

LATE \*Testimony submitted late may not be considered by the Committee for decision making purposes.

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Congress of the United States  
House of Representatives  
Washington, DC 20515

**LATE**

COMMITTEE ON APPROPRIATIONS  
SUBCOMMITTEES:  
MILITARY CONSTRUCTION, VETERANS AFFAIRS AND  
RELATED AGENCIES

COMMERCE, JUSTICE, SCIENCE AND RELATED  
AGENCIES

LEGISLATIVE BRANCH

COMMITTEE ON NATURAL  
RESOURCES  
SUBCOMMITTEES:  
NATIONAL PARKS, FORESTS AND PUBLIC LANDS

WATER, OCEANS AND WILDLIFE

INDIGENOUS PEOPLES OF THE UNITED STATES

**TESTIMONY OF U. S. CONGRESSMAN ED CASE IN SUPPORT OF H.C.R. 81  
AND H.C.R. 95, RELATING TO REASONABLE SAFETY AND COMMUNITY  
DISRUPTION REGULATION OF COMMERCIAL TOUR HELICOPTERS AND  
SMALL AIRCRAFT**

Chair Aquino, Vice Chair Ilagan and members of the Committee:

First, mahalo for highlighting and pursuing a critical issue that increasingly risks the public safety and disrupts the daily lives of residents and visitors in all corners of our Hawai'i: the virtually unregulated operations of commercial tour helicopters and small aircraft. For the public I represent, I fully support both HCR 81 and HCR95, which advance our efforts to reclaim our skies and ensure the safe and peaceful operation of air tours throughout the state consistent with the public good.

COVID-19 has obscured the increasingly risky and disruptive effects of commercial tour helicopter and small aircraft operations over the last year. But make no mistake: the air tour operators fully intend to resume and expand the pre-COVID status quo as soon as possible, as we already see happening with resumption of operations.

That status quo saw widespread and worsening safety concerns, including in 2019 alone three fatal accidents with twenty-one lives lost. The same is true with on-the-ground community disruption, with operators refusing to adopt or comply with any reasonable restrictions on time, place and manner of operations to address such disruption, even refusing or subverting reasonable efforts to track operations in order to specify and confirm complaints and areas of concern.

Clearly, self-regulation has not worked and will never work, and, despite all attempts to pretend that they are responsive to community concerns, air tour operators will continue to make every attempt to avoid any reasonable restrictions and to dismiss public concerns. Only substantial regulation at all of the federal, state and local levels of

government will achieve a reclamation of public skies for operations that are safe and non-disruptive.

The tour operators are acting with impunity to public concerns because they believe that the public, through you and the rest of our state and county governments, are powerless to actually do anything, that their operations can't be regulated at the state and county level. First, this is not true, as there is a zone of permissible state and county government regulation even under existing federal law, and this zone should be utilized to the maximum extent possible. But second, what is true is that our federal government, through the Federal Aviation Administration, apparently does not believe that it currently has sufficient regulatory authority to regulate the national (our, public) airspace to address the severe disruption of such operations throughout Hawai'i.

The current situation and the actions of communities throughout Hawai'i seeking to address the safety and community disruption risks of commercial air tour operations are fully spelled out in the recitals of H.C.R. 81. I incorporate them here by reference.

As noted there, on the federal level I recently reintroduced H.R. 389, the Safe and Quiet Skies Act, in Congress to require the Federal Aviation Administration to take specific steps to improve safety and reduce community disruption. My measure would also expand the zone of permissible state and county regulation of commercial air tour operations toward the same goals, make these flights safer and reduce the noise from these flights. Attached to my testimony are a letter to my colleagues on the Safe and Quiet Skies Act, a section-by-section summary of the bill and the text of the bill itself. I fully endorse the support of H.R. 389 confirmed in H.C.R. 81, especially as it will allow me to confirm to my colleagues in Congress that public concerns with air tour operations are widespread and statewide, contrary to the implications and even outright representations of the air tour operators that these concerns are isolated and limited.

I also specifically support H.C.R. 95, which is a seemingly simple request that air tour operators not overfly residential communities, for obvious safety and community disruption reasons. There is no reason at all why operators need to overfly residential communities in order to provide customers (the vast majority of whom are tourists, who suffer no ground safety and disruption risks and to whom we do not owe a right to overfly our communities with safety and disruption consequences for their own enjoyment) a reasonable tour experience. They can easily fly over the ocean with proper safety procedures and equipment and, if they can't, that is no excuse to significantly increase safety risks and community disruption from residential community overflights. They do so not because they have to, but because they want to and don't acknowledge and value those consequences.

I would greatly appreciate this Committee's and the Hawai'i State Legislature's support of these concurrent resolutions, and look forward to working with you and a very concerned public toward reasserting public control of our skies.

Thank you again.

