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

ON THE FOLLOWING MEASURE:
S.B. NO. 1007, S.D. 2, RELATING TO PUBLIC LAND LIABILITY.

BEFORE THE:
HOUSE COMMITTEES ON WATER & LAND AND ON OCEAN, MARINE RESOURCES, & HAWAIIAN AFFAIRS

DATE: Monday, March 11, 2013 **TIME:** 9:30 a.m.

LOCATION: State Capitol, Room 325

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

Chairs Evans and Hanohano and Members of the Committees:

The Department of the Attorney General strongly supports this bill with amendments.

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

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

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

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

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

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

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

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

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

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

Since the accident described above, the Board has closed off this site. Although signs have been posted notifying the public of the closure, local residents and visitors still access the site. The installation of fencing at this site prior to the Brem accident would not have been feasible without a survey and study.

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

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

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

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

Further, the Department of the Attorney General strongly recommends an additional amendment to Act 82 that will provide the State with protection from liability when it posts warning signs of conditions, whether natural or not, on unimproved public lands, in accordance with the procedures set forth in Act 82. We have attached a proposed draft of the bill that includes the wording for the additional amendment.

We respectfully and strongly request that this bill be passed with the recommended amendments.

THE SENATE

TWENTY-SEVENTH LEGISLATURE, 2013

STATE OF HAWAII

S.B. NO. 1007, S.D.2 Proposed H.D. 1

A BILL FOR AN ACT

RELATING TO PUBLIC LAND LIABILITY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The purpose of this Act is to amend Act 82, Session Laws of Hawaii 2003, as amended, to add a definition of "voluntary trails", to clarify the definition of "improved public lands", and to extend the conclusive presumption of legally adequate warning of conditions, whether natural or not, to unimproved public lands.

SECTION 2. Act 82, Session Laws of Hawaii 2003, as amended by section 5 of Act 152, Session Laws of Hawaii 2007, by section 1 of Act 144, Session Laws of Hawaii 2008, and by section 3 of Act 81, Session Laws of Hawaii 2009, is amended by amending the definitions section, section 663- , Hawaii Revised Statutes, in section 2 as follows:

(1) By adding a new definition to be appropriately inserted and to read as follows:

""Voluntary trails" means trails, paths, or routes created by hikers or other users of public land that are not part of an

official trail constructed, developed, or maintained by the State or any county."

(2) By amending the definition of "improved public lands" to read as follows:

""Improved public lands" means lands designated as part of the state park system, parks, and parkways under chapter 184[~~,~~] and developed or maintained by the State, or as part of a county's park system[~~,~~] and developed or maintained by the county, and lands [~~which~~] that are part of the Hawaii statewide trail and access system under chapter 198D, excluding buildings and structures constructed upon such lands. [~~For purposes of this part, "improved public lands"~~] The term excludes voluntary trails and ocean and submerged lands."

SECTION 3. Act 82, Session Laws of Hawaii 2003, as amended by section 5 of Act 152, Session Laws of Hawaii 2007, by section 1 of Act 144, Session Laws of Hawaii 2008, and by section 3 of Act 81, Session Laws of Hawaii 2009, is amended by amending subsection (d) of the second section 663- , Hawaii Revised Statutes, in section 2 to read as follows:

"(d) If a warning sign, device, or system is posted or established in accordance with this section on unimproved lands, the posting or establishment of the warning sign, device, or system shall not create a duty on the part of the State or county to establish an additional warning sign, device, or system in other locations on the unimproved lands. A sign, device, or

system warning of dangerous conditions, whether natural or not, on unimproved public lands posted or established in accordance with this section shall be conclusively presumed to be legally adequate warning of the conditions of which the sign, device, or system warns."

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

DEPARTMENT OF THE CORPORATION COUNSEL
CITY AND COUNTY OF HONOLULU
530 SOUTH KING STREET, ROOM 110 * HONOLULU, HAWAII 96813
PHONE: (808) 768-5193 * FAX: (808) 768-5105 * INTERNET: www.honolulu.gov

KIRK CALDWELL
MAYOR

DIANE T. KAWAUCHI
ACTING CORPORATION COUNSEL

March 8, 2013

The Honorable Cindy Evans, Chair
and Members of the Committee on Water and Land
The Honorable Faye P. Hanohano, Chair
and Members of the Committee on Ocean, Marine
Resources and Hawaiian Affairs
State House of Representatives
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Evans, Chair Hanohano and Committee Members:

Subject: Senate Bill 1007, S.D.2, Relating to Public Land Liability

The City and County of Honolulu ("City") supports S.B. 1007, S.D.2 which seeks to amend and clarify the definition of "improved public lands" in Act 82, Session Laws of Hawaii 2003.

