enjoying archeological, scenic, natural, or scientific sites, or other similar activities. "Recreational use" also means any noncommercial activity undertaken without consideration to create, protect, preserve, rehabilitate or maintain

the land for recreational uses. § 5793. Liability limited (a) Land. -- An owner shall not be liable for property damage or personal injury sustained by a person who, without consideration, enters or goes upon the owner's land for a recreational use unless the damage or injury is the result of the willful or wanton misconduct of the owner. (b) Equipment, fixtures, machinery or personal property. (1) Unless the damage or injury is the result of the willful or wanton misconduct of the owner, an owner shall not be liable for property damage or personal injury sustained by a person who, without consideration and without actual permission of the owner, enters or goes upon the owner's land for a recreational use and proceeds to enter upon or use: (A) equipment, machinery or personal property; or (B) structures or fixtures not described in subdivision 5792(2)(A)(iii) or (iv) of this title. (2) Permission to enter or go upon an owner's land shall not, by itself, include permission to enter or go upon structures or to go upon or use equipment, fixtures, machinery or personal property. § 5794.

Landowner protection (a) The fact that an owner has made land available without consideration for recreational uses shall not be construed to: (1) limit the property rights of owners; (2) limit the ability of an owner and a recreational user of the land to enter into agreements for the recreational use of the land to vary or supplement the duties and limitations created in this chapter; (3) support or create any claim or right of eminent domain, adverse possession or other prescriptive right or easement or any other land use restriction; (4) alter, modify or supersede the rights and responsibilities under chapters 191, animal control, and 193, domestic pet or wolf-hybrid control, of Title 20; under chapters 29, snowmobiles, and 31, all-terrain vehicles, of Title 23; under chapter 23, bicycle routes, of Title 19; and under chapter 20, Vermont trail system, of Title 10; (5) extend any assurance that the land is safe for recreational uses or create any duty on an owner to inspect the land to discover dangerous conditions; (6) relieve a person making recreational use of land from the obligation the person may have in the absence of this chapter to exercise due care for the person's own safety in the recreational use of the land. (b) Nothing in this chapter shall create any presumption or inference of permission or consent to enter upon an owner's land for any purpose. 13 (c) For the purposes of protecting landowners who make land available for recreational use to members of the public for no consideration pursuant to this chapter, the presence of one or more of the following on land does not by itself preclude the land from being "open and undeveloped": posting of the land, fences, or agricultural or forestry related structures. § 5795.

Exceptions This chapter shall not apply to lands owned by a municipality or the state. Thus, Article 5791 specifies that the purpose of the act is to encourage owners to open their lands and waters for recreational uses to the public by establishing a rule that owners who do so for no consideration have no greater duty of care to recreationists than to a trespasser. Article 5792 defines terms and defines recreational use considerably more broadly than New York's statute, including in addition to outdoor recreation activities and gleaning: picking wild or cultivated plants, nature study, visiting or enjoying archaeological, scenic, natural, or scientific sites, or other similar activities, as well as any noncommercial activities undertaken without consideration to protect, rehabilitate, or improve the land for recreational uses. Article 5793 (a) exempts landowners of liability for the above situations except for injury resulting from willful or wanton misconduct; and (b) exempts landowners from liability under the same conditions for people who enter the property for recreational purposes and then proceed to use equipment, machinery, personal property, or

structures and facilities on the property. Article 5794 provides some other protections for the owner: that letting people use the land does not restrict the owner's property rights; that it does not extend any assurance that the property is safe; and that it does not lessen users' responsibilities to look out for their own care and safety. Finally, unlike New York's statute, Article 5795 clearly states that the act does not apply to lands owned by a municipality or the state. Court-Determined Breadth and Limitations of the Statute No court cases were found after passage of the revised legislation in 1997 or in the preceding five years that pertained to an adult recreationist on private lands. Whether there has simply been a shortage of cases involving serious injuries, or whether Vermont attorneys are well aware of the statute and it is therefore fulfilling its intent very well would require further research. Two cases were found with a relationship to landowner liability and children. The first occurred in 1996, in which a child crawled under a barbed wire fence, into a pasture containing a horse, and was kicked and injured by the horse. Plaintiffs claimed the situation posed an attractive nuisance. Both the trial and appeals courts disagreed—the horse had no previous history of aggression, and there was insufficient foreseeability of an accident to justify requiring the owner to child-proof the pasture. The case briefing further explained that the attractive nuisance doctrine (in Vermont) is merely a detailed articulation of ordinary negligence, and that a trespassing child is not entitled to a heightened standard of care by the possessor of the land (Zukatis by Zukatis v. Perry (1996), No. 94-593, Supreme Court of Vermont, 165 Vt. 298; 682 A.2d 964). Note also that a later case indicates that Vermont has not adopted the doctrine of attractive nuisance (Baisley v. Missisquoi Cemetery Ass'n (1998), No. 96-433, Supreme Court of Vermont, 167 Vt. 473; 708 A.2d 924). In the second case (Baisley v. Missisquoi Cemetery Ass'n & Robert Young, Sr., (1998), 167 Vt. 473; 708 A.2d 924), three children entered a cemetery and took a ladder out of the cemetery to climb a tree whose branches overhung the cemetery property. A five-year-old child fell out of the tree and was impaled on the spikes of the top of the fence. The trial court had ruled the child a trespasser and had ruled in summary judgment for the defendant Cemetery Association. The Supreme Court ruled that trespass at the time of the accident was a technicality since the tree was not on cemetery property, that the Cemetery Association owed a duty of ordinary care to the defendant, and that a jury could potentially find the Cemetery Association and its caretaker-employee negligent of providing this level of care. Thus, the Court reversed the lower court's order of summary judgment for the defendant.

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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Hawaii Climbing Testimony copy

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

Re: Senate Bill 1168 decision making by WAM on Friday, February 22nd in room 221 at 9:00 AM

From: Keith Okuna

Testimony in SUPPORT of Senate Bill 1168

I am writing to support SB 1168 which pertains to limited liability for the activities of mountain climbing, rock climbing, rappelling, and bouldering. These activities deserve to have limited liability in line with Hawaii's skateboarding, watersport, and ocean activity statutes for a number of critical reasons including: the legal climate in Hawaii, the inherent risk of rock climbing activities, the total inability of the State to oversee them, and the ongoing DLNR practice of closing public lands out of fear of litigation.

First, landowner liability laws in Hawaii are drastically in need of clarification to keep pace with the types of outdoor recreation that are rapidly burgeoning throughout the islands. Gaps in the Hawaii Revised Statutes continue to allow tax dollars to hemorrhage out of the general fund due to lawsuits. The legal climate that has been engendered by consumer lawyers has allowed these lawsuits to persist and to succeed. Many of these judgments against the State seem utterly ludicrous and can only be seen as results of the prodigious cleverness of the lawyers who continue to pilfer the State's coffers. The legislature must take action to protect the rights of recreationists to utilize public lands as they choose, rather than protecting the ability of trial lawyers to sue the State every time someone is injured or killed.

Additionally, Hawaii offers a bountiful array of recreational activities, and we as a society must accept that reasonable people who pursue these activities (such as mountain climbing, rock climbing, rappelling, and bouldering) accept all natural and inherent risks that come along with them. Whenever someone participates in these climbing activities, there are immediate and obvious risks which are essential qualities of these activities that cannot be entirely removed or mitigated; there should be no legal grounds for holding the State liable for damages resulting from such risks. Banning participation in these activities (as the DLNR has done at a number of areas) cannot be the solution; rock climbing is a "welcomed and historic use" of public lands according to the National Park Service, and we must seek to protect it as such.

The nature of mountain climbing, rock climbing, rappelling, and bouldering are such that the practitioners of these activities will always be seeking out new areas to explore and enjoy. This completely precludes any attempts by DLNR to regulate or oversee these activities; the climbers will always be two steps ahead, often establishing self-maintained trails and climbing areas well off the beaten path. Potential proposed solutions of posting signage or setting up permitting programs are completely untenable unless we wish to see thousands of new signs throughout the islands, and establish paperwork for every new climbing site that is established. DLNR doesn't have the resources or staff to enact such programs, and the public doesn't want government oversight of rock climbing areas. By maintaining the stance that climbing is allowed but not regulated, the State will not need to pursue such wasteful measures.

This brings us to the final critical point regarding rock climbing liability: the DLNR's actions. Since a rockfall injury occurred in June of 2012 at a climbing wall in Mokuleia, the DLNR has closed down the two largest, most well-developed climbing areas on the island of Oahu; their actions prompted the DHHL to close down a third extremely popular climbing site as well. In more than twenty years of organized rock climbing in Hawaii there has never been a lawsuit filed against the State as a result of rock climbing activities; these area closures are purely the result of paranoid speculation. As long as the threat of unrighteous lawsuits exists, the DLNR will not allow rock climbing at these areas. This

Hawaii Climbing Testimony copy

intractable position has led to eight months of efforts by local climbers to try to regain access to these public lands, including: appealing to neighborhood boards, repeated offers to the by national nonprofit organization the Access Fund to insure the State against climbing injuries, and requests from local climbers to assume stewardship and land management of the climbing areas; all these efforts have been endlessly stymied by DLNR officials.