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WATER, OCEANS AND WILDLIFE

INDIGENOUS PEOPLES OF THE UNITED STATES

January 4, 2021

**Cosponsor Safe And Quiet Skies Act To Require Federal Aviation Administration To  
Address Growing Safety And Noise/Community Disruption Concerns From Commercial  
Helicopters And Small Aircraft**

**116th Congress Cosponsors:** Ed Case, Zoe Lofgren, Jerrold Nadler, Joe Neguse, Brad Sherman

Dear Colleague:

Concerns continue to grow rapidly throughout the country over accelerating safety and noise/community disruption concerns from ever-increasing and expanding aircraft operations. These are particularly acute with commercial helicopter and small aircraft operations for tour and other recreational purposes.

In 2019 alone, there were 17 sightseeing tour flight and skydiving accidents nationwide with 37 deaths from six of those crashes. In my Hawai'i alone, we saw three dead in the crash of a commercial air tour helicopter into a residential neighborhood, eleven more dead in the crash of a commercial skydiving plane, and then seven more dead in a commercial air tour helicopter crash in a remote mountain region. Many other areas of the country have been equally impacted, especially those with high commercial usage, more dense populations, valuable natural resources, significant defense installations and other factors.

These tragedies and impacts are occurring amidst and because of a rapid increase in commercial helicopter and small plane overflights including residential, commercial and industrial neighborhoods, cemeteries and memorials, land and marine parks and other recreation areas, and sensitive military installations. They have disrupted whole communities with excessive noise and other impacts, destroyed the peace and sanctity of special places, increased risk to not only passengers but those on the ground and weakened security and management of defense operations.

The Federal Aviation Administration (FAA) currently has virtually exclusive jurisdiction over these aircraft operations. Following these recent tragedies, the National Transportation Safety Board (NTSB), which is responsible for investigating accidents but not for direct safety regulation, strongly suggested to the FAA that safety-related regulation of commercial tour

helicopters and small aircraft skydiving operations is generally insufficient and cited to a number of specific recommendations arising from prior crashes that the FAA had declined to implement.

Regarding ground disruption and risk, the FAA takes the position that its responsibility is strictly operational safety and national airspace efficiency (meaning maximum usage) and does not extend to ground disruption and other negative impacts. The FAA further takes the position that state and local jurisdictions have virtually no regulatory authority to protect their communities, citizens, spaces and properties from safety and community disruption consequences.

As a result, the operators, aside from strict takeoff and approach, avoidance of established flight paths and other limited circumstances, are virtually free to fly wherever, whenever and as often as they want. And they do, with little to no self-regulation.

This situation is unacceptable for both safety and community impact concerns. If you and your communities and constituents suffer from these risks and impacts and share these concerns, I ask for your cosponsorship of my Safe and Quiet Skies Act in the 117<sup>th</sup> Congress.

This bill would first require the FAA to implement the NTSB's recommended enhanced safety regulations. It would also prohibit flights over federal property that requires privacy, dignity and respect, to include military installations, national cemeteries and national parks, wildlife refuges and wilderness. It would further require the use of standard equipment to monitor the location of flights, apply the "sterile cockpit rule" to tour flights (meaning in part that the pilot could not also be the tour guide), prohibit flights lower than 1,500 feet over actual ground, and limit decibel levels to those commonly applied to operations in residential areas.

Additionally, the bill would allow states, localities and tribes to impose stricter regulations on tour flights in their jurisdictions with required public engagement. A copy of my bill and section-by-section summary are attached.

Thank you for your consideration. Please contact Kainan Miranda at [Kainan.Miranda@mail.house.gov](mailto:Kainan.Miranda@mail.house.gov) if you have any questions or would like to cosponsor the Safe and Quiet Skies Act.

Sincerely,

**Ed Case**

Ed Case  
Member of Congress

## Safe and Quiet Skies Act Section-by-Section Summary

### Section 1 - Short Title

- Safe and Quiet Skies Act

### Section 2 – Requirements for Commercial Air Tour Flights

- Prohibits tour flights over military installations, national cemeteries, national wilderness areas, national parks, and national wildlife refuges.
  - Current law has no prohibitions on where tours can fly.
  - Military installations can have flight restrictions imposed based on national security concerns, but this is not uniformly applied or enforced.
  - Current law requires air tour management plans over national parks, but only the Grand Canyon National Park has one.
- Requires Automatic Dependent Surveillance-Broadcast (ADS-B) out equipment on all tour aircraft and to be utilized for the entirety of tour flights. ADS-B is a system for broadcasting and receiving aircraft identification, position, altitude, heading, and speed data derived from on-board navigation systems such as a Global Positioning System (GPS) receiver.
  - Current regulation requires air ADS-B out capability for certain aircraft by 2020 and varies on when the equipment must be in use (usually based on proximity to certain airports).
- Applies the “sterile cockpit rule” to tour flights, which requires that pilots only focus on safely operating the aircraft and would define tour-giving and narrating as outside of the duties required for safe operation.
  - The rule currently applies to commercial airlines, but not tour flights.
- Requires that tour flights always fly above 1,500 feet altitude over actual ground with very limited exceptions for emergencies.
  - Currently, there is a wide variety of regulations on the altitude requirement for tour flights and a significant amount of discretion given to the FAA to allow for deviation from altitude requirements.
- Requires tour flights over occupied areas (including residential, commercial and recreational areas) to be no louder than 55 dbA, the same level of noise commonly allowed for residential areas.
  - Current regulations outline higher noise limit requirements for FAA certification of an aircraft with multiple methods of measurement.