The purpose of Act 82 was to establish a risk management procedure for improved public lands that involves the design and placement of signs warning of dangerous natural conditions, and that affords the State and counties protection from liability for injuries resulting from those dangerous conditions. The 2003 Legislature found that many dangerous conditions on unimproved and improved public lands pose a risk of injury to recreational users. In practice, current laws discouraged the State and counties from warning of risks because to do so may impose additional responsibility and liability on the State and counties. Act 82 was a fair and balanced solution to this problem; otherwise many public recreational areas would be closed for use by the public. Sen. Conf. Comm. Rep. No. 14, in 2003 Sen. Journal, at 951.

The definition of "improved public lands" in Act 82 does not distinguish between parks and trails which are improved and maintained by the State and counties, and other public lands within the State and county park systems which

are unimproved and not maintained. Passage of S.B. 1007, S.D.2, would clarify that the State or counties do not have a duty to warn of dangerous natural conditions on public land that is part of the park system, if the land is unimproved and not maintained by the State or county. S.B. 1007, S.D.2 would further define and exclude "voluntary trails" from the definition of "improved public lands" covered by Act 82 since these unofficial trails and routes are created by the public without the knowledge or permission of the State or counties.

Passage of S.B. 1007, S.D.2 would help by providing a more clear delineation of where warning signs should be placed which would allow the State and counties to make the best use of their limited financial resources.

For these reasons, we respectfully request your support of S.B. 1007, S.D.2.

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

Very truly yours,

Diane T. Kawauchi

DIANE T. KAWAUCHI
Acting Corporation Counsel

DTK:ey

TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE HAWAII ASSOCIATION FOR JUSTICE (HAJ) IN OPPOSITION TO S.B. NO. 1007, SD 1

Date: Monday, March 11, 2013
Time: 9:30 o'clock am

To: Chairpersons Cindy Evans and Faye Hanohano and Members of the House Committees on Water & Land and the House Committee on Ocean, Marine Resources & Hawaiian Affairs:

My name is Bob Toyofuku and I am presenting this testimony on behalf of the Hawaii Association for Justice (HAJ) in OPPOSITION to S.B. No. 1007, SD 1, Relating to Public Land Liability and suggesting language to address the concerns raised in the measure while balancing the public's safety.

The issue raised in this measure is the extent to which government should expend resources to discover and monitor "voluntary trails" created by members of the public on government lands that are independent of official trails created and/or maintained or monitored by the government or part of the statewide trail and access system. The competing factors are the burden to government to find and maintain voluntary trails which may be located in remote locations versus the public safety benefit of safely maintaining trails and/or warning of hazardous conditions. At the extremes, it becomes impractical, if not impossible, for government to find and maintain rarely used trails in the middle of nowhere. At the other extreme, it is not only practical but essential that popular trails that are part of official trail systems or located in close proximity must be adequately monitored and maintained to provide reasonably safe recreational activities for the public.

The importance of measures which define minimum standards for governmental entities related to trails must viewed in the context that they exist for the benefit of the

general public, not for experienced hikers or hunters. Although the required warnings are for everyone using these trails, experienced hikers/hunters are more capable of adequately assessing their situation whether on or off official trails. The ordinary urban dweller, on the other hand, may use the trail system once every few years. Parents taking their young children on an occasional easy hike, tourists drawn to Hawaii's scenic paradise or retirees getting exercise on a stroll through the forest using popular established trails.

HAJ agrees that government should not be expected or required to affirmatively seek and discover voluntary trails in remote locations as the cost greatly outweighs the benefit. On the other hand, where voluntary trails are a part of official trails or so close in proximity that they appear to the general public to be a part of the official trail there is no great burden for government to comply with existing requirements because they are there inspecting and maintaining the official trails anyway. Uninitiated members of the general public will not know that a voluntary trail that is a part of the official trail was established by common usage rather than officially cut by the government. To an ordinary citizen, these look like they are part of the official trail and there is no reason for them to believe otherwise.