Action by the legislature is required to solve this patently absurd situation wherein a "welcomed and historic use" of public lands has been banned, and a whole community has been disenfranchised due to the threat of lawsuits arising from participation in an inherently dangerous activity. We the people need the legislature to remove the threat of lawsuits from the Hawaiian legal climate so that DLNR can rescind its draconian stance toward a safe, healthy, and fulfilling activity and way of life and allow Hawaii's climbers to regain and maintain access to the public lands they treasure. Please pass Senate Bill 1168 to resolve this situation. Thank you for allowing me to present this testimony.

Sincerely,
Keith Okuna

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

Re: Senate Bill 1168 decision making by WAM on Friday, February 22nd in room 221 at 9:00 AM

From: Kevin Nesnow
Oahu Resident

Testimony in SUPPORT of Senate Bill 1168

I am writing to support SB 1168 which pertains to limited liability for the activities of mountain climbing, rock climbing, rappelling, and bouldering. These activities deserve to have limited liability in line with Hawaii's skateboarding, watersport, and ocean activity statutes for a number of critical reasons including: the legal climate in Hawaii, the inherent risk of rock climbing activities, the total inability of the State to oversee them, and the ongoing DLNR practice of closing public lands out of fear of litigation.

First, landowner liability laws in Hawaii are drastically in need of clarification to keep pace with the types of outdoor recreation that are rapidly burgeoning throughout the islands. Gaps in the Hawaii Revised Statutes continue to allow tax dollars to hemorrhage out of the general fund due to lawsuits. The legal climate that has been engendered by consumer lawyers has allowed these lawsuits to persist and to succeed. Many of these judgments against the State seem utterly ludicrous and can only be seen as results of the prodigious cleverness of the lawyers who continue to pilfer the State's coffers. The legislature must take action to protect the rights of recreationists to utilize public lands as they choose, rather than protecting the ability of trial lawyers to sue the State every time someone is injured or killed.

Additionally, Hawaii offers a bountiful array of recreational activities, and we as a society must accept that reasonable people who pursue these activities (such as mountain climbing, rock climbing, rappelling, and bouldering) accept all natural and inherent risks that come along with them. Whenever someone participates in these climbing activities, there are immediate and obvious risks which are essential qualities of these activities that cannot be entirely removed or mitigated; there should be no legal grounds for holding the State liable for damages resulting from such risks. Banning participation in these activities (as the DLNR has done at a number of areas) cannot be the solution; rock climbing is a "welcomed and historic use" of public lands according to the National Park Service, and we must seek to protect it as such.

The nature of mountain climbing, rock climbing, rappelling, and bouldering are such that the practitioners of these activities will always be seeking out new areas to explore and enjoy. This completely precludes any attempts by DLNR to regulate or oversee these activities; the climbers will always be two steps ahead, often establishing self-maintained trails and climbing areas well off the beaten path. Potential proposed solutions of posting signage or setting up permitting programs are completely untenable unless we wish to see thousands of new signs throughout the islands, and establish paperwork for every new climbing site that is established. DLNR doesn't have the resources or staff to enact such programs, and the public doesn't want government oversight of rock climbing areas. By maintaining the stance that climbing is allowed but not regulated, the State will not need to pursue such wasteful measures.

This brings us to the final critical point regarding rock climbing liability: the DLNR's actions. Since a rockfall injury occurred in June of 2012 at a climbing wall in Mokuleia, the DLNR has closed

down the two largest, most well-developed climbing areas on the island of Oahu; their actions prompted the DHHL to close down a third extremely popular climbing site as well. In more than twenty years of organized rock climbing in Hawaii there has never been a lawsuit filed against the State as a result of rock climbing activities; these area closures are purely the result of paranoid speculation. As long as the threat of unrighteous lawsuits exists, the DLNR will not allow rock climbing at these areas. This intractable position has led to eight months of efforts by local climbers to try to regain access to these public lands, including: appealing to neighborhood boards, repeated offers by the national nonprofit organization the Access Fund to insure the State against climbing injuries, and requests from local climbers to assume stewardship and land management of the climbing areas; all these efforts have been endlessly stymied by DLNR officials.

Action by the legislature is required to solve this patently absurd situation wherein a “welcomed and historic use” of public lands has been banned, and a whole community has been disenfranchised due to the threat of lawsuits arising from participation in an inherently dangerous activity. We the people need the legislature to remove the threat of lawsuits from the Hawaiian legal climate so that DLNR can rescind its draconian stance toward a safe, healthy, and fulfilling activity and way of life and allow Hawaii's climbers to regain and maintain access to the public lands they treasure. Please pass Senate Bill 1168 to resolve this situation. Thank you for allowing me to present this testimony.

Yours,

~ Kevin Nesnow

Hello,

I am writing in support of this measure, which hopes to open the rock climbing areas across Hawai'i. Being raised in Colorado, a state that has effectively implemented their natural rock climbing resources into their overall repertoire to further promote tourism, climbing has been an important part of my life since high school.

But more than merely being an ever present phenomenon, it has allowed me to avoid certain negative habits and, in turn, allowed me to pursue more positive lifestyle choices. The truth is, as many of my friends in high school pursued a path that leant itself to substance abuse, I chose the path of rock climbing. The fact that this was a viable option allowed me to avoid the aforementioned negative lifestyle and give me the strength to develop my personality in a more responsible manner. I very much believe that without the positive alternative of rock climbing I would not be where I am today – finishing up an MA at the University of Hawai'i and planning to continue on to the University of Chicago for my PhD. It speaks to the character of rock climbing, as well as those who participate in it, that it can provide a path for a radically different approach to life and values.

I sincerely believe that Hawai'i would be doing a disservice to its youth, as well as its public more broadly, if they continue to ban rock climbing.

Thank you very much for your time.

Sincerely,

Kyle Peters

I, Meghan Taylor strongly support bill SB1168 because the sport of rock Climbing, rappelling, mountaineering and bouldering are wonderful, Inspiring sports that take place in nature which is individuals in this great Country of ours to participate in with the FREEDOM our country stands Upon.

Bill SB1168 protects the state from liability when an individual chooses to Participate in these activities and an accident happens. Sports give passion To life as we all know, they inspire us to new heights. Most all sports have Risk involved but even though we always want people to be safe in any Sport accidents once in a while will happen, that is part of life.

Rock climbing and the other sports we support are just as passionately Important to that person that loves the sport just as surfing huge waves, Scuba diving, football, yes, the list can go on and on, is to those individuals Who participate and except the risks of their chosen sport. To deprive these Individuals from their personal freedom is a complete injustice, it is not The principal our country was founded upon.

It is so important as a state and country to not make the absolute wrong Decision based upon fear, we would be contradicting all the beliefs we Stand for as the United States if America, people are personally accountable When they enter nature that is untamed and the state of Hawaii should not Be held responsible for those choices and actions.

The bill SB1168 will protect Hawaii and let wonderful sports continue and People will have the freedom for their liberty and pursuit of happiness. Rock climbing is a sport that teaches perseverance, teamwork, personal Accountability to help keep your partners safe, self confidence and is Beautiful to accomplish your goals and never give up.

I think we all would agree these are the qualities that we would love for Our young and older people to have, it takes hard work, much practice and Pressing yourself to new levels you thought you could never accomplish, Which helps people to have confidence not only in that sport but it carries On into everyday life.

We all get inspired even if we may never do a particular sport when people May fall or an accident happens and people reach deep inside themselves And reach in and have heart to carry on, get back on the horse as the saying

Goes and to try to be brave and not give up. Don't we all love those stories, don't they possibly really help young people have dreams to go for and People struggling through something difficult in their life to say to Themselves, wow, things are really rough now but look at that person Doing something amazing, I may be able to do something I love that is Amazing to, we believe in adventure still, don't we?

The beauty of nature and peoples god given right to explore should not be Taken away. It would be taking peoples freedom away and Hawaii would Become a place of fear not bravery. We have laws to let people enjoy the Sport and beauty of the ocean without the state being held responsible For an individuals freedom, the same law needs to be put in place for Sportsmen in nature through the bill SB1168, it is the right thing to do!

The state needs to be protected and people to be held accountable For their own choices. Our people in Hawaii need their climbing areas Opened immediately. I and I'm sure many others in life have started Down the wrong path, realized it and then changed courses to go Down the right path. We as a state have taken individuals freedom Away and it is my strong testimony that it needs to change with the passing Of bill SB1168. Lets let people live their dreams, we all want to protect our Children but don't we want to also tell them be brave go for your dreams, We want them not to live in fear but to thrive.

Please do the right thing with the passing of this bill and stand ground on What our country's founded upon, what we want to teach our children, To build character, Have Hawaii stand for freedom and bravery, I think we All believe to be of vital importance to a enriching life and state. Thank you Very much for the opportunity to speak, have a wonderful week.