### Section 3 – Delegated Authority to State and Local Regulators

- Allows states and localities to impose requirements (in addition to the minimum national requirements of Section 2) on tour flights.
  - FAA takes the position that under current law the scope of a state or locality's ability to impose restrictions on tour flights is very limited.

### Section 4 – Public Engagement Throughout Federal and State Regulatory Process

- Requires that all regulations under this act, including updating any Air Tours Common Procedure Manual, includes public engagement.
  - Currently, FAA does not require public comment or engagement on updates to the Air Tours Common Procedures Manual, which is the current de facto regulation for tour flights.

### Section 5 – Penalties

- Requires FAA to impose penalties on tour flights that violate this act including revoking certifications and permits to operate tour flights.

### Section 6 – Conforming Edits

- Makes edits to current law to implement this act.
- Includes edits to ensure native tribes have the same authority as states and localities under Section 3 of this act.

### Section 7 – NTSB Recommendations

- Requires FAA to implement National Transportation Safety Board (NTSB) recommendations regarding Part 135 regulations, which most tour flights fly under.
- Requires all tour flights to fly under Part 135 regulations and prohibits tour flights from flying under less restrictive Part 91 regulations.

### Section 8 – Definitions

- Defines terms in the act
- Includes skydiving operations (“intentional parachuting”) under the definition of “commercial air tour.”

.....  
(Original Signature of Member)

117TH CONGRESS  
1ST SESSION

**H. R.** \_\_\_\_\_

To impose safety requirements on commercial air tour flights, and for other purposes.

\_\_\_\_\_  
IN THE HOUSE OF REPRESENTATIVES

Mr. CASE introduced the following bill; which was referred to the Committee on \_\_\_\_\_

\_\_\_\_\_  
**A BILL**

To impose safety requirements on commercial air tour flights, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Safe and Quiet Skies  
5 Act of 2021”.



1 **SEC. 2. REQUIREMENTS FOR COMMERCIAL AIR TOUR**  
2 **FLIGHTS.**

3 (a) PROHIBITION OF OVERFLIGHTS.—Notwith-  
4 standing any other provision of law, a commercial air tour  
5 may not operate within a half mile of the following:

6 (1) A military installation.

7 (2) A national cemetery.

8 (3) A unit of the National Wilderness Preserva-  
9 tion System.

10 (4) A unit of the National Park System.

11 (5) A unit of the National Wildlife Refuge Sys-  
12 tem.

13 (b) USE OF AUTOMATIC DEPENDENT SURVEIL-  
14 LANCE-BROADCAST (ADS-B) OUT EQUIPMENT.—The  
15 Administrator of the Federal Aviation Administration  
16 shall revise section 91.227 of title 14, Code of Federal  
17 Regulations, to require the use of ADS-B Out (as such  
18 term is defined in such section) during the entire oper-  
19 ation of a commercial air tour.

20 (c) STERILE COCKPIT RULE.—The Administrator  
21 shall issue such regulations as are necessary to—

22 (1) impose the requirements of section 121.542  
23 of title 14, Code of Federal Regulations, on a com-  
24 mercial air tour and a pilot of a commercial air tour  
25 (including a commercial air tour that does not hold

1 a certificate under part 121 of title 14, Code of Fed-  
2 eral Regulations);

3 (2) define tour-giving and providing an oral  
4 narration of the air tour as duties that are not re-  
5 quired for the safe operation of the aircraft for a  
6 commercial air tour (including a commercial air tour  
7 that does not hold a certificate under part 121 of  
8 title 14, Code of Federal Regulations); and

9 (3) define a critical phase of flight for a com-  
10 mercial air tour (including a commercial air tour  
11 that does not hold a certificate under part 121 of  
12 title 14, Code of Federal Regulations) to include all  
13 ground operations involving taxi, takeoff, and land-  
14 ing, and all other flight operations regardless of alti-  
15 tude of operation.

16 (d) MINIMUM ALTITUDES.—

17 (1) IN GENERAL.—Notwithstanding any other  
18 provision of law, a commercial air tour may not op-  
19 erate at an altitude of less than 1,500 feet.

20 (2) EXCEPTIONS.—

21 (A) SAFE HARBOR.—An operator of a  
22 commercial air tour may fly below the altitude  
23 described in paragraph (1) for reasons of safety  
24 if unpredictable circumstances occur.

1 (B) FAA REQUIREMENTS.—The Adminis-  
2 trator may permit an operator of a commercial  
3 air tour to operate below the altitude described  
4 in paragraph (1) for flight operations for take-  
5 off and landing.

6 (3) RULE OF CONSTRUCTION.—If a reasonable  
7 individual would believe a commercial air tour could  
8 not safely fly at a minimum altitude of 1,500 feet  
9 for the duration of the flight given the conditions at  
10 takeoff, the safe harbor described in paragraph  
11 (2)(A) shall not apply.

