



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
KA 'OIHANA O KA LOIO KUHINA  
THIRTY-SECOND LEGISLATURE, 2023**

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**ON THE FOLLOWING MEASURE:**

H.B. NO. 1201, H.D. 1, RELATING TO NOISE POLLUTION.

**BEFORE THE:**

HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

**DATE:** Thursday, March 2, 2023 **TIME:** 2:00 p.m.

**LOCATION:** State Capitol, Room 325

**TESTIFIER(S):** Anne E. Lopez, Attorney General, or  
Wade H. Hargrove III, Deputy Attorney General

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Chair Tarnas and Members of the Committee:

The Department of the Attorney General provides the following comments.

The purpose of this bill is to add a new section to chapter 342F, Hawaii Revised Statutes (HRS), to make the sound generated by helicopters above a certain decibel level measured on the dBC weighting system a public nuisance and a violation of that chapter. It would allow the Department of Health (DOH) to respond to complaints, take readings of helicopter noise, and collect a fine of no less than \$5,000 for a first offense and \$10,000 for each subsequent offense. It would also create a private cause of action for individuals to seek an injunction and recover damages for violations of this new section.

The bill may be subject to challenge under the Supremacy Clause of the U.S. Constitution, which provides that state law is subordinate to federal law. U.S. Const., Art. VI, Sec. 2. Section 1108(a) of the Federal Aviation Act, as amended, provides that "The United States Government has exclusive sovereignty of airspace of the United States," 49 U.S.C. § 40103(a)(1).

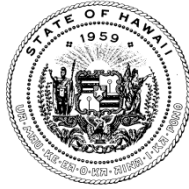
The responsibility of regulating air traffic, and the noise related to that air traffic, belongs exclusively to the federal government and any state or municipal effort to regulate in this area is subject to constitutional challenge and will be preempted by federal law. See City of Burbank v. Lockheed Air Terminal, Inc., 411 U.S. 624 (1973).

Congress granted to the Federal Aviation Administration (FAA) the obligation to regulate all things related to aircraft and expressly preempted any state or local efforts to do so. City of Burbank, at 628-29.

Additionally, the United States Supreme Court has declared: “The aircraft and its noise are indivisible; the noise of the aircraft extends outward from it with the same inseparability as its wings and tail assembly[.]” Id. at 629 (quoting American Airlines v. Hempstead, 272 F. Supp. 226, 230 (E.D.N.Y. 1967)). The Noise Control Act of 1972 requires the FAA to specifically coordinate its adoption of regulations with the recommendations of the United States Environmental Protection Agency, further establishing the federal government’s paramount role in the regulation of noise related to air traffic not only as a flight-management issue but also as a matter of public health and safety (i.e., nuisance). Id. at 630-31. Consequently, the regulation of aircraft noise is the exclusive right of the federal government, and neither the State nor an individual may bring claims against helicopter operators for noise pursuant to the causes of action this bill seeks to create.

We appreciate the opportunity to testify on this measure.

JOSH GREEN, M.D.  
GOVERNOR



**TESTIMONY BY:**  
EDWIN H. SNIFFEN  
DIRECTOR

Deputy Directors  
DREANALEE K. KALILI  
TAMMY L. LEE  
ROBIN K. SHISHIDO  
JAMES KUNANE TOKIOKA

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

March 2, 2023  
2:00 P.M.  
State Capitol, Teleconference

**H.B. 1201 HD1**  
**RELATING TO NOISE POLLUTION**

House Committee on Judiciary and Hawaiian Affairs

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The Department of Transportation (DOT) provides **comments** on this measure, which amends Chapter 342F, Hawaii Revised Statutes to address helicopters as a public nuisance due to noise pollution.

The DOT believes that this measure may be preempted by the federal government and as such we defer to the testimony of the Department of the Attorney General.

Thank you for the opportunity to provide testimony.



March 1, 2023

COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS

Rep. David A. Tarnas, Chair

Rep. Gregg Takayama, Vice Chair

*HB1201HD1: RELATING TO NOISE POLLUTION. Establishes that noise generated by helicopters in excess of a certain decibel level constitutes a public nuisance and a source of noise pollution in violation of the State's noise pollution law. Establishes fines and a private right of action for individuals to sue helicopter owners and operators for committing a public nuisance. Establishes exceptions.*

Committee Hearing Date: March 2, 2023 @ 2:00PM

Aloha Chair Tarnas, Vice Chair Takayama, and Committee Members,

Jack Harter Helicopters opposes the proposed changes *HB1201HD1* would make to Hawaii Revised Statute 342F.

Although the language in *HB1201HD1* is incomplete because it is missing the decibel level value and a specific distance from an airport at which a violation of this proposed law would occur, it is clear that, if enacted, this bill would make flying a helicopter in the State of Hawaii almost impossible for commercial or personal use. This bill would also flood our legal system with frivolous legal actions if passed into law.