From: mailinglist@capitol.hawaii.gov
To: [WAM Testimony](#)
Cc: Puakea006@hotmail.com
Subject: Submitted testimony for SB1168 on Feb 22, 2013 09:00AM
Date: Wednesday, February 20, 2013 11:36:46 PM

SB1168

Submitted on: 2/20/2013

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

Submitted By	Organization	Testifier Position	Present at Hearing
Melita Among	Individual	Support	No

Comments: I am submitting testimony in favor of SB1168, SD1, which limits state liability for rock climbing on state lands. The provision under consideration is specific to the recreational activity of rock climbing and as the report submitted with the bill attests, it is necessary because the state cannot take on the significant responsibility of managing and regulating all the possible places where hazardous recreational activities such as rock climbing, bouldering, rappelling, and hiking take place. The Water and Land Committee, as well as the Judiciary Committee, have unanimously voted for this measure. The climbing community is in favor of this measure. I urge you to pass this bill out of committee. Sincerely, Melita Among

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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Chair Ige, Vice Chair Kadani and Members of the Senate Ways and Means Committee
WAM Hearing in Room 211 of the State Capitol
Friday, February 22nd at 9:00 a.m.
Regarding Senate Bill 1168

TESTIMONY IN SUPPORT

Aloha Chair Ige, Vice Chair Kidani, and members of the Senate Ways and Means Committee. Thank you for allowing me to present this testimony in SUPPORT of SB 1168.

My name is Michael Bishop and, as some of you may know, I have been tirelessly working to support a handful of bills pertaining to landowner liability. I am honored to be one of a handful of unofficial spokespeople for the Hawaii rock climbing community; I'm also an extremely avid hiker, diver, surfer, and outdoor enthusiast. I was born here on Oahu, but have spent considerable portions of my life away from Hawaii; each time I left, I felt the irresistible gravity of the islands drawing me home. Upon my latest return home, I was greeted with a vibrant rock climbing community and some of the finest, most beautiful, and safest climbing areas I have ever seen.

When I moved back to Oahu from Colorado two and a half years ago, I started visiting a climbing area my cousin told me about. That area was the Mokuleia wall, an area that she climbed at in its early days, some twenty years ago, with the climbers who were pioneering the sport of rock climbing in Hawaii. I quickly found an amazing group of climbing friends who frequented the Mokuleia wall, and who eased what can often be a difficult transition back to life in Hawaii. My extensive climbing experience (18 years) and knowledge allowed me to shepherd many of my other friends into the climbing world; most of them were immediately hooked on the physical and mental challenges presented by rock climbing and now, 2 years later, all of them can attest to the profound personal development that rock climbing can engender. Building my circle of friends through climbing gave me a sense of community and of belonging to something greater than myself; indeed, climbing is a way of life for many people here in Hawaii, just as surfing, or paddling, or diving, or waterfall hiking, or any other number of activities are for countless residents of the islands. Currently however, there aren't any places to go climbing that haven't been closed out of liability concerns.

These liability concerns came to light last June, when a 12 year-old girl was tragically injured by falling rocks while on a climbing trip to the Mokuleia wall. I was sickened with grief for the young girl, her family, and for the Camp Erdman guide who was leading the trip. However, I was utterly shocked when DLNR closed down the climbing area overnight and posted signage indicating a \$2000 fine for using the trail up to the cliffs. There was no discussion or input from the community, and many of us were nonplussed that the area had been closed entirely - instead of just being signed as having dangerous rockfall potential. In all my years of climbing, I have never witnessed such a reaction to an injury.

I quickly realized that the sport of rock climbing is not very well understood in Hawaii, and that many state officials (and members of the public, for that matter) thought that we were participating in some egregiously dangerous daredevil sport. These claims could not be further from the truth. A number of peer-reviewed medical studies have shown that rock climbing should not be characterized as a high-risk sport; that the incidence of injuries is very low (particularly for sport climbing and bouldering - the two most prevalent types of climbing in Hawaii); and that the vast majority of injuries consist of strains, sprains, and breaks - predominantly in the lower extremities. Conclusive, objective data to support the contention that rock climbing is a 'high-risk' sport simply doesn't exist.

These studies can be found here:

<http://www.ncbi.nlm.nih.gov/pubmed/20632737>

<http://www.ncbi.nlm.nih.gov/pubmed/21913158>

<http://www.ncbi.nlm.nih.gov/pubmed/22824837>

<http://www.ncbi.nlm.nih.gov/pubmed/19666157>

Rock climbers, out of necessity, are extraordinarily safety conscious, many of us even obsessively so; we seek out professional training and more experienced climbers to mentor us, we use the finest technical gear that brilliant engineers can come up with, and we always watch out for our partners or anyone who may be around us while we climb. Ultimately though, even obsessive attention to safety isn't enough to take the risk of injury or death out of rock climbing; it is an essential quality of the sport and gives it much of its tantalizing allure. This is made clear to climbers every time they seek any type of climbing instruction, use any indoor climbing facility, or purchase any type of climbing equipment. This immediate and

obvious inherent risk of the sport is repeatedly stressed to us so much that it has become a part of the consciousness of every climber.

The awareness of the risks contained in rock climbing may be one reason there is a dearth of lawsuits stemming from rock climbing injuries. There is usually no legal 'hook' to go after landowners when injured during the course of an inherently dangerous sport. Even after injury occurs at newly developed or previously unknown areas, appropriate warning signs should ameliorate liability concerns. Here in Hawaii this has proven not to be the case. Despite the fact that the young girl's family hasn't sued the State, DLNR has maintained that they cannot reopen any of the closed climbing areas without liability limitations. The overly litigious legal climate here in Hawaii, in conjunction with massive judgments against the State (including, of course, Brem) during the tenure of current leadership at DLNR, has led to the paralyzing fear of lawsuits. Even if this fear seems unreasonable (on the grounds that whatever lawsuits stem from rock climbing will likely be frivolous), the cost of defending against such suits is a tangible financial concern.

A handful of potential solutions to the closures include: requiring waivers similar to those for beach weddings, management of climbing areas by DLNR, establishing permitting requirements to go rock climbing at specific sites, or passing liability limiting legislation. In terms of effort, cost, and efficiency, the first three options are all rendered nonsensical by the very straightforward and prudent option of passing legislation to limit State liability. It's not only impractical for the State to try to locate every climbing site across the islands and post appropriate warning signage, it would also result in the rather unsightly marring of pristine wilderness areas with excessive signage. Additionally, it would be a waste of State funds to have to engage in a game of cat-and-mouse to put up new signs at every new area that is developed; it would also be an unnecessary use of DLNR manpower, which is already stretched very thin.

Immunity legislation must be enacted to get the State out of the difficult position of having to choose between two awful options: (1) being exposed to lawsuits requiring costly legal defense or, worse yet, paying out huge settlements; or (2) having to close down public recreation areas, post signs, provide DOCARE agents to enforce the closures, and upsetting the public. SB 1168 will solve this dilemma for rock climbing, whereas SB 1007 will solve this

dilemma for hiking. Both measures will positively benefit the State's finances and have already been deemed to have practical merit by the previous committees that have heard them.

There are two mutually exclusive outcomes for the stance that the legislature chooses to take regarding these liability issues. First, the legislature can strike down the attempts to limit landowner liability; maintaining the status-quo of DLNR enacted land closures, upset recreationists, and lawsuits against the State. Alternately, the legislature can adopt the stance that sometimes, in very specific circumstances, limited liability legislation is not only appropriate, but absolutely necessary; thereby allowing the natural resources of the islands to be returned to the people of Hawaii, supporting an entire statewide community of thousands of hikers and climbers, and eliminating the threat of lawsuits that arise from inherently dangerous activities.

I have followed the progress of many landowner liability bills throughout the 2013 session, have testified both in person and online at relevant hearings, have discussed these bills with their primary opposition, and have extensive knowledge of the rock climbing community and environment here in Hawaii. I will make myself available in whatever capacity I can be useful (in person and/or via phone or email), to each and every one of you, if you have any hesitations or questions about these bills.

After everything climbing has given me upon my return to my beloved homeland, I must implore you to please do whatever you can to allow me and my community to pursue life, liberty, and happiness as we love to do here in Hawaii.

With the utmost sincerity,
Michael Bishop

February 20, 2013 Testimony in Support of Sentate Bill 1168

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

Re: Senate Bill 1168 decision making by WAM on Friday, February 22nd in room 221 at 9:00 AM

submitted by:

Michael Richardson, resident of Honolulu

2241 Noah St.

Honolulu, HI 96816

(808) 387-7825

bugman@climbaloha.com

As a registered voter, small business owner, and resident of Honolulu since 1995, I am urging strong support for **SB1168**. 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 **SB1168** because it is my hope that sensible legislation like this bill will address the Department of Land and Natural Resources' (DLNR) fear of liability stemming from the possibility of someone getting injured while rock climbing on State lands. This fear of liability prompted the DLNR to close all Oahu rock climbing sites in June of 2012 when a teenage girl was injured at one of the sites. The June 2012 incident which prompted the closures was the first and only serious rock climbing accident in the 22 year history of climbing on the island of Oahu. I challenge anyone to identify a single other sport with a better safety record than that of the rock climbing community. So while DLNR's fear of liability is not due to any reasonable expectation (based upon our historical safety record) that climbers will continue to be seriously injured climbing, it is not unreasonable for DLNR to fear liability itself (recall the \$15.4 million Brem case) because our liability laws are out of date and favors Hawaii's trial attorneys. The fact that only the Hawaii Association for Justice opposes this bill speaks volumes.