12 (e) OCCUPIED AREAS.—

13 (1) IN GENERAL.—Notwithstanding any other  
14 provision of law, a commercial air tour may not op-  
15 erate within half a mile of an occupied area unless  
16 the aircraft has noise suppression technology that  
17 brings noise to the lesser of—

18 (A) a maximum level of 55 dbA as meas-  
19 ured from such occupied area; and

20 (B) a maximum level required in such oc-  
21 cupied area by a requirement imposed pursuant  
22 to section 3(a) of this Act or section 40128(e)  
23 of title 49, United States Code.

24 (2) REGULATIONS.—The Administrator shall  
25 revise subparts F and H of part 36 of title 14, Code

1 of Federal Regulations, and related appendices, to  
2 reduce noise limits in accordance with paragraph  
3 (1).

4 **SEC. 3. DELEGATED AUTHORITY TO STATE AND LOCAL**  
5 **REGULATORS.**

6 (a) IN GENERAL.—Notwithstanding any other provi-  
7 sion of law, a State or locality may impose additional re-  
8 quirements on commercial air tours (but may not waive  
9 any requirements described in this Act or in the amend-  
10 ments made by this Act), including—

- 11 (1) banning such tours;
- 12 (2) imposing day and time flight restrictions;
- 13 (3) regulating the total number of flights per  
14 day;
- 15 (4) regulating route requirements over occupied  
16 areas;
- 17 (5) prohibiting flights over State or local parks,  
18 ocean recreation, cemeteries, and other areas of  
19 State interest; and
- 20 (6) requiring commercial air tours to operate at  
21 lower decibels for purposes of noise requirements.

22 (b) FAA EXCEPTIONS.—The Administrator may in-  
23 validate a requirement imposed pursuant to subsection (a)  
24 if required for flight operations for takeoff and landing.

1 **SEC. 4. PUBLIC ENGAGEMENT THROUGHOUT FEDERAL**  
2 **AND STATE REGULATORY PROCESS.**

3 During the promulgation of any regulation required  
4 by this Act or the drafting and update of the Air Tours  
5 Common Procedural Manuals, the requirements of the Ad-  
6 ministrative Procedure Act shall apply.

7 **SEC. 5. PENALTIES.**

8 The Administrator shall impose penalties for viola-  
9 tions of this Act or the amendments made by this Act,  
10 including revoking any certifications or permits issued to  
11 operate a commercial air tour.

12 **SEC. 6. CONFORMING AMENDMENTS.**

13 Section 40128 of title 49, United States Code, is  
14 amended—

15 (1) by striking “a national park or” in each  
16 place in which it appears;

17 (2) by striking “park or” in each place in which  
18 it appears;

19 (3) in subsection (a)(1)(C), by striking “or vol-  
20 untary agreement under subsection (b)(7)”;

21 (4) by striking subsection (a)(2) and inserting  
22 the following:

23 “(2) APPLICATION FOR OPERATING AUTHOR-  
24 ITY.—Before commencing commercial air tour oper-  
25 ations over tribal lands, a commercial air tour oper-

1 ator shall apply to the Administrator for authority  
2 to conduct the operations over the tribal lands.”;

3 (5) by striking subsection (a)(3);

4 (6) by redesignating paragraph (4) of sub-  
5 section (a) as paragraph (3);

6 (7) by striking subsection (a)(5);

7 (8) in subsection (b)(1)(A)—

8 (A) by striking “over the park” and insert-  
9 ing “over the lands”; and

10 (B) by striking “paragraph (4)” and in-  
11 sserting “paragraph (3)”;

12 (9) by striking subsection (b)(1)(C);

13 (10) by striking subsection (b)(3);

14 (11) by redesignating paragraphs (4) through  
15 (6) of subsection (b) as paragraphs (3) through (5),  
16 respectively;

17 (12) by striking subsection (b)(7);

18 (13) by striking subsection (c)(2)(B);

19 (14) by redesignating subparagraphs (C)  
20 through (I) of subsection (c)(2) as subparagraphs  
21 (B) through (H), respectively;

22 (15) in subsection (c)(3)(B), by striking “at  
23 the” in each place in which it appears;

24 (16) in subsection (d)(1)—

1 (A) by striking “over a national park  
2 under interim operating authority granted  
3 under subsection (c) or”; and

4 (B) by striking “or voluntary agreement”;  
5 (17) by striking subsection (e);

6 (18) by striking subsection (f) and inserting the  
7 following:

8 “(e) TRIBAL AUTHORITY.—

9 “(1) IN GENERAL.—Notwithstanding any other  
10 provision of law, a tribal entity may impose addi-  
11 tional requirements on commercial air tours (but  
12 may not waive any requirements described in the  
13 Safe and Quiet Skies Act of 2021 or in the amend-  
14 ments made by the Safe and Quiet Skies Act of  
15 2021), including—

16 “(A) banning such tours;

17 “(B) imposing day and time flight restric-  
18 tions;

19 “(C) regulating the total number of flights  
20 per day;

21 “(D) regulating route requirements over  
22 occupied areas;

23 “(E) prohibiting flights over tribal parks,  
24 ocean recreation, cemeteries, and other areas of  
25 tribal interest; and

1           “(F) requiring commercial air tours to op-  
2           erate at lower decibels for purposes of noise re-  
3           quirements.

