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GOVERNOR OF HAWAII



**LATE**

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LAND  
STATE PARKS

**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

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**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.

**LATE**

**COMMENTS BY ROBERT TOYOFUKU ON BEHALF OF THE HAWAII  
ASSOCIATION FOR JUSTICE (HAJ) IN OPPOSITION TO S.B. NO. 1168, SD 1**

Date: Friday, February 22, 2013

Time: 9:00 o'clock am.

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

My name is Bob Toyofuku and I am presenting these comments on behalf of the Hawaii Association for Justice (HAJ) in OPPOSITION to S.B. No. 1168, SD 1 Relating to Limited Liability for Mountain Climbing, Rock Climbing, Rappelling, and Bouldering on Government Land.

The purpose of this bill is to provide public entities with **absolute immunity** from any injury to person or property on government land when engaged in those activities listed in the bill.

The justification sheet attached to this bill implies that government would be liable even where an injury occurred on unimproved land in remote unmanaged areas owned by government. Public, like private, landowners are liable only when they have a duty to any third person who may be injured. That duty is to follow a standard of care that a reasonable person must use under the circumstances to prevent harm to others. This is the essence of the concept of negligence in tort law. In other words, the public and private landowner must not act in a negligent manner. **There is no legal obligation that a landowner protects against every risk or be liable for every injury.**

HAJ has always maintained that proponents of an immunity bill should at least provide the legislature with the data that clearly indicates the number and type of lawsuits that have been filed against public landowners of unimproved lands for personal injuries

or property damage that have occurred on such unimproved land, any resulting judgment against the government, and the circumstances under which the government landowner was found to be negligent. To the best of our knowledge, we know of no lawsuits that have been filed against the state or counties for injuries sustained due to rock climbing or bouldering as set forth in this bill. **The state already has substantial protection from liability in connection with natural conditions on unimproved lands under Act 82.** We have always maintained that the legislature should have all of the facts and data before a major shift in public policy is made. This **bill is not in the public interest and would be creating bad public policy.**

Thank you for the opportunity to comment on this bill. HAJ respectfully requests that this bill be held in committee.

**LATE**

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: Christine Miyasaki

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. This bill will help protect the right of the people for access to public lands and help protect the State from excessive litigation.

Thank you for your time and consideration.



From: [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
 To: [WAM Testimony](#)  
 Cc: [larryd@hawaii.edu](mailto:larryd@hawaii.edu)  
 Subject: Submitted testimony for SB1168 on Feb 22, 2013 09:00AM  
 Date: Thursday, February 21, 2013 9:11:46 PM

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
Larry Day	Individual	Support	No

Comments: I strongly support SB1168, which limits liability among public entities for injuries or damages incurred while rock climbing and related activities. As an avid climber and hiker, I understand the risks associated with outdoor activities and am willing to assume responsibility for my actions. The existence of similar recreational use statutes in most other states and the dearth of climber-initiated lawsuits suggests others prioritize personal freedom (and responsibility) over oppressive land use restrictions as well. Rock climbing on Oahu has effectively been outlawed after a girl was injured by falling rock while climbing at a crag in Mokuleia. To my knowledge this is the first serious injury in over twenty years of climbing at Mokuleia. This contrasts to injuries and deaths that occur each year in the ocean adjacent to public beaches across the state. Protecting the State from liability due to climbing accidents should be comparable to that afforded ocean activities, as the public values access to both the water and land. Moreover, rockfall can occur at any cliff, including those adjacent to public trails. For example, the Kealia trail, located in Mokuleia, has experienced rockfall in the past, yet it remains open while climbing areas on the same cliff band are closed. If warning signs are sufficient for hikers on public trails, one could reason that comparable signage should suffice to warn climbers. As it is impossible to eliminate all risk associated with outdoor activities, the State cannot be held liable for every accident that occurs on public lands. Nor should the government arbitrarily dictate which activities are acceptably "safe". Rather, responsible citizens should be able to pursue outdoor recreation, including climbing, with an understanding that accidents can happen. Whether these occur due to human error or inherent dangers of the activity/environment, the individual must be responsible for their actions. Bill such as SB1168 underscore this idea while freeing the State from liability resulting from such accidents.

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

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

Testimony in SUPPORT of Senate Bill 1168

I learnt to rock climb on Oahu, early in 2012, and immediately fell in love with the sport. Since the closure of the climbing areas I decided to leave Hawaii so that I could feed my obsession for the sport. I have visited several other climbing areas over the last year, but I believe that none compare with the places I used to climb in Hawaii. I have never seen such safe, well organized climbing locations, such friendly fellow climbers, and such stunning climbing areas as I knew in Hawaii. I hope to one day return and relive the memories I have of climbing on Oahu, and this is why I support SB1168 SD1.

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,  
Oliver Scott-Dye



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 22<sup>nd</sup> in room 221 at 9:00 AM

From: Rosanna Ho



**Testimony in SUPPORT of Senate Bill 1168**

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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.

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Sincerely,

Rosanna Ho

**LATE**

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 22<sup>nd</sup> in room 221 at 9:00 AM

From: Yoshio M Akaha

### **Testimony in SUPPORT of Senate Bill 1168**

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Sincerely,  
Yoshi Akaha

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