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 in alignment with modern times, are less progressive than most other States, and in fact have not been updated since 1969.

I am writing in support of SB 1168 which specifically pertains to limiting State liability for the activities of mountain climbing, rock climbing, rappelling, and bouldering because it is a **win-win situation**. Why do I believe this?

1) By passing this bill, the legislature will add no additional expense to the DLNR's already meager budget. Indeed the measure will save DLNR money because they would not be compelled to manage the sport and the measure will potentially save taxpayers money in the event someone is injured while engaging in this inherently dangerous sport.

2) Rock climbing is not activity that DLNR should or could manage. The nature of mountain climbing, rock climbing, rappelling, and bouldering are such that the practitioners of these activities will always be seeking out new areas to explore and enjoy. This scenario completely precludes any attempts by DLNR to regulate or oversee these activities. Rock climbers will always be two steps ahead, often establishing self-maintained trails and climbing areas well off the beaten path. Potential proposed solutions of posting signage or setting up permitting programs are completely untenable

unless we wish to see thousands of new signs throughout the islands, and establish paperwork for every new climbing site that is established. DLNR officials have publically testified that the agency lacks the expertise, the resources, or the staff to enact such programs, and climbers do not wish for government oversight of rock climbing areas. By maintaining the stance that climbing is allowed but not regulated, the State will not need to pursue such wasteful measures.

3) The Oahu climbing community numbering approximately 500 individuals, already does a great job of managing its climbing areas. In the 22 year history of climbing on the island, Oahu's rock climbers have maintained the climbing trails, picked up trash in and around the climbing areas, including the nearby roads and beaches, maintained all the climbing routes with the same standards used worldwide in other tropical localities, invested in thousands of dollars of safety equipment including rescue litters and spare helmets at its climbing sites, and much more. These activities are best done privately and passage of this legislation will allow for the status quo arrangement to continue. The DLNR is already stretched thin and they support this legislation, as well as more comprehensive liability reform.

4) As previously mentioned, the historical safety record of rock climbing in Hawaii is nearly impeccable. Mr. Robert Turan, National Park Service Ranger, (and who has submitted testimony in support of SB1168), has suggested that no other climbing area on the mainland has maintained a better safety record than that of the Mokuleia climbing site on Oahu. Additionally, Mr. Turan, who is a Rescue Ranger with safety oversight at several mainland climbing areas, clearly identified the variety of safety measures that Oahu rock climbers have voluntarily emplaced at our climbing sites as factors for this amazing safety record.

5) Rock climbing in Hawaii is actually no more dangerous than most climbing areas on the mainland despite the common misperception otherwise. Many residents erroneously believe that Hawaii lacks suitable cliffs and rock substrate for rock climbing. However, there are in fact, no less than 15 established climbing areas located on the island of Oahu alone. All of these rock climbing sites occur on 'blue rock' basalt cliffs comprised of the same extremely hard and dense 'blue rock' stone that has been used for decades as curbsides along our streets and roadways and as building materials past and present. A quick stroll through Chinatown or past many of Honolulu's historic buildings will attest to the integrity of Hawaii's 'blue rock' stone, the same which rock climbers utilize for their sport in Hawaii.

6) The National Park Service considers rock climbing a "welcomed and historic use of public lands" and the State of Hawaii should take a similar stance as its own Na Ala Hele program does toward the maintenance and protection of trails, historic and otherwise. As a very active member of the climbing community, I can assure you that the sport of rock climbing has and is increasingly growing in importance to the concept of Hawaii as a fun and healthy place to recreate for both visitors and residents. Currently, Oahu's 500 rock climbers have nowhere to climb, and the roughly 1,000 annual visitors that travel to Oahu to climb are going elsewhere. While rock climbing is a drop in the bucket compared to Oahu's surfing industry or its surfing 'attractiveness', eliminating options for recreation is bad business. Rock climbing is an important component of the overall Oahu ecotourism industry and to suggest otherwise indicates an uninformed opinion.

7) While small in scope and size, Hawaii's rock climbing community deserves no less than the protection afforded other similarly hazardous recreational activities such as skateboarding. Rock climbing deserves to have limited liability in line with Hawaii's skateboarding, watersport, and ocean activity statutes for a number of critical reasons including: the legal climate in Hawaii, the inherent risk of rock climbing activities, the total inability of the State to oversee and manage climbing areas, and

the ongoing DLNR practice of closing public lands out of fear of litigation.

8) Hawaii offers a bountiful array of recreational activities, and we as a society must accept that reasonable people who pursue these activities (such as mountain climbing, rock climbing, rappelling, and bouldering) accept all natural and inherent risks that come along with them. Whenever someone participates in these climbing activities, there are immediate and obvious risks which are essential qualities of these activities that cannot be entirely removed or mitigated; there should be no legal grounds for holding the State liable for damages resulting from such risks. Banning participation in these activities (as the DLNR has done at most Oahu sites) cannot be the solution.

9) Last but not least, passing SB1168 is a win-win situation for the Hawaii Association for Justice since there has never been a lawsuit against the State for rock climbing injuries in the 22 year history of the sport in Hawaii. Hawaii's roughly 4,100 trial attorneys have nothing to lose.

In summary, action by the legislature is required to solve this patently absurd situation wherein a "welcomed and historic use" of public lands has been banned, and a whole community has been disenfranchised due to the threat of lawsuits arising from participation in an inherently dangerous activity. We the people need the legislature to remove the threat of lawsuits from the Hawaiian legal climate so that DLNR can rescind its unwavering stance toward a safe, healthy, and fulfilling activity and way of life and allow Hawaii's climbers to regain and maintain access to the public lands they treasure. Please pass Senate Bill 1168 to resolve this situation. Thank you for allowing me to present this testimony and feel free to contact me if you have any questions.

Sincerely,
Michael Richardson

From: mailinglist@capitol.hawaii.gov
To: [WAM Testimony](#)
Cc: Mikehilbert@hotmail.com
Subject: Submitted testimony for SB1168 on Feb 22, 2013 09:00AM
Date: Wednesday, February 20, 2013 6:15:12 AM

SB1168

Submitted on: 2/20/2013

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

Submitted By	Organization	Testifier Position	Present at Hearing
Mike hilbert	Individual	Support	No

Comments: I would like to encourage the state legislature of Hawaii to once again allow Rock climbing on its public what happens. I've been a hiker and climber for years and see it as one of the best ways to connect with the natural world and to convene with others with similar mindsets. Rockclimbing's risks are no different than the risks associated with hiking, surfing, or for that matter driving. When participants should use common sense and appropriate safety procedures and equipment risk of severe injury is very low. I encourage the legislature to once again allow individuals to utilize this valuable natural resource.

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

Re: Senate Bill 1168 decision making by WAM on Friday, February 22nd in room 221 at 9:00 AM

From: Morgan M. Steinmetz

Testimony in SUPPORT of Senate Bill 1168

I am writing to support SB 1168 which pertains to limited liability for the activities of mountain climbing, rock climbing, rappelling, and bouldering. These activities deserve to have limited liability in line with Hawaii's skateboarding, watersport, and ocean activity statutes for a number of critical reasons including: the legal climate in Hawaii, the inherent risk of rock climbing activities, the total inability of the State to oversee them, and the ongoing DLNR practice of closing public lands out of fear of litigation.

First, landowner liability laws in Hawaii are drastically in need of clarification to keep pace with the types of outdoor recreation that are rapidly burgeoning throughout the islands. Gaps in the Hawaii Revised Statutes continue to allow tax dollars to hemorrhage out of the general fund due to lawsuits. The legal climate that has been engendered by consumer lawyers has allowed these lawsuits to persist and to succeed. Many of these judgments against the State seem utterly ludicrous and can only be seen as results of the prodigious cleverness of the lawyers who continue to pilfer the State's coffers. The legislature must take action to protect the rights of recreationists to utilize public lands as they choose, rather than protecting the ability of trial lawyers to sue the State every time someone is injured or killed.

Additionally, Hawaii offers a bountiful array of recreational activities, and we as a society must accept that reasonable people who pursue these activities (such as mountain climbing, rock climbing, rappelling, and bouldering) accept all natural and inherent risks that come along with them. Whenever someone participates in these climbing activities, there are immediate and obvious risks which are essential qualities of these activities that cannot be entirely removed or mitigated; there should be no legal grounds for holding the State liable for damages resulting from such risks. Banning participation in these activities (as the DLNR has done at a number of areas) cannot be the solution; rock climbing is a "welcomed and historic use" of public lands according to the National Park Service, and we must seek to protect it as such.