4           “(2) FAA EXCEPTIONS.—The Administrator of  
5           the Federal Aviation Administration may invalidate  
6           a regulation imposed pursuant to paragraph (1) if  
7           required for flight operations for takeoff and land-  
8           ing.

9           “(3) TRIBAL ENTITY.—In this subsection, the  
10          term ‘tribal entity’ means—

11               “(A) a tribal organization (as such term is  
12               defined in section 4 of the Indian Self-Deter-  
13               mination and Education Assistance Act of 1975  
14               (25 U.S.C. 5304));

15               “(B) a tribally designated housing entity  
16               (as such term is defined in section 4 of the Na-  
17               tive American Housing Assistance and Self-De-  
18               termination Act of 1996 (25 U.S.C. 4103)); or

19               “(C) an Indian-owned business or a tribal  
20               enterprise (as such terms are defined in section  
21               3 of the Native American Business Develop-  
22               ment, Trade Promotion, and Tourism Act of  
23               2000 (25 U.S.C. 4302)).”;

24           (19) in subsection (g)(1), by striking “over a  
25          national park” and inserting “over tribal lands”;



1 (20) in subsection (g)(2), by striking “over a  
2 national park” and inserting “over tribal lands”;

3 (21) by striking subsection (g)(4);

4 (22) by redesignating paragraphs (5) through  
5 (8) of subsection (g) as paragraphs (4) through (7),  
6 respectively; and

7 (23) by redesignating subsection (g) as sub-  
8 section (f).

9 **SEC. 7. NTSB RECOMMENDATIONS.**

10 (a) IN GENERAL.—The Administrator shall imple-  
11 ment all recommendations concerning operators under  
12 part 135 of title 14, Code of Federal Regulations, that—

13 (1) were issued by the National Transportation  
14 Safety Board; and

15 (2) are considered by the Board to be open un-  
16 acceptable response.

17 (b) PART 135 REGULATION.—The Administrator—

18 (1) shall require all commercial air tours to op-  
19 erate pursuant to part 135 of title 14, Code of Fed-  
20 eral Regulations; and

21 (2) may not permit a commercial air tour to op-  
22 erate pursuant to part 91 of title 14, Code of Fed-  
23 eral Regulations.

24 **SEC. 8. DEFINITIONS.**

25 In this Act, the following definitions apply:

1           (1) ADMINISTRATOR.—The term “Adminis-  
2           trator” means the Administrator of the Federal  
3           Aviation Administration.

4           (2) ALTITUDE.—The term “altitude” means  
5           the distance above ground level between an aircraft  
6           and the highest obstacle that is within 2 miles of the  
7           location over which such aircraft is flying at any  
8           time.

9           (3) COMMERCIAL AIR TOUR.—The term “com-  
10          mercial air tour” means any flight conducted for  
11          compensation or hire in a powered aircraft where a  
12          purpose of the flight is sightseeing or intentional  
13          parachuting. If the operator of a flight asserts that  
14          the flight is not a commercial air tour, factors that  
15          can be considered by the Administrator in making a  
16          determination of whether the flight is a commercial  
17          air tour include—

18                 (A) whether there was a holding out to the  
19                 public of willingness to conduct a sightseeing or  
20                 intentional parachuting flight for compensation  
21                 or hire;

22                 (B) whether a narrative was provided that  
23                 referred to areas or points of interest on the  
24                 surface;

25                 (C) the area of operation;

1 (D) the frequency of flights;

2 (E) the route of flight;

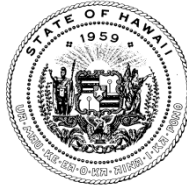
3 (F) the inclusion of sightseeing or inten-  
4 tional parachuting flights as part of any travel  
5 arrangement package; or

6 (G) whether the flight in question would or  
7 would not have been canceled based on poor vis-  
8 ibility of the surface.

9 (4) DBA.—The term “dbA” means the A-  
10 weighted sound level or unit of measurement de-  
11 scribing the total sound level of all noises as meas-  
12 ured with a sound level meter using the A weighting  
13 network.

14 (5) OCCUPIED AREA.—The term “occupied  
15 area” means land area that is used by people, in-  
16 cluding residential areas, commercial areas, and rec-  
17 reational areas.