Therefore, it is suggested that the following or similar language be added at the end of the definition for "voluntary trails": **"but do not include trails, paths, or routes that are connected to an official trail constructed, developed, or maintained by the State or county or so close in proximity so as to appear to be a part of an official trail or access system."** This should be added on page 1 line 15 and page 2 line 10.

This language protects the public while imposing minimal burden on government because it applies only to trails that are obvious and in close proximity to the official trails that they regularly maintain and monitor as a matter of course.

Further, on page 2, line 3 and lines 4 &5, the proposed addition of the phrases: **"which are developed or maintained by the State" and "which are developed or maintained by the counties" should be deleted** because they are unnecessary and may lead to unintended confusion. The specific exemption of voluntary trails adequately addresses government's concern about responsibility for unknown and essentially undiscoverable trails created in remote locations. Adding the requirement that land be "maintained" by government before it is subject to Act 82 can be interpreted as meaning that if government fails to maintain a trail (as required by Act 82) it is no longer subject to Act 82 because the trail is not "maintained" by the State or county. We believe this is an unintended but literal result of the proposed language. It should therefore be deleted.

Thank you very much for allowing me to testify in OPPOSITION to this measure as currently drafted. We appreciate consideration of our concerns and suggested amendment. Please feel free to contact me should you have any questions or desire additional information.

Protect America's Climbing

March 10, 2013

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

RE: Access Fund Testimony in Support of SB 1007, SD 2, SSCR 723

Dear WAL/OMH Committee Members,

I, R.D. Pascoe, Policy Director for the Access Fund, am writing in support of Senate Bill No. 1007, SD 2, SSCR 723 (SB 1007). 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

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. Often recreationists find new or undeveloped locations to recreate and develop voluntary trails. In most federal agencies, these are called "social trails" and they are not managed unless they are causing undue impacts to natural or cultural resources. The topography

and foliage of the Hawaiian Islands force recreationists to establish voluntary or social trails that are impossible for the state to manage.

SB 1007 simply clarifies what trails the State is responsible for and provides reasonable immunity for the voluntary trails that are continually being developed and used by a variety of different recreationists. Thus, DNLR will be able to open most public lands to recreation without the specter of being found liable for trails they have no role in developing or maintaining.

Please feel free to utilize the Access Fund as a resource as SB 1007 moves forward.

Best Regards,

R.D. Pascoe
Policy Director
Access Fund

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[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: Co-Chairs Evans and Hanohano, and the members of the WAL/OMH committees

Re: Senate Bill 1007 hearing by WAL/OMH on Monday, March 11th in room 325 at 9:30 AM

From: Michael Bishop (constituent of Representative Fale)

Testimony in SUPPORT of SB 1007

I, Michael Bishop, am writing in support of SB 1007. Another bill (HB 550) with identical language has already been passed by this same joint committee on February 4th; I would again like to urge Co-Chairs Evans and Hanohano to pass this bill so that the House Judiciary committee will have another opportunity to schedule a hearing for this particular bill.

Senate Bill 1007 clarifies the definition of "improved public lands" under Act 82, Session Laws of Hawaii 2003, to limit liability for public entities based on their duty to warn of dangers on public lands. Across Hawaii, recreationists display their desires to explore the natural wonders and beauty of the islands, whether they find State maintained trails or not. Hikers, hunters, climbers, and other users frequently choose to establish their own networks of trails to access every hidden gem they find across the islands, in both remote and not-so-remote locations. Currently, unclear language creates some confusion as to when and where the State should be liable for warning of dangers upon public land; and when users of "voluntary trails" must be held accountable for their own safety.

The Na Ala Hele trail network welcomes and invites residents and visitors alike to explore the breathtaking, abundant, and awe-inspiring natural beauty of the Hawaiian islands. On these trails, clearly the state has a duty to warn of dangers since the State actively takes responsibility for the safety of these trails by maintaining them and inviting people to use them. However, when individuals choose to establish side trails off of State maintained trials, or entirely new trails apart from existing networks, the State cannot be expected to warn of dangers that it probably doesn't even know about. Since "voluntary trails" are currently considered to be part of "improved public lands" for which the State takes responsibility, the State has the impossible tasks of monitoring trails that have not yet been created and warning of dangers of which they have no knowledge.

The massive $15 million judgment against the State as a result of Brem, et al. v. State of Hawaii, Civil No. 07-1-0176, Fifth Circuit Court, State of Hawaii should be a sufficient wake-up call to the people of Hawaii. Deficient and ambiguous liability laws need to bolstered and amended. When people choose to explore dangerous wilderness areas, they must be held accountable for their own decisions and actions.