The nature of mountain climbing, rock climbing, rappelling, and bouldering are such that the practitioners of these activities will always be seeking out new areas to explore and enjoy. This completely precludes any attempts by DLNR to regulate or oversee these activities; the climbers will always be two steps ahead, often establishing self-maintained trails and climbing areas well off the beaten path. Potential proposed solutions of posting signage or setting up permitting programs are completely untenable unless we wish to see thousands of new signs throughout the islands, and establish paperwork for every new climbing site that is established. DLNR doesn't have the resources or staff to enact such programs, and the public doesn't want government oversight of rock climbing areas. By maintaining the stance that climbing is allowed but not regulated, the State will not need to pursue such wasteful measures.

This brings us to the final critical point regarding rock climbing liability: the DLNR's actions. Since a rockfall injury occurred in June of 2012 at a climbing wall in Mokuleia, the DLNR has closed down the two largest, most well-developed climbing areas on the island of Oahu; their actions prompted the DHHL to close down a third extremely popular climbing site as well. In more than twenty years of organized rock climbing in Hawaii there has never been a lawsuit filed against the State as a result of rock climbing activities; these area closures are purely the result of paranoid speculation. As long as the threat of unrighteous lawsuits exists, the DLNR will not allow rock climbing at these areas. This intractable position has led to eight months of efforts by local climbers to try to regain access to these public lands, including: appealing to neighborhood boards, repeated offers to the by national nonprofit organization the Access Fund to insure the State against climbing injuries, and requests from local climbers to assume stewardship and land management of the climbing areas; all these efforts have been endlessly stymied by DLNR officials.

Action by the legislature is required to solve this patently absurd situation wherein a "welcomed and historic use" of public lands has been banned, and a whole community has been disenfranchised due to the threat of lawsuits arising from participation in an inherently dangerous activity. We the people need the legislature to remove the threat of lawsuits from the Hawaiian legal climate so that DLNR can rescind its draconian stance toward a safe, healthy, and fulfilling activity and way of life and allow Hawaii's climbers to regain and maintain access to the public lands they treasure. Please pass Senate Bill 1168 to resolve this situation. Thank you for allowing me to present this testimony.

Sincerely,
Morgan M. Steinmetz

February 21, 2013
Testimony in Support of SB1168

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

Dear Sirs:

I support SB1168 which attempts to limit liability to the State of Hawaii when people engage in hazardous recreational activities on State land. The bill strikes the proper balance between negligence and personal responsibility. The does not eliminate negligence when the State of Hawaii is remiss and clarifies that when a person engages in dangerous recreational activities on State land that the person is personally responsible for his or her own injury or death.

Nathan Yuen
Hiker-Blogger
HawaiianForest.Com

From: mailinglist@capitol.hawaii.gov
To: [WAM Testimony](#)
Cc: nnokuna@gmail.com
Subject: Submitted testimony for SB1168 on Feb 22, 2013 09:00AM
Date: Thursday, February 21, 2013 12:54:06 AM

SB1168

Submitted on: 2/21/2013

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

Submitted By	Organization	Testifier Position	Present at Hearing
neilokuna	Individual	Support	No

Comments: Thank you for the opportunity to testify on this bill. I am writing in support of SB1168. Clearly Oahu is becoming more and more crowded and access to lands for outdoor activities is becoming more precious as a result. It is important that venues be kept open for those participating in such sports as rock climbing and bouldering. Testimony has been submitted against this bill reflecting on the brittle condition of much of the rock in Hawaii. While that may be true, the areas that had been previously used for rock climbing have been determined to be safe for the purposes intended. The intent is not to open any and all areas of the islands for rock climbing; but only those areas that have been previously determined to be capable of safely managing the safety lines and anchors that are commonly used by climbers. The anchors used are specially designed for Hawaii's conditions and installed so as to minimize impact to the environment while still providing the protection required.

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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sb1168testimony

To: Chair Ige, Vice Chair Kidani, and members of the Senate Ways and Means Committee
Re: Senate Bill 1168 decision making by WAM on Friday, February 22nd in room 221 at 9:00 AM

From: Patrick Karjala

Testimony in SUPPORT of Senate Bill 1168

I am writing to support SB 1168 which pertains to limited liability for the activities of mountain climbing, rock climbing, rappelling, and bouldering. These activities deserve to have limited liability in line with Hawaii's skateboarding, watersport, and ocean activity statutes for a number of critical reasons including: the legal climate in Hawaii, the inherent risk of rock climbing activities, the total inability of the State to oversee them, and the ongoing DLNR practice of closing public lands out of fear of litigation.

First, landowner liability laws in Hawaii are drastically in need of clarification to keep pace with the types of outdoor recreation that are rapidly burgeoning throughout the islands. Gaps in the Hawaii Revised Statutes continue to allow tax dollars to hemorrhage out of the general fund due to lawsuits. The legal climate that has been engendered by consumer lawyers has allowed these lawsuits to persist and to succeed. Many of these judgments against the State seem utterly ludicrous and can only be seen as results of the prodigious cleverness of the lawyers who continue to pilfer the State's coffers. The legislature must take action to protect the rights of recreationists to utilize public lands as they choose, rather than protecting the ability of trial lawyers to sue the State every time someone is injured or killed.

Additionally, Hawaii offers a bountiful array of recreational activities, and we as a society must accept that reasonable people who pursue these activities (such as mountain climbing, rock climbing, rappelling, and bouldering) accept all natural and inherent risks that come along with them. Whenever someone participates in these climbing activities, there are immediate and obvious risks which are essential qualities of these activities that cannot be entirely removed or mitigated; there should be no legal grounds for holding the State liable for damages resulting from such risks. Banning participation in these activities (as the DLNR has done at a number of areas) cannot be the solution; rock climbing is a "welcomed and historic use" of public lands according to the National Park Service, and we must seek to protect it as such.

The nature of mountain climbing, rock climbing, rappelling, and bouldering are such that the practitioners of these activities will always be seeking out new areas to explore and enjoy. This completely precludes any attempts by DLNR to regulate or oversee these activities; the climbers will always be two steps ahead, often establishing self-maintained trails and climbing areas well off the beaten path. Potential proposed solutions of posting signage or setting up permitting programs are completely untenable unless we wish to see thousands of new signs throughout the islands, and establish paperwork for every new climbing site that is established. DLNR doesn't have the resources or staff to enact such programs, and the public doesn't want government oversight of rock climbing areas. By maintaining the stance that climbing is allowed but not regulated, the State will not need to pursue such wasteful measures.

This brings us to the final critical point regarding rock climbing liability: the DLNR's actions. Since a rockfall injury occurred in June of 2012 at a climbing wall in Mokuleia, the DLNR has closed down the two largest, most well-developed climbing areas on the island of Oahu; their actions prompted the DHHL to close down a third extremely popular climbing site as well. In more than twenty years of organized rock climbing in Hawaii there has never been a lawsuit filed against the State as a result of rock climbing activities; these area closures are purely the result of paranoid speculation. As long as the threat of unrighteous lawsuits exists, the DLNR will not allow rock climbing at these areas. This

sb1168testimony

intractable position has led to eight months of efforts by local climbers to try to regain access to these public lands, including: appealing to neighborhood boards, repeated offers to the by national nonprofit organization the Access Fund to insure the State against climbing injuries, and requests from local climbers to assume stewardship and land management of the climbing areas; all these efforts have been endlessly stymied by DLNR officials.

Action by the legislature is required to solve this patently absurd situation wherein a "welcomed and historic use" of public lands has been banned, and a whole community has been disenfranchised due to the threat of lawsuits arising from participation in an inherently dangerous activity. We the people need the legislature to remove the threat of lawsuits from the Hawaiian legal climate so that DLNR can rescind its draconian stance toward a safe, healthy, and fulfilling activity and way of life and allow Hawaii's climbers to regain and maintain access to the public lands they treasure. Please pass Senate Bill 1168 to resolve this situation. Thank you for allowing me to present this testimony.

Sincerely,
Patrick Karjala
2662 Waolani Ave
Honolulu, HI 96817

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

Re: Senate Bill 1168 decision making by WAM on Friday, February 22nd in room 221 at 9:00 AM

From: ***** *****

Testimony in SUPPORT of Senate Bill 1168

I am writing to support SB 1168 which pertains to limited liability for the activities of mountain climbing, rock climbing, rappelling, and bouldering. These activities deserve to have limited liability in line with Hawaii's skateboarding, watersport, and ocean activity statutes for a number of critical reasons including: the legal climate in Hawaii, the inherent risk of rock climbing activities, the total inability of the State to oversee them, and the ongoing DLNR practice of closing public lands out of fear of litigation.