DAVID Y. IGE  
GOVERNOR



**TESTIMONY BY:**

JADE T. BUTAY  
DIRECTOR

Deputy Directors  
LYNN A.S. ARAKI-REGAN  
DEREK J. CHOW  
ROSS M. HIGASHI  
EDWIN H. SNIFFEN

**STATE OF HAWAII**  
**DEPARTMENT OF TRANSPORTATION**  
869 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813-5097

March 19, 2021  
10:30 a.m.  
State Capitol, Teleconference

**H.C.R. 81**

**URGING THE UNITED STATES CONGRESS, FEDERAL AVIATION  
ADMINISTRATION, AND HAWAII DEPARTMENT OF TRANSPORTATION TO TAKE  
EVERY ACTION NECESSARY TO ADDRESS RAPIDLY INCREASING SAFETY  
RISKS AND COMMUNITY DISRUPTION RESULTING FROM INSUFFICIENT  
REGULATION OF RAPIDLY INCREASING OPERATIONS OF TOUR HELICOPTERS  
AND SMALL AIRCRAFT THROUGHOUT HAWAII SKIES.**

House Committee on Transportation

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The Department of Transportation **supports the intent** of the actions in this resolution to enhance safety and prevent community disruption by Hawaii tour helicopter and small aircraft operations.

Thank you for the opportunity to provide testimony.

**COUNTY COUNCIL**

Arryl Kaneshiro, Chair  
Mason K. Chock, Vice Chair  
Bernard P. Carvalho, Jr.  
Felicia Cowden  
Bill DeCosta  
Luke A. Evslin  
KipuKai Kualii



**OFFICE OF THE COUNTY CLERK**

Jade K. Fountain-Tanigawa, County Clerk  
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**Council Services Division**  
4396 Rice Street, Suite 209  
Lihu'e, Kaua'i, Hawai'i 96766

March 18, 2021

**TESTIMONY OF BERNARD P. CARVALHO, JR.**  
**COUNCILMEMBER, KAUAI COUNTY COUNCIL**

**ON**

**HCR 81, SUPPORTING NECESSARY ACTIONS TO ADDRESS RAPIDLY  
INCREASING SAFETY RISKS AND COMMUNITY DISRUPTION RESULTING  
FROM INSUFFICIENT REGULATION OF RAPIDLY INCREASING  
OPERATIONS OF TOUR HELICOPTERS AND SMALL AIRCRAFT  
THROUGHOUT HAWAII SKIES**

**AND**

**HR 68, SUPPORTING NECESSARY ACTIONS TO ADDRESS RAPIDLY  
INCREASING SAFETY RISKS AND COMMUNITY DISRUPTION RESULTING  
FROM INSUFFICIENT REGULATION OF RAPIDLY INCREASING  
OPERATIONS OF TOUR HELICOPTERS AND SMALL AIRCRAFT  
THROUGHOUT HAWAII SKIES**

**House Committee on Transportation**

**House Committee on Consumer Protection & Commerce**

**Friday, March 19, 2021**

**10:30 a.m.**

**Via Videoconference**

**Conference Room 423**

Dear Chair Aquino, Chair Johanson, and Members of the Committees:

Thank you for this opportunity to provide testimony in support of HCR 81 and HR 68, Supporting Necessary Actions to Address Rapidly Increasing Safety Risks and Community Disruption Resulting From Insufficient Regulation of Rapidly Increasing Operations of Tour Helicopters and Small Aircraft Throughout Hawai'i Skies. My testimony is submitted in my individual capacity as a Member of the Kaua'i County Council and Parks & Recreation / Transportation Committee Chair of the Kaua'i County Council.

Given the recent history of tour helicopter and small aircraft collisions in the State from April 2019 to February 2020, which resulted in twenty-three (23) fatalities, it is crucial that the United States Congress enact a Safe and Quiet Skies Act and that the Federal Aviation Administration and Hawai'i Department of Transportation utilize the Airport Noise and Capacity Act of 1990 and Title 14 Code of Federal Regulations part 50 to its fullest extent in order to minimize safety risks and community disruption. I wholeheartedly support the intent of these measures as it will ensure a safer community for residents and visitors alike.

AN EQUAL OPPORTUNITY EMPLOYER

Chair Aquino, Chair Johanson, and Members of the Committees

Re: HCR 81 and HR 68, Supporting Necessary Actions to Address Rapidly Increasing Safety Risks and Community Disruption Resulting From Insufficient Regulation of Rapidly Increasing Operations of Tour Helicopters and Small Aircraft Throughout Hawai'i Skies

March 18, 2021

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Thank you again for this opportunity to provide testimony in support of HCR 81 and HR 68. Should you have any questions, please feel free to contact me or Council Services Staff at (808) 241-4188.

Sincerely,



BERNARD P. CARVALHO, JR.  
Councilmember, Kaua'i County Council

AAO:dmc

House Committee on Transportation Hearing  
Friday, March 19, 2021  
10:30 AM VideoConference  
Room 423

**LATE**

**HOUSE CONCURRENT RESOLUTION 81 / HOUSE RESOLUTION 68**  
**Testimony in Strong Support with Recommendations from**  
**O'ahu Tour Helicopter Safety and Noise Inter-Action Group**

Aloha Chair Aquino, Vice Chair Ilagan and Transportation Committee Members:

Excessive aircraft noise compromises the health and well-being of the Hawaii 's people, and statutory remedies are long overdue for the safety protection and quality of life relief to thousands of suffering citizens in Hawai'i, particularly on O'ahu and Hawai'i Island as well as Kaua'i and Maui.