In the minds of Hawaiian voters, Brem will serve as a landmark settlement which will motivate one of two outcomes: an overprotective 'nanny state' that continues to close down public lands and that is tasked with warning the public about every danger that anyone discovers in the wilderness; or a paradigm shift toward a more reasonable level of personal responsibility for the inherent risks of exploring nature, and a shift away from the overly litigious mentality that has plagued Hawaii as of late. Please pass this bill to ensure the latter outcome and protect the taxpayers of Hawaii from any more catastrophic lawsuits. Thank you for the opportunity to provide this testimony.

Sincerely,
Michael Bishop

March 10, 2013

To: Rep. Cindy Evans, Chair and the Committee on Water and Land,
Rep. Faye P. Hanohano, Chair and the Committee on Ocean, Marine Resources and Hawaiian Affairs

From: Debora Halbert, Individual

Hearing: March 11, 2013, 9:30 AM Conference Room 325

RE: Support for SB 1007

I am writing in support of SB 1007, related to a change in the definition of improved public lands to include wording of what constitutes a voluntary trail. I am in support of this legislation given the intended purpose, "of limiting liability for public entities based on the duty to warn of dangers on public lands."

As an avid hiker and rock climber, I agree with the DLNR that they have met their duty to warn anyone assuming the risk of hazardous recreational activities by placing a sign at the trailhead of *trails maintained by the state*. Voluntary trails used for recreational purposes, whether that be paragliding, hang gliding, pig hunting, climbing, or orienteering, should not be considered part of the scope of the DLNR duty to warn.

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

I would also like to note that I am supporting this legislation without amendments. Prior to the Senate Ways and Means hearing on SB 1007, the representative for the Consumer Lawyers of Hawaii, also known as the Hawaii Association for Justice, introduced an amendment to the bill, which did not appear in the public version that would have changed the scope of the measure. As a citizen interested in the outcome of this measure, the introduction of the amendment without any notification meant I did not have an opportunity to respond or express my concerns about the introduced changes.

The way those of us interested in the bill found out about the amendment came only when Senator Theilen expressed her concerns during the hearing and voted for the measure with reservation. The amendment introduced by the Hawaii Association for Justice changed the definition so that voluntary trails and required the state to be responsible for voluntary trails that branched from official trails. As Senator Theilen rightly noted, such an amendment undermined the intent of the legislation. While I do not see the amendment on the version of the bill posted for public testimony, I want to be clear that *if this amendment is introduced again, I stand against it. I support the passage of SB 1007 without amendments.*

Sincerely,

Debora Halbert

March 10, 2013 Testimony in Support of SB1007

submitted by:
Michael Richardson, resident of Honolulu
2241 Noah St.
Honolulu, HI 96816
(808) 387-7825
bugman@climbaloha.com

Testimony in SUPPORT of SB 1007

I am writing to support Senate Bill 1007 which clarifies the definition of "improved public lands" under Act 82, Session Laws of Hawaii 2003, to limit liability for public entities based on their duty to warn of dangers on public lands. Across Hawaii, recreationists display their desires to explore the natural wonders and beauty of the islands, whether they find State maintained trails or not. hunters, climbers, and other users frequently choose to establish their own networks of trails to access every hidden gem they find across the islands, in both remote and not-so-remote locations. Currently, unclear language creates some confusion as to when and where the State should be liable for warning of dangers upon public land; and when users of "voluntary trails" must be held accountable for their own safety.

The Na Ala Hele trail network welcomes and invites residents and visitors alike to explore the breathtaking, abundant, and awe-inspiring natural beauty of the Hawaiian islands. On these trails, clearly the state has a duty to warn of dangers since the State actively takes responsibility for the safety of these trails by maintaining them and inviting people to use them. However, when individuals choose to establish side trails off of State maintained trials, or entirely new trails apart from existing networks, the State cannot be expected to warn of dangers that it probably doesn't even know about. Since "voluntary trails" are currently considered to be part of "improved public lands" for which the State takes responsibility, the State has the impossible tasks of monitoring trails that have not yet been created and warning of dangers of which they have no knowledge.

The massive $15 million judgment against the State as a result of Brem, et al. v. State of Hawaii, Civil No. 07-1-0176, Fifth Circuit Court, State of Hawaii should be a sufficient wake-up call to the people of Hawaii. Deficient and ambiguous liability laws need to bolstered and amended. When people choose to explore dangerous wilderness areas, they must be held accountable for their own decisions and actions.