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Additionally, Hawaii offers a bountiful array of recreational activities, and we as a society must accept that reasonable people who pursue these activities (such as mountain climbing, rock climbing, rappelling, and bouldering) accept all natural and inherent risks that come along with them. Whenever someone participates in these climbing activities, there are immediate and obvious risks which are essential qualities of these activities that cannot be entirely removed or mitigated; there should be no legal grounds for holding the State liable for damages resulting from such risks. Banning participation in these activities (as the DLNR has done at a number of areas) cannot be the solution; rock climbing is a "welcomed and historic use" of public lands according to the National Park Service, and we must seek to protect it as such.

The nature of mountain climbing, rock climbing, rappelling, and bouldering are such that the practitioners of these activities will always be seeking out new areas to explore and enjoy. This completely precludes any attempts by DLNR to regulate or oversee these activities; the climbers will always be two steps ahead, often establishing self-maintained trails and climbing areas well off the beaten path. Potential proposed solutions of posting signage or setting up permitting programs are completely untenable unless we wish to see thousands of new signs throughout the islands, and establish paperwork for every new climbing site that is established. DLNR doesn't have the resources or staff to enact such programs, and the public doesn't want government oversight of rock climbing areas. By maintaining the stance that climbing is

allowed but not regulated, the State will not need to pursue such wasteful measures.

This brings us to the final critical point regarding rock climbing liability: the DLNR's actions. Since a rockfall injury occurred in June of 2012 at a climbing wall in Mokuleia, the DLNR has closed down the two largest, most well-developed climbing areas on the island of Oahu; their actions prompted the DHHL to close down a third extremely popular climbing site as well. In more than twenty years of organized rock climbing in Hawaii there has never been a lawsuit filed against the State as a result of rock climbing activities; these area closures are purely the result of paranoid speculation. As long as the threat of unrighteous lawsuits exists, the DLNR will not allow rock climbing at these areas. This intractable position has led to eight months of efforts by local climbers to try to regain access to these public lands, including: appealing to neighborhood boards, repeated offers to the by national nonprofit organization the Access Fund to insure the State against climbing injuries, and requests from local climbers to assume stewardship and land management of the climbing areas; all these efforts have been endlessly stymied by DLNR officials.

Action by the legislature is required to solve this patently absurd situation wherein a “welcomed and historic use” of public lands has been banned, and a whole community has been disenfranchised due to the threat of lawsuits arising from participation in an inherently dangerous activity. We the people need the legislature to remove the threat of lawsuits from the Hawaiian legal climate so that DLNR can rescind its draconian stance toward a safe, healthy, and fulfilling activity and way of life and allow Hawaii's climbers to regain and maintain access to the public lands they treasure. Please pass Senate Bill 1168 to resolve this situation. Thank you for allowing me to present this testimony.

Sincerely,
Rita Ryan

From: mailinglist@capitol.hawaii.gov
To: [WAM Testimony](#)
Cc: rob_turan@nps.gov
Subject: Submitted testimony for SB1168 on Feb 22, 2013 09:00AM
Date: Wednesday, February 20, 2013 4:12:02 PM

SB1168

Submitted on: 2/20/2013

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

Submitted By	Organization	Testifier Position	Present at Hearing
Rob Turan	Individual	Support	No

Comments: My name is Rob Turan and I would like to submit testimony in support of SB1168 which would update rock climbing liability protection in the State of Hawaii. I have been a National Park Service law enforcement Park Ranger and the Climbing Park Ranger for 30 years at National Parks including Grand Canyon, New River Gorge, Obed Wild and Scenic River, and Sunset Rock, Lookout Mountain, Tennessee. As the primary staff person dealing with all aspects of climbing management at these National Parks, from policy, anchor replacement, resource impact and mitigation, and search and rescue, my overall experience is without peer. In addition I have been an active rock climber since 1978. I helped institute the very first anchor replacement initiative to occur within federally managed land and this in turn set precedence for all other climbing parks to do the same to preserve rim ecosystems. I am the National Park Service's rock climbing rescue lead instructor. There are very few people who have more experience and expertise with rock climbing and crag management than I do and I provide this testimony on that basis. I visited the North Shore of Oahu the spring of 2012, specifically to rock climb at the Mokuleia Crag, an incredible basalt cliff that I had heard so much about from friends in the climbing community and in various magazine articles. Everything about the Mokuleia rock climbing crag, from the hike in, to the quality and texture of the smooth basalt, to the unique and safe top roping system, is of a world-class nature. I absolutely loved climbing at The Moke. I was very impressed that a cache was on site with safety equipment including a litter, helmets, rope and so forth. I have never seen such dedication placed into an area, nor such thorough attention to safety and on-site preparedness for a carry out operation in the event of an injury. The effort the Hawaii climbers have made to be safe, and to be self-sufficient in performing a carry out is unparalleled in my extensive experience. In addition, the very well-maintained bolts and "string system" the local climbers have developed at the Mokuleia crag enables ropes, for top-roping, to be put into place from the ground, without any of the environmental damage that often occurs along the top of climbing cliffs. Because of this system, climbers at the Mokuleia wall don't have to access the fragile environments above the solid basalt crag. The Mokuleia crag's rock quality, measures for safety, thoroughness of maintenance, and attention to ensuring adverse impacts to the environment are avoided are, in my professional opinion, world class.

The Mokuleia Crag's safety record is superior – 20+ years with only one serious injury (which resulted in the Crag's closure last spring) is excellent. I notice a group of Hawaii personal injury lawyers is working to oppose this bill and while I sympathize with their concern that passage of this bill into law could, some far day in the future, result in one of them foregoing a sizeable payout from the State's funds, I hope that you will rule in favor of the State and the public good by ensuring this bill passes into law. In addition to the objective safety of this crag and the objective need the State has for updated liability law, the subjective is also worth mentioning here: the ocean scenery when on a rope on the Mokuleia crag is breathtaking. There is no cliff anywhere in the world that offers the combination of view and quality of the rock climbing the Mokuldia Crag offers. I most heartedly endorse preserving The Moke as a world class climbing destination. Please update Hawaii law to enable DLNR to keep the Mokuleia crag open so that climbers from across the planet can enjoy the best of Hawaii as I did. Thank you and please contact me if I can answer any questions or provide additional information. Rob Turan rob_turan@nps.gov

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20 FEBRUARY 2013

ATTENTION:

COMMITTEE CHAIR DAVID Y. IGE

AND MEMBERS OF THE COMMITTEE ON WAYS & MEANS

STATE SENATE

HAWAII STATE CAPITOL

415 SOUTH BERETANIA STREET

HONOLULU, HAWAII 96813

RE: SB1168 SD1, RELATING TO LIMITED LIABILITY FOR MOUNTAIN CLIMBING, ROCK CLIMBING, RAPPELLING, AND BOULDERING ON GOVERNMENT LAND.

TESTIMONY OF SUPPORT

Dear Committee Chair and Committee Members,

I, Robert M. Anderson, STRONGLY SUPPORT SB1168 SD1, which seeks to clarify 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. SB1168 SD1 also seeks to define rock climbing and bouldering.

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

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

nearly impossible and totally fruitless trying to work with DLNR to get Mokuleia reopened, as the efforts of our group, the North Shore Neighborhood Board, and other folks have all been met with cold shoulders.

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

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

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

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

It is the hope of myself and the rest of the Hawaii climbing community that the passage of SB1168 SD1 will help lead to the reopening of the Mokuleia Crag for climbing access, and the rest of Kaena State Park to all recreational users. While SB1168 SD1 is not a magical "silver bullet" needed to solve all liability and climbing access concerns, we strongly believe it is a solid step in the right direction. There is no reason why the State of Hawaii, the DLNR, or any other entity for that matter would want to, or be capable of regulating and micro-managing rock climbing in the islands. The passage of SB1168 SD1 would relieve the State of the burden and responsibility of that additional liability. By limiting liability for the State of Hawaii and closing some of the open doors for frivolous lawsuits from the public, state agencies should be able to relax and lessen some of their restrictions. This is could only be described as a win-win situation for both the State and outdoor enthusiasts. All this will lead to not only better land management practices, but more people being able to safely enjoy all the beautiful natural resources our state has to offer.

For these reasons, I STRONGLY SUPPORT SB1168 SD1, and urge its passing during this session of the Hawaii State Legislature. Let it also be known that I support HB937 and HB625 HD1, SB1168 SD1's companion legislation in the House of Representatives. Thank you immensely for your time and consideration.

Sincerely,

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

(808) 358-9439

February 20, 2013

To Whom it may concern:

As an avid outdoor adventurer I understand the hazards of engaging in such activities as hiking and rock climbing. I take precautions to minimize adverse consequences for myself, the land, and other people using the same public places. I know also, though, that accidents do happen and are the responsibility of the party engaged in such activity. Therefore, I support SB1168 in favor of releasing the state or land owners from liability for any accident resulting from these activities which occurs on public or state owned property.