Tour helicopters have been increasingly inundating and impacting established communities with incessant noise invasion. The crescendo of island-wide community complaints across the State over the past four years has demonstrated this. Despite this public outcry, tour helicopter operators have been unwilling to change their flight paths to prevent the significant negative effects of helicopter noise within and around these impacted communities.

Further, tour helicopters are an inherent safety risk to Hawaii's island communities, natural habitats and coastal defense areas. The following commercial helicopter crashes and emergencies have occurred in Hawai'i since September 2018:

- September 18, 2018- Novictor Robinson-44 crash in Wahiawa, O'ahu;
- October 22, 2018- Novictor Robinson-44 crash at Kaneohe Bay recreational sand bar;
- February 21, 2019- K&S "Paradise" Hughes-369E crash in Waipio Valley, Hawai'i Island;
- April 16, 2019- K&S "Paradise" Hughes-369E crash in Sacred Falls State Park, Oah'u;
- April 29, 2019- Novictor Robinson-44 crash with 3 fatalities on a Kailua town street;
- May 21, 2019- Schuman "Magnum" 369D emergency landing in the Diamond Head National Natural Landmark and State Historic Monument Crater Park with 3,300 daily visitors;
- December 26, 2019 - Safari Eurocopter-AS350 crash with 7 fatalities on a Kauai cliff face near the Na Pali Coast;
- March 5, 2020 - Blue Hawaiian Eurocopter 130 crash in Puna, Hawai'i Island;

In 2016, a fatal tour helicopter crash occurred near the USS Arizona memorial and Pearl Harbor nuclear submarine base.

As the National Transportation Safety Board Chairperson has notably stated, "each crash underscores the urgency" for effective tour helicopter safety improvements.

**Protection of the Safety of Hawai'i's Communities is Paramount**

*Effective regulation and its ensured implementation will eliminate ground disruptions by tour helicopter operations that presently relentlessly disrupt Hawaii 's communities, which will be safer with far fewer disruptions if existing regulations are used and enforced to their full extent via tour helicopter management plans, airport owners' noise restrictions, and airport noise compatibility programs.*

Tour helicopter safety equipment must be required through State Department of Transportation Airports Division *ground use permits* to protect Hawai'i's people *on the ground*. This equipment

must include tour helicopter flotation devices installed *on* the aircraft, not merely personal flotation devices stored in the aircraft.

Additionally, tour helicopters must be instrument flight rated (IFR) for flying in sudden inclement weather, and equipped with certified instrumentation and IFR-certified pilots who are not merely tour guides.

Tour helicopter instrument rating certification and pilot flight instrument certification requirements are extremely important for all tour helicopter operations on each island when inclement weather conditions that cannot be avoided arise, as demonstrated by the following recent fatal tour and charter helicopter crashes:

- April 29, 2019 – a Novictor Helicopters tour helicopter crashed in downtown Kailua on O‘ahu, with three (3) fatalities;
- December 26, 2019 – a Safari Helicopters tour helicopter crash into a Kaua‘i cliff face, with seven (7) fatalities including three (3) children;
- January 26, 2020 – an Island Express charter helicopter crash in Southern California, with nine (9) fatalities including three (3) children.

Clearly the “lack of effective federal regulations and the lack of effective self-regulation” by tour helicopter operators “pose a significant and growing threat to the safety, health and well-being” of the people of Hawai‘i nei, and “the State Department of Transportation (Airports Division) must “take every action necessary to address rapidly increasing safety risks and community disruption resulting from insufficient regulation” of tour helicopter operations throughout the State of Hawai‘i.

Further the lack of enforcement of existing Hawai‘i-specific regulations per FAR 14 CFR Part 136, Appendix A, also contributes to the “significant and growing threat to the safety, health and well-being” of the people of Hawai‘i, including the requirements to maintain at least 1,500 feet in altitude above and at least 1,500 feet in distance from any land form, structure or person; and to attach flotation safety devices to the tour aircraft - because all tour helicopters fly over water in Hawai‘i.

Notably, tour helicopters on O‘ahu are required to fly over water from the State airport to Diamond Head, where their operators then elect to fly over and around Diamond Head - with daily visitors atop the crater’s 760-foot summit, leaving only a few hundred feet between the tour chopper and the people below.

Further, Diamond Head is a National Natural Landmark and State Historic Monument, and its Crater Park should be protected from tour helicopter safety and noise impacts just as required for Hawai‘i’s National Parks. Similarly, Mt. Olomana above Kailua is a State Monument, and its surrounding parkland and community should be protected in the same way.

We strongly agree that the Hawaii Air Noise and Safety Task Force *must* “immediately respond substantively to public safety and community disruption concerns with clear changes to operations” to reduce noise and safety impacts to the communities on the ground; and that federal, state and county elected officials and administrators pursue actions “that will enhance the safety and prevent community disruption by Hawaii tour helicopter and small aircraft operations.”

In addition to the above underscored additions for both House Concurrent Resolution 81 and its companion House Resolution 68, we recommend that the certified copies be additionally transmitted to the FAA Western Region Administrator, the Honolulu Airports Air Traffic Control (ATC) Chief Manager, and the Chairperson and Members of the Honolulu City Council.