In the minds of Hawaiian voters, Brem will serve as a landmark settlement which will motivate one of two outcomes: an overprotective 'nanny state' that continues to close down public lands and that is tasked with warning the public about every danger that anyone discovers in the wilderness; or a paradigm shift toward a more reasonable level of personal responsibility for the inherent risks of exploring nature, and a shift away from the overly litigious mentality that has plagued Hawaii as of late. Please pass this bill to ensure the latter outcome and protect the taxpayers of Hawaii from any more catastrophic lawsuits. Thank you for the opportunity to provide this testimony.

Sincerely,
Michael S. Richardson

lowen1-Kyli

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, March 09, 2013 11:55 PM
To: waltestimony
Cc: kicker117@live.com
Subject: *Submitted testimony for SB1007 on Mar 11, 2013 09:30AM*

SB1007
Submitted on: 3/9/2013
Testimony for WAL/OMH on Mar 11, 2013 09:30AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Sayar Kuchenski	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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lowen1-Kyli

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, March 10, 2013 9:39 AM
To: waltestimony
Cc: bwong13@punahou.edu
Subject: Submitted testimony for SB1007 on Mar 11, 2013 09:30AM
Attachments: testimony .docx

SB1007
Submitted on: 3/10/2013
Testimony for WAL/OMH on Mar 11, 2013 09:30AM in Conference Room 325

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

Comments:

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I'm favor of this bill as high school student, who has taken classes with Climb Aloha and enjoys recreational rock climbing. I've taken my friends out on a couple occasions and I'd like to add that rock climbing is a growing sport and I'm glad this bill recognizes this and is moving to addressing some of the legal issues.

March 10, 2013

To: House Committees on Water and Land, and
Ocean, Marine Resources, & Hawaiian Affairs

Hearing Scheduled for March 11, 2013 at 9:30 AM

Testimony in Support of SB 1007 SD2, "Relating to Public Land Liability"
From: Deborah Chang, Hawai`i Island Resident

Aloha Chairs Evans and Hanohano, Vice-Chairs Lowen and Cullen, and Members of the House Committees on Water and Land, and Ocean, Marine Resources, & Hawaiian Affairs:

I ask for your support of SB 1007 SD2, "Relating to Public Land Liability." This bill excludes "voluntary trails" from the definition of "improved public lands." It would protect the state and county from liability when people venture on public lands using "voluntary trails" that are not approved, managed or maintained for public use. The Acts that are amended by SB 1007 SD 2 would relieve public landowners from a duty to warn of "dangerous natural conditions on unimproved public lands," similar to the liability protection given to private landowners in Chapter 520, HRS (passed in 1969).

Rock climbers have lobbied in support of this bill, but the bill's liability protections apply to other forms of recreation as well. The State is the largest landowner in Hawai`i. Public land management agencies lack the staff and funds to monitor all of the public lands that are identified in guidebooks and websites as having fabulous waterfalls, swimming holes, spectacular views, breathtaking cliffs, etc. It is impossible to guard every entry point and challenge every web posting.

As a taxpayer and outdoor recreationist, I see the addition of "voluntary trails" and the other clarifications proposed in this bill as helping to (1) protect limited government resources from costly litigation when people are injured on public lands, which are not "improved" and managed for public recreational use, and (2) reinforce the "enter at your own risk" responsibility that every recreationist (not just rock climbers) should be prepared to assume when he/she makes the decision to enter lands that are not being maintained, inspected, posted, or monitored for hazardous conditions.

The Hawaii Association for Justice (HAJ) has suggested in earlier hearings on this bill that the proposed definition of "voluntary trails" should indicate that voluntary trails "do not include trails, paths, or routes that are connected to an official trail constructed, developed, or maintained by the State or county or so close in proximity so as to appear to be a part of an official trail or access system." I strongly disagree with this suggestion, because it would not limit the State or county's liability over voluntary trails that persist no matter what land managers do to discourage their use. Often poorly constructed, hazardous, and potentially miles in length, these unofficial, connecting trails should be posted as "closed" and re-naturalized. However, in the event that the undesirable trail use persists (and this is not uncommon), the State or county should not bear any liability and duty to warn of hazards on closed trails.

Mahalo for your consideration of my testimony.