Samantha Shobert

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

Re: Senate Bill 1168 decision making by WAM on Friday, February 22nd in room 221 at 9:00 AM

From: Sayar Kuchenski

Testimony in SUPPORT of Senate Bill 1168

I am writing to support SB 1168 which pertains to limited liability for the activities of mountain climbing, rock climbing, rappelling, and bouldering. These activities deserve to have limited liability in line with Hawaii's skateboarding, watersport, and ocean activity statutes for a number of critical reasons including: the legal climate in Hawaii, the inherent risk of rock climbing activities, the total inability of the State to oversee them, and the ongoing DLNR practice of closing public lands out of fear of litigation.

First, landowner liability laws in Hawaii are drastically in need of clarification to keep pace with the types of outdoor recreation that are rapidly burgeoning throughout the islands. Gaps in the Hawaii Revised Statutes continue to allow tax dollars to hemorrhage out of the general fund due to lawsuits. The legal climate that has been engendered by consumer lawyers has allowed these lawsuits to persist and to succeed. Many of these judgments against the State seem utterly ludicrous and can only be seen as results of the prodigious cleverness of the lawyers who continue to pilfer the State's coffers. The legislature must take action to protect the rights of recreationists to utilize public lands as they choose, rather than protecting the ability of trial lawyers to sue the State every time someone is injured or killed.

Additionally, Hawaii offers a bountiful array of recreational activities, and we as a society must accept that reasonable people who pursue these activities (such as mountain climbing, rock climbing, rappelling, and bouldering) accept all natural and inherent risks that come along with them. Whenever someone participates in these climbing activities, there are immediate and obvious risks which are essential qualities of these activities that cannot be entirely removed or mitigated; there should be no legal grounds for holding the State liable for damages resulting from such risks. Banning participation in these activities (as the DLNR has done at a number of areas) cannot be the solution; rock climbing is a "welcomed and historic use" of public lands according to the National Park Service, and we must seek to protect it as such.

The nature of mountain climbing, rock climbing, rappelling, and bouldering are such that the practitioners of these activities will always be seeking out new areas to explore and enjoy. This completely precludes any attempts by DLNR to regulate or oversee these activities; the climbers will always be two steps ahead, often establishing self-maintained trails and climbing areas well off the beaten path. Potential proposed solutions of posting signage or setting up permitting programs are completely untenable unless we wish to see thousands of new signs throughout the islands, and establish paperwork for every new climbing site that is established. DLNR doesn't have the resources or staff to enact such programs, and the public doesn't want government oversight of rock climbing areas. By maintaining the stance that climbing is allowed but not regulated, the State will not need to pursue such wasteful measures.

This brings us to the final critical point regarding rock climbing liability: the DLNR's actions. Since a rockfall injury occurred in June of 2012 at a climbing wall in Mokuleia, the DLNR has closed down the two largest, most well-developed climbing areas on the island of Oahu; their actions

prompted the DHHL to close down a third extremely popular climbing site as well. In more than twenty years of organized rock climbing in Hawaii there has never been a lawsuit filed against the State as a result of rock climbing activities; these area closures are purely the result of paranoid speculation. As long as the threat of unrighteous lawsuits exists, the DLNR will not allow rock climbing at these areas. This intractable position has led to eight months of efforts by local climbers to try to regain access to these public lands, including: appealing to neighborhood boards, repeated offers the by national nonprofit organization the Access Fund to insure the State against climbing injuries, and requests from local climbers to assume stewardship and land management of the climbing areas; all these efforts have been endlessly stymied by DLNR officials.

Action by the legislature is required to solve this patently absurd situation wherein a “welcomed and historic use” of public lands has been banned, and a whole community has been disenfranchised due to the threat of lawsuits arising from participation in an inherently dangerous activity. We the people need the legislature to remove the threat of lawsuits from the Hawaiian legal climate so that DLNR can rescind its draconian stance toward a safe, healthy, and fulfilling activity and way of life and allow Hawaii's climbers to regain and maintain access to the public lands they treasure. Please pass Senate Bill 1168 to resolve this situation. Thank you for allowing me to present this testimony.

Sincerely,
Sayar Kuchenski

February 21, 2013

RE: Testimony in Support of SB1168

Scott E. Hovey, Jr. Esq.
1830 Liholiho Street, Apt 608
Honolulu Hawaii 96822

Dear Sirs:

I support SB1168 which attempts to limit liability to the State of Hawaii when people engage in rock climbing on State land. The bill strikes the proper balance between negligence and personal responsibility. The bill does not eliminate negligence when the State of Hawaii is remiss and clarifies that when a person engages in dangerous recreational activities on State land that the person is personally responsible for his or her own injury or death.

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

Scott E. Hovey, Jr. Esq.
www.kiapolo.com

From: mailinglist@capitol.hawaii.gov
To: [WAM Testimony](#)
Cc: higgins.scottr@gmail.com
Subject: Submitted testimony for SB1168 on Feb 22, 2013 09:00AM
Date: Wednesday, February 20, 2013 9:12:16 AM

SB1168

Submitted on: 2/20/2013

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

Submitted By	Organization	Testifier Position	Present at Hearing
Scott Higgins	Individual	Support	Yes

Comments: Dear Legislator, I am writing to voice my strong support for SB1168. By limiting liable of the state government, with regards to climbing injuries, this bill will allow the outdoor recreation community to continue to grow its positive culture and economic impact on Oahu. Please support this bill. Regards, Scott Higgins

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: [WAM Testimony](#)
Cc: severine.monnerat@seattlebiomed.org
Subject: Submitted testimony for SB1168 on Feb 22, 2013 09:00AM
Date: Tuesday, February 19, 2013 10:26:22 PM

SB1168

Submitted on: 2/19/2013

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

Submitted By	Organization	Testifier Position	Present at Hearing
Severine Monnerat	Individual	Support	No

Comments: As a climber, I have climbed in many crags all over the world. Mokuleia was one of the best crag I have been to, with solid basalt, well equipped, and in an amazing location. It was world-class climbing. It would be a terrible loss if the crag was not reopened. Thank you for taking the right decision, Severine Monnerat, PhD

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I, Steven Clark, **SUPPORT** SB1168 because rock climbing, bouldering, and rappelling are my passions in life. I have just recently moved to Hawaii a month ago. I am originally from Tennessee where I started rock climbing around three years ago. Ever since, I have climbed in numerous states such as North Carolina, Kentucky, California, Colorado, Arizona, and Oregon. At each of these states, I have never had an issue with access until I moved to Hawaii.

Hawaii is a state that profits off of tourism. The last vacation I took before moving to Hawaii, I did on the intent of rock climbing like many others out there who participate in the activity. When you take away climbing from Hawaii, you also take away potential visitors to this great state.

I understand the risks that are sometimes involved in an activity such as rock climbing. Like the surfers who attempt the big waves found on Waimea Bay or Pipeline, serious injuries are a potential. But with rock climbing, if one is to take the correct precautions, many of these factors can be directly eliminated.

Since I have moved here, I have not been able to climb outside in the respect of the laws of the state. I hope that in the near future, this can be changed.

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

Re: Senate Bill 1168 decision making by WAM on Friday, February 22nd in room 221 at 9:00 AM

From: Sue Donaldson

Testimony in SUPPORT of Senate Bill 1168

I am writing to support SB 1168 which pertains to limited liability for the activities of mountain climbing, rock climbing, rappelling, and bouldering. These activities deserve to have limited liability in line with Hawaii's skateboarding, watersport, and ocean activity statutes for a number of critical reasons including: the legal climate in Hawaii, the inherent risk of rock climbing activities, the total inability of the State to oversee them, and the ongoing DLNR practice of closing public lands out of fear of litigation.

First, landowner liability laws in Hawaii are drastically in need of clarification to keep pace with the types of outdoor recreation that are rapidly burgeoning throughout the islands. Gaps in the Hawaii Revised Statutes continue to allow tax dollars to hemorrhage out of the general fund due to lawsuits. The legal climate that has been engendered by consumer lawyers has allowed these lawsuits to persist and to succeed. Many of these judgments against the State seem utterly ludicrous and can only be seen as results of the prodigious cleverness of the lawyers who continue to pilfer the State's coffers. The legislature must take action to protect the rights of recreationists to utilize public lands as they choose, rather than protecting the ability of trial lawyers to sue the State every time someone is injured or killed.

Additionally, Hawaii offers a bountiful array of recreational activities, and we as a society must accept that reasonable people who pursue these activities (such as mountain climbing, rock climbing, rappelling, and bouldering) accept all natural and inherent risks that come along with them. Whenever someone participates in these climbing activities, there are immediate and obvious risks which are essential qualities of these activities that cannot be entirely removed or mitigated; there should be no legal grounds for holding the State liable for damages resulting from such risks. Banning participation in these activities (as the DLNR has done at a number of areas) cannot be the solution; rock climbing is a "welcomed and historic use" of public lands according to the National Park Service, and we must seek to protect it as such.

