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From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 11, 2013 7:31 PM
To: waltestimony
Cc: LOLABRIGIDA53@gmail.com
Subject: Submitted testimony for SB1168 on Mar 11, 2013 09:30AM
Attachments: Testimony HB 625 2013-02-25.docx

SB1168

Submitted on: 3/11/2013

Testimony for WAL on Mar 11, 2013 09:30AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
BRIGIDA SANCHEZ	Individual	Support	No

Comments: Please, do not take away these trails Climbers and Hikers have been the keepers of these beautiful places always finding the time to volunteer and keep these very same trails as clean and as safe as possible.

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February 25, 2013 Testimony in Support of House Bill 625

To: Chair Rhoads, Vice Chair Har and members of the Judiciary Committee

Submitted by: Brigida I.Sanchez Individual and Resident of Honolulu

I am writing in support of **HB 625** 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. I respectfully request that the committee **amend the current HB 625 to remove Section 2 related to general liability protection for the state under Section 520.**

These sections were combined from two independent bills in earlier committee hearings and I believe they should be discussed separately given the difference in intent and scope of the legislation under consideration. While the more general revision of 520 may be a worthwhile idea, it is one that needs independent discussion and assessment. Thus, my support is specifically for Section 1 of the current version of HB 625 which specifically pertains to limiting State liability for the activities of mountain climbing, rock climbing, rappelling, and bouldering.

I respectfully request that Section 2 of the current version of HB625 be replaced with the following language to better clarify the activities for which we seek liability protection for the State and to better synchronize HB625 with its Senate companion bill SB1168:

SECTION 2. Section 662-1, Hawaii Revised Statutes, is amended by adding two new definitions to be appropriately inserted and to read as follows:

""Bouldering" refers to a style of rock climbing undertaken outdoors without rope and normally done on large natural boulders.

"Rock climbing" means any activity involving the use of rope to ascend or descend rock."

Activities such as rock climbing deserve to be treated similarly to Hawaii's skateboarding, watersport, and ocean activities, all of which have statutes limiting State liability for these hazardous recreational uses. We believe it is important to offer such protection for a number of critical reasons including: the legal climate in Hawaii, the inherent risk of rock climbing (much like the inherent risk involved in skateboarding or surfing), DLNR's admission that they lack the staff and expertise to manage and oversee climbing sites, , and the ongoing DLNR practice of closing public lands out of fear of litigation.

Furthermore, HB 625 should be passed 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 thus supports the status quo prior to the closure of the area.

2) The measure will potentially save taxpayers money in the event someone is injured while engaging in this inherently dangerous sport. 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 into safety equipment, including rescue litters and spare helmets at its climbing sites, and much more. These activities have been done voluntarily and privately over the last 20 years and passage of this legislation will allow for the status quo arrangement to continue. The DLNR budget and staff are already stretched thin and DLNR supports this legislation, as well as more comprehensive liability reform.

3) The historical safety record of rock climbing in Hawaii is nearly impeccable. Mr. Robert Turan, National Park Service Ranger, (who submitted testimony in support of SB1168, the companion to this bill to this legislation), 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 on Federal lands, 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. As he said in his testimony,

“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 challenge anyone to identify a single other sport with a better safety record than that of the rock climbing community. However, fear of liability has undermined our efforts and our ability to pursue our passion for rock climbing.

4) The rock quality upon which climbers climb in Hawaii is no more dangerous than other climbing areas on the mainland. Many residents erroneously believe that Hawaii lacks suitable cliffs and rock substrate for rock climbing. However, rock climbing on Oahu occurs on what is known as '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 structural integrity of Hawaii's 'blue rock' stone, the same which rock climbers utilize for their sport in Hawaii.

5) 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.

6) 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 that are essential qualities of the sport that cannot be entirely removed or mitigated; there should be no legal grounds for holding the State liable for damages resulting from such risks. Furthermore, it is a longstanding ethic in climbing communities that each individual is responsible for all aspects of their well-being. One climbs at one's own risk, as is stated at the beginning of all guidebooks. Banning participation in these activities (as the DLNR has done at most Oahu sites) cannot be the solution.

The current climate of fear brought on by the failure of the state to revise Hawaii's tort laws related to hazardous recreational use over the last decade has meant that DLNR's has been reduced to closing areas once an individual is injured or killed instead of continuing to offer the opportunity for locals and visitors alike to enjoy the outdoors. Given the changing nature of recreational use across the country, such a practice will continue put recreational users at odds with state policy in greater numbers. Recall the 1980s bumper stickers "skateboarding is not a crime," the same thing applies to rock climbing in Hawaii in the 21st century.

So while DLNR's fear of liability is not due to any reasonable expectation (based upon our historical safety record) that climbers will 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 favor Hawaii's trial attorneys. The fact that only the Hawaii Association for Justice opposes this bill speaks volumes.

As members of the Judiciary are perhaps aware, Hawaii's recreational use statutes have not been revised since initially promulgated in the 1960s. We feel that this piece of legislation is a step in the right direction towards more comprehensive hazardous recreational use reform.

I wish to thank the House Judiciary Committee members for their time in consideration of this testimony and urge the Committee to support and pass HB625.

Sincerely,

Brigida I. Sanchez