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

Re: Senate Bill 1007 decision making by WAM
From: Dr. Paul Ryan, Rita Ryan

Testimony in SUPPORT of SB 1007

I am writing to support Senate Bill 1007 which clarifies the definition of "improved public lands" under Act 82, Session Laws of Hawaii 2003, to limit liability for public entities based on their duty to warn of dangers on public lands. Across Hawaii, recreationists display their desires to explore the natural wonders and beauty of the islands, whether they find State maintained trails or not. Hikers, hunters, climbers, and other users frequently choose to establish their own networks of trails to access every hidden gem they find across the islands, in both remote and not-so-remote locations. Currently, unclear language creates some confusion as to when and where the State should be liable for warning of dangers upon public land; and when users of "voluntary trails" must be held accountable for their own safety.

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In the minds of Hawaiian voters, Brem will serve as a landmark settlement which will motivate one of two outcomes: an overprotective 'nanny state' that continues to close down public lands and that is tasked with warning the public about every danger that anyone discovers in the wilderness; or a paradigm shift toward a more reasonable level of personal responsibility for the inherent risks of exploring nature, and a shift away from the overly litigious mentality that has plagued Hawaii as of late. Please pass this bill to ensure the latter outcome and protect the taxpayers of Hawaii from any more catastrophic lawsuits. Thank you for the opportunity to provide this testimony.

Sincerely,
Dr. Paul Ryan
Rita Ryan
41-042 Kaulu Street
Waimanalo, HI 96795

lowen1-Kyli

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, March 09, 2013 10:40 AM
To: waltestimony
Cc: kalani.math@gmail.com
Subject: Submitted testimony for SB1007 on Mar 11, 2013 09:30AM
Attachments: testimony.pdf

SB1007
Submitted on: 3/9/2013
Testimony for WAL/OMH on Mar 11, 2013 09:30AM in Conference Room 325

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

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

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

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

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

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

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

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

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

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

Sincerely,

Duc Ong

To: Committee on Water and Land

From: Kitt Turner

Hearing: March 11, 2013, 9:30 AM Conference Room 325

RE: SB 1007

Dear Committee on Water and Land,

As an avid hiker and rock climber, I support the passage of SB 1007. This legislation will help reduce the states liability pertaining to injuries sustained on state land. The passage of the legislation will help assure that trails and hikes do not get shut down because of liability concerns.

I understand that as a hiker we assume risk for our welfare when engaging in hazardous recreational activity. Hiking and climbing is a way of life for many living here on Oahu. We have unfortunately seen many trails and areas closed unnecessarily because of liability concerns, and it is in best interest of everyone to pass SB 1007.

I urge you to pass this legislation to make the state safer from overly litigious residents and visitors who should understand that they assume risk for their personal safety when leaving the confines of their homes.

Sincerely,

Kitt Turner

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

To: House Committee on Water and Land

Re: Bill 1168 decision on Monday, March 11 in room 325 at 9:30 AM

From: Paul D. Cavallaro

Testimony in SUPPORT of SB 1007

I am writing to support Senate Bill 1007 which clarifies the definition of "improved public lands" under Act 82, Session Laws of Hawaii 2003, to limit liability for public entities based on their duty to warn of dangers on public lands. Across Hawaii, recreationists display their desires to explore the natural wonders and beauty of the islands, whether they find State maintained trails or not. Hikers, hunters, climbers, and other users frequently choose to establish their own networks of trails to access every hidden gem they find across the islands, in both remote and not-so-remote locations. Currently, unclear language creates some confusion as to when and where the State should be liable for warning of dangers upon public land; and when users of "voluntary trails" must be held accountable for their own safety.

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The massive $15 million judgment against the State as a result of Brem, et al. v. State of Hawaii, Civil No. 07-1-0176, Fifth Circuit Court, State of Hawaii should be a sufficient wake-up call to the people of Hawaii. Deficient and ambiguous liability laws need to bolstered and amended. When people choose to explore dangerous wilderness areas, they must be held accountable for their own decisions and actions.

In the minds of Hawaiian voters, Brem will serve as a landmark settlement which will motivate one of two outcomes: an overprotective 'nanny state' that continues to close down public lands and that is tasked with warning the public about every danger that anyone discovers in the wilderness; or a paradigm shift toward a more reasonable level of personal responsibility for the inherent risks of exploring nature, and a shift away from the overly litigious mentality that has plagued Hawaii as of late. Please pass this bill to ensure the latter outcome and protect the taxpayers of Hawaii from any more catastrophic lawsuits. Thank you for the opportunity to provide this testimony.