The nature of mountain climbing, rock climbing, rappelling, and bouldering are such that the practitioners of these activities will always be seeking out new areas to explore and enjoy. This completely precludes any attempts by DLNR to regulate or oversee these activities; the climbers will always be two steps ahead, often establishing self-maintained trails and climbing areas well off the beaten path. Potential proposed solutions of posting signage or setting up permitting programs are completely untenable unless we wish to see thousands of new signs throughout the islands, and establish paperwork for every new climbing site that is established. DLNR doesn't have the resources or staff to enact such programs, and the public doesn't want government oversight of rock climbing areas. By maintaining the stance that climbing is allowed but not regulated, the State will not need to pursue such wasteful measures.

This brings us to the final critical point regarding rock climbing liability: the DLNR's actions. Since a rockfall injury occurred in June of 2012 at a climbing wall in Mokuleia, the DLNR has closed down the two largest, most well-developed climbing areas on the island of Oahu; their actions

prompted the DHHL to close down a third extremely popular climbing site as well. In more than twenty years of organized rock climbing in Hawaii there has never been a lawsuit filed against the State as a result of rock climbing activities; these area closures are purely the result of paranoid speculation. As long as the threat of unrighteous lawsuits exists, the DLNR will not allow rock climbing at these areas. This intractable position has led to eight months of efforts by local climbers to try to regain access to these public lands, including: appealing to neighborhood boards, repeated offers by a national nonprofit organization the Access Fund to insure the State against climbing injuries, and requests from local climbers to assume stewardship and land management of the climbing areas; all these efforts have been endlessly stymied by DLNR officials.

Action by the legislature is required to solve this patently absurd situation wherein a “welcomed and historic use” of public lands has been banned, and a whole community has been disenfranchised due to the threat of lawsuits arising from participation in an inherently dangerous activity. We the people need the legislature to remove the threat of lawsuits from the Hawaiian legal climate so that DLNR can rescind its draconian stance toward a safe, healthy, and fulfilling activity and way of life and allow Hawaii's climbers to regain and maintain access to the public lands they treasure. Please pass Senate Bill 1168 to resolve this situation. Thank you for allowing me to present this testimony.

Sincerely,

Sue Donaldson
Honolulu, HI 96815

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

Re: Senate Bill 1168 decision making by WAM on Friday, February 22nd

From: Thomas Lee Engle

Testimony in SUPPORT of Senate Bill 1168

I am writing to support SB 1168 which pertains to limited liability for the activities of mountain climbing, rock climbing, rappelling, and bouldering. These activities deserve to have limited liability in line with Hawaii's skateboarding, watersport, and ocean activity statutes for a number of critical reasons including: the legal climate in Hawaii, the inherent risk of rock climbing activities, the total inability of the State to oversee them, and the ongoing DLNR practice of closing public lands out of fear of litigation.

First, landowner liability laws in Hawaii are drastically in need of clarification to keep pace with the types of outdoor recreation that are rapidly burgeoning throughout the islands. Gaps in the Hawaii Revised Statutes continue to allow tax dollars to hemorrhage out of the general fund due to lawsuits. The legal climate that has been engendered by consumer lawyers has allowed these lawsuits to persist and to succeed. Many of these judgments against the State seem utterly ludicrous and can only be seen as results of the prodigious cleverness of the lawyers who continue to pilfer the State's coffers. The legislature must take action to protect the rights of recreationists to utilize public lands as they choose, rather than protecting the ability of trial lawyers to sue the State every time someone is injured or killed.

Additionally, Hawaii offers a bountiful array of recreational activities, and we as a society must accept that reasonable people who pursue these activities (such as mountain climbing, rock climbing, rappelling, and bouldering) accept all natural and inherent risks that come along with them. Whenever someone participates in these climbing activities, there are immediate and obvious risks which are essential qualities of these activities that cannot be entirely removed or mitigated; there should be no legal grounds for holding the State liable for damages resulting from such risks. Banning participation in these activities (as the DLNR has done at a number of areas) cannot be the solution; rock climbing is a "welcomed and historic use" of public lands according to the National Park Service, and we must seek to protect it as such.

The nature of mountain climbing, rock climbing, rappelling, and bouldering are such that the practitioners of these activities will always be seeking out new areas to explore and enjoy. This completely precludes any attempts by DLNR to regulate or oversee these activities; the climbers will always be two steps ahead, often establishing self-maintained trails and climbing areas well off the beaten path. Potential proposed solutions of posting signage or setting up permitting programs are completely untenable unless we wish to see thousands of new signs throughout the islands, and establish paperwork for every new climbing site that is established. DLNR doesn't have the resources or staff to enact such programs, and the public doesn't want government oversight of rock climbing areas. By maintaining the stance that climbing is allowed but not regulated, the State will not need to pursue such wasteful measures.

This brings us to the final critical point regarding rock climbing liability: the DLNR's

actions. Since a rockfall injury occurred in June of 2012 at a climbing wall in Mokuleia, the DLNR has closed down the two largest, most well-developed climbing areas on the island of Oahu; their actions prompted the DHHL to close down a third extremely popular climbing site as well. In more than twenty years of organized rock climbing in Hawaii there has never been a lawsuit filed against the State as a result of rock climbing activities; these area closures are purely the result of paranoid speculation. As long as the threat of unrighteous lawsuits exists, the DLNR will not allow rock climbing at these areas. This intractable position has led to eight months of efforts by local climbers to try to regain access to these public lands, including: appealing to neighborhood boards, repeated offers by national nonprofit organization the Access Fund to insure the State against climbing injuries, and requests from local climbers to assume stewardship and land management of the climbing areas; all these efforts have been endlessly stymied by DLNR officials.

Action by the legislature is required to solve this patently absurd situation wherein a “welcomed and historic use” of public lands has been banned, and a whole community has been disenfranchised due to the threat of lawsuits arising from participation in an inherently dangerous activity. We the people need the legislature to remove the threat of lawsuits from the Hawaiian legal climate so that DLNR can rescind its draconian stance toward a safe, healthy, and fulfilling activity and way of life and allow Hawaii's climbers to regain and maintain access to the public lands they treasure. Please pass Senate Bill 1168 to resolve this situation. Thank you for allowing me to present this testimony.

Sincerely,
Thomas Engle

From: mailinglist@capitol.hawaii.gov
To: [WAM Testimony](#)
Cc: taborn@my.hpu.edu
Subject: Submitted testimony for SB1168 on Feb 22, 2013 09:00AM
Date: Wednesday, February 20, 2013 11:58:45 PM

SB1168

Submitted on: 2/20/2013

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

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

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

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From: mailinglist@capitol.hawaii.gov
To: [WAM Testimony](#)
Cc: zach@zacupuncture.com
Subject: Submitted testimony for SB1168 on Feb 22, 2013 09:00AM
Date: Wednesday, February 20, 2013 4:01:12 PM

SB1168

Submitted on: 2/20/2013

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

Submitted By	Organization	Testifier Position	Present at Hearing
Zachary Yamasaki	Individual	Support	No

Comments: I support the use of hawaii's natural resources. The people need access to parks and should not hold the state accountable for accidents that occur unless due to failure to maintain trails. Please do not take away our rights to use the land.

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NEIL ABERCROMBIE
GOVERNOR OF HAWAII



LATE

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 Committee on
WAYS AND MEANS**

**Friday, February 22, 2013
9:00 AM
State Capitol, Conference Room 211**

**In consideration of
SENATE BILL 1168, SENATE DRAFT 1
RELATING TO LIMITED LIABILITY FOR MOUNTAIN CLIMBING, ROCK
CLIMBING, RAPPELLING, AND BOULDERING ON GOVERNMENT LAND**

The Department of Land and Natural Resources (Department) is in strong support of Senate Bill 1168, Senate Draft 1 an Administration proposal which clarifies that no public entity or public employee shall be liable to any person for injury or damage on government land when engaged in mountain climbing, rock climbing, rappelling and bouldering.

There has been an increasing trend in public recreation throughout the United States and Hawaii to pursue the activity of bouldering, rock climbing, rappelling and related activity that requires special skills, equipment and specific geologic features with unique qualities. In addition, the advent of indoor climbing gyms and mobile climbing walls, where the recreationalists can practice on engineered walls in a secure environment with ancillary safety equipment, has led to an increased desire to then test skills in an exterior, unmanaged environment subject to variation and additional exposure to environmental hazards. Due to the Internet and other social media, the proliferation of information on this activity and the method by which the public gains information on climbing opportunities located in remote unmanaged areas to practice these skills, is rapidly increasing.

While Hawaii lacks the unique geology on a wide scale basis to support or promote this recreational activity – there are isolated outcroppings of specific rock features throughout the State that are alluring for rock climbing. This activity may occur on both public and private land. As the Department has jurisdiction of approximately two million acres of land and staff have no programs or training on the activity nor are knowledgeable of all possible statewide locations and current ancillary use, regulating or managing this activity is untenable. However, as it has been occurring virtually for decades in various locations and with a growing degree of participation, and rather than attempt to regulate or prohibit and subsequently enforce against the

activity, absent any expertise on the subject, providing government with liability relief associated with its use is a prudent measure.

The Department is in strong support of passage of this Administration bill.