**LATE**

**HCR-81**

Submitted on: 3/19/2021 4:23:19 AM

Testimony for TRN on 3/19/2021 10:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
bob ernst	hicop	Support	No

Comments:

HICOP SUPPORTS AND ASKS YOU TO VOTE TO APPROVE THE HOUSE House Concurrent Resolution 81 / House Resolution 68 AND House Concurrent Resolution 95 / House Resolution 90

Aloha Committee on Transportation,

Aloha Chair Aquino,

Aloha Vice Chair Ilagan,

Aloha Committee Members DeCoite, Hashimoto Kitagawa, Nakamura, Takumi and Matsumoto,

All these House Resolutions recognize, describe the tour copter impacts to your constituents and request the Federal and State agencies to address these issues.

HICoP further asks that the Hawaii Legislature take meaningful action and vote to implement meaningful legislation such as SB17.

Mahalo,

Bob

For the HICoP Board



**LATE**

**HCR-81**

Submitted on: 3/18/2021 9:14:46 PM

Testimony for TRN on 3/19/2021 10:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Debra Laeha	Individual	Support	No

Comments:

Mahalo for allowing me to provide my testimony. In some ways, this concern feels incredibly petty relative to the other more significant issues we are dealing with at this time in history, but I cannot sit idly by and allow the place that I call home to be consumed again by the out-of-control tour helicopter industry.

The tour helicopter industry has been allowed to operate virtually unregulated in the Islands for decades. Tour helicopters fly whenever, wherever they want; their only requirement is to “fly neighborly” and “safely”, at an altitude of 1,500 ft or higher. This leaves things wide open to interpretation and has produced a wild-wild west mentality in our skies.

Tour helicopters fly under Visual Flight Rules (VFR); they are not equipped with instruments to fly under cloudy conditions. Despite this, tour operators fly over Windward Communities even under rainy, cloudy conditions when the Ko‘olau Mountains are completely fogged in. This creates incredibly unsafe conditions as evidenced by the tragic helicopter accident on April 29, 2019, when a tour helicopter pilot became disoriented during overcast conditions and crashed in the middle of Kailua Town’s main street, killing 3, but miraculously sparing the lives of those on the ground. Because tour helicopters in Hawaii are only capable of operating under VFR, it is especially dangerous to those of us living in Windward Communities where weather and wind conditions, **especially near the mountains**, are “unpredictable” (which tour operators have openly acknowledged).

When called, every government agency (FAA, Hawaii Airport Division, Hawaii Department of Transportation) points to the other as the one in charge. After many aggravating phone calls and finger-pointing (the proverbial endless loop), it became clear that NO ONE is in control of these operators. In fact, government agencies have given the tour helicopter industry carte blanche authority (via the Hawaii Helicopter Association—which actually has NO authority over individual operators) to control/monitor THEMSELVES! How ludicrous that the fox is given the keys to the hen house! Some tour operators have held these keys for so long that they openly goad frustrated community members to “go ahead and try to make changes” since they know that the Community has been unsuccessful in doing so for more than 25 years. These

operators know they have the upper hand; the tourist buck has clearly been valued over the health and well-being of Kama'Ā• ina for years.

Pre-Covid, the volume of tour helicopters over Maunawili/Olomana (based on data from the FlightRadar24 app) had reached a tipping point. We averaged a helicopter overhead every 4 to 5 minutes from 7 am to 6 pm—*every day*. It became so unbearable that my family actually considered moving from our home of 20+ years. Then we realized that there was no place to go! We are buzzed by helicopters while at our family property in Pupukea, at cemeteries in Kaneohe and Diamond Head, at Makapu'u beach, on the mountain hiking trails, at City and State parks, while having coffee in Manoa... there is virtually no escaping the incessant drone of these helicopters. The now quiet skies created by Covid have only highlighted how dire the problem had become. We are overjoyed to hear the birds again.

Since the FAA and Hawaii State government agencies have been ineffective partners in establishing regulations to protect the safety and well-being of our community, we need regulators to:

- Reduce/control the volume of tour helicopter activity
- Increase minimum altitude requirements
- Vary flight paths so one community is not inundated over others
- To ensure the safety of those on the ground, tour helicopters should be banned from flying over residential areas altogether
- Tour helicopters should be required to fly one mile offshore to ensure the safety of those on the ground
- Require helicopters be fitted with IFR and floatation equipment
- Establish an independent government agency to represent Kama'Ā• ina concerns, monitor tour operator activities, and impose CONSEQUENCES for infractions (turning off transponders, flying below required elevations, crashes) and ensure appropriate licensing, etc.

**PLEASE HELP** take back our skies!

**LATE**

**HCR-81**

Submitted on: 3/18/2021 10:55:10 PM

Testimony for TRN on 3/19/2021 10:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Cory Harden	Individual	Support	No

Comments:

Aloha legislators,

Helicopters and tour aircraft have been disrupting and endangering our islands for far too long. Surely you can take this small step!

mahalo,

Cory Harden