Sincerely,
Paul D. Cavallaro

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

Re: Senate Bill 1007 decision making by WAM
From: Dr. Paul Ryan, Rita Ryan

Testimony in SUPPORT of SB 1007

I am writing to support Senate Bill 1007 which clarifies the definition of "improved public lands" under Act 82, Session Laws of Hawaii 2003, to limit liability for public entities based on their duty to warn of dangers on public lands. Across Hawaii, recreationists display their desires to explore the natural wonders and beauty of the islands, whether they find State maintained trails or not. Hikers, hunters, climbers, and other users frequently choose to establish their own networks of trails to access every hidden gem they find across the islands, in both remote and not-so-remote locations. Currently, unclear language creates some confusion as to when and where the State should be liable for warning of dangers upon public land; and when users of "voluntary trails" must be held accountable for their own safety.

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Sincerely,
Dr. Paul Ryan
Rita Ryan
41-042 Kaulu Street
Waimanalo, HI 96795

I, Daniel Allen Langdon, **STRONGLY SUPPORT** SB1007 SD2.

I understand that this bill is necessary in the ongoing effort to ensure access to public lands for participants in activities that entail risk such as hiking and climbing.

These activities are entail risk that cannot be entirely mitigated, and I understand that this bill limits the state's liability in the event that a person is injured while undertaking these activities on public land. As a climber, I support this legislation because I want these activities to be allowed on public lands without having to be concerned that taxpayer money will be spent defending costly litigations.

Furthermore, if access to activities such as climbing is limited, the state discourages people who climb from visiting Hawaii, and as I climber, I will testify that Hawaii has several very ideal climbing spots on public land.

March 9, 2013

To: House Committee Water & Land
Re: SB 1007 SD2
From: Mrs. Lovena Harwood, individual

Testimony in SUPPORT of SB 1007

I, Lovena Harwood, am writing to support Senate Bill 1007 which clarifies the definition of "improved public lands" under Act 82, Session Laws of Hawaii 2003, to limit liability for public entities based on their duty to warn of dangers on public lands. Across Hawaii, recreationists display their desires to explore the natural wonders and beauty of the islands, whether they find State maintained trails or not. Hikers, hunters, climbers, and other users frequently choose to establish their own networks of trails to access every hidden gem they find across the islands, in both remote and not-so-remote locations. Currently, unclear language creates some confusion as to when and where the State should be liable for warning of dangers upon public land; and when users of "voluntary trails" must be held accountable for their own safety.

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Sincerely,
Mrs. Lovena Harwood
Bradford, MA

To: House Committee on Water and Land

Re: Senate Bill 1007 SD2

From: Rosanna Ho

Testimony in SUPPORT of SB 1007 SD2

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Sincerely,

Rosanna Ho

NEIL ABERCROMBIE
GOVERNOR OF HAWAII

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ESTHER KIA'AINA
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

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Testimony of
WILLIAM J. AILA, JR.
Chairperson

Before the House Committees on
WATER & LAND
and
OCEAN, MARINE RESOURCES, & HAWAIIAN AFFAIRS

Monday, March 11, 2013
9:30 AM
State Capitol, Conference Room 325

In consideration of
SENATE BILL 1007, SENATE DRAFT 2
RELATING TO PUBLIC LAND LIABILITY

Senate Bill 1007, Senate Draft 2 proposes to amend Act 82, Session Laws of Hawaii (SLH) 2003, and clarifies the definition of "improved public lands" for the limitation of liability for public entities based on the duty to warn of dangers on public lands. **The Department of Land and Natural Resources (Department) strongly supports this measure.**

Act 82, SLH 2003, as currently written, does not distinguish between parks and trails constructed, owned, and maintained by the State and counties and other lands that, although part of the of the state park system, are unimproved and not maintained by the State or counties. This bill would clarify that the State or counties do not have a duty to warn of dangerous natural conditions on public land that is part of the park system, if the land is unimproved and not maintained by the State or county. This bill also defines and excludes "voluntary trails" from the definition of "improved public lands" since these unofficial trails and routes are created by members of the public without the knowledge or permission of the State or counties.

Again, the Department is in strong support of passage of this Administrative measure, as this clarification is critical due to the vast amounts of wild land acreage under the Department's jurisdiction that is not promoted or managed for any public access.