The US Congress has granted preemptive authority to the Federal Aviation Administration (FAA) over the operation of aircraft in the National Airspace System (NAS). This was done to provide a safe and sustainable aviation system across the entire country. This bill would violate the FAA's sole jurisdiction over the operation of aircraft in the NAS by making the lawful operation of a helicopter (in compliance with the Federal Aviation Regulations (FARs)), a violation of a sound limit established in the Hawaii Revised Statutes.

The FAA is keenly aware of safety issues related to aviation. The FAA has some authority to establish noise limits in the areas surrounding airports for the sake of the communities surrounding these facilities that are vital to our economy. To the best of my knowledge, there has never been a helicopter that exceeded the FAA's noise limits during operation near an airport or heliport.

A bill similar to *HB1201HD1* was recently passed by the New York State Legislature. New York Senate Bill S7493 was vetoed by the governor of New York. A statement from the Helicopter Association International included the following information about the New York governor's veto,

*"In a statement announcing her decision, Governor Hochul cited preemption as her primary reason for the veto. "Recent federal case law makes clear that nonfederal actors must carefully consider how state and local restrictions interact with federal laws governing aviation and must be attentive to federally mandated processes for enacting policy in this area," she said. "Certain elements of this legislation run counter to the federal scheme regulating New York's airports and airspace. Therefore, I am constrained to veto this bill.""*

In a 2021 letter to Suzanne Case, former Chair of the Hawaii Department of Land and Natural Resources Land Board from Raquel Girvin, FAA Regional Administrator for the Western-Pacific Region, Ms. Girvin explained in great detail the authorities and duties of the FAA and the authority of the State of Hawaii related to helicopter (aviation in general) noise. I have included a link to that letter in this document below and I am hopeful that this letter will help make it clear that the State of Hawaii would be in violation of the FAA's congressionally-mandated, exclusive authority to regulate the National Airspace System if SB969SD1 was to be passed through the legislature and signed by the governor.

Thank you for considering our testimony and we urge your committee to **oppose passage of *HB1201HD1***.



Casey Riemer  
Special Project Manager

<https://dlnr.hawaii.gov/wp-content/uploads/2022/03/FAA-Response-to-DLNR-05-28-21.pdf>



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March 2, 2023

Honorable Scot Matayoshi  
Hawaii House of Representatives, District 49  
State Capitol, Room 331  
Honolulu, HI 96813

**TRANSMITTED VIA ELECTRONIC SUBMISSION**  
**SUBJECT: HB 1201 – Helicopter Noise - OPPOSE**

Honorable Representative Matayoshi,

On behalf of the over 1,000 aircraft owners and pilots across the State of Hawaii, we must respectfully oppose Hawaii House Bill (HB) 1201, which would declare helicopter noise a public nuisance and authorize a private right of action against an operator.

Simply put, HB 1201 runs afoul of well-settled federal law and could open the door to frivolous lawsuits. The Federal Aviation Administration (FAA) has exclusive authority over aviation leaving the state of Hawaii with no legal grounds to set acceptable or unacceptable noise thresholds for helicopter operations. Moreover, the state has no authority to set boundaries for where noise violations could be issued. See 49 U.S.C. § 47521 & 41713; Advisory Circular 36-1H (Nov. 15, 2001).

Last year the State of Hawaii enacted legislation requiring permits for tour operators and also required the Department of Transportation to promulgate regulations for how this permit would be implemented. Tour operators have yet to see draft regulations that would impact the very noise concerns HB 1201 seeks to address. Rather than introduce new legislation, seeking to double down and remedy the same problem, it would be prudent to allow current law to take effect and then gauge its effects.

This legislation will have a detrimental impact on the aviation industry in the state and the state's economy and will create a chilling effect on private investment in aviation industries and infrastructure looking to do business in Hawaii. Simply put the passage of this legislation would incentivize high-technology aviation businesses to invest in other states eager to support these growing aviation sectors.

For these reasons, AOPA must respectfully OPPOSE HB 1201.

Sincerely,

**Jared Yoshiki**  
*Western Pacific Regional Manager*



*Dedicated to the Advancement of the International Helicopter Community*

House Committee on Judiciary & Hawaiian Affairs  
Hawaii State Legislature

Wednesday, March 2<sup>nd</sup>, 2023

**RE: Opposition to House Bill 1201**

As representatives of the international vertical flight industry, the Helicopter Association International (HAI) would like to express our serious concerns regarding HB 1201. HAI represents more than 1,100 companies and over 16,000 industry professionals in more than 65 countries. Each year, HAI members safely operate more than 3,700 helicopters and remotely piloted aircraft approximately 2.9 million hours. HAI is dedicated to the promotion of vertical flight as a safe, effective method of commerce and to the advancement of the international vertical flight community.

HAI strongly opposes HB 1201. The bill runs afoul of well-settled federal law and opens the door to frivolous lawsuits. The Federal Aviation Administration (FAA) and the federal Department of Transportation (DOT) have exclusive authority over aviation. The state of Hawaii has no legal grounds to set an acceptable or unacceptable noise threshold for helicopter operations, nor does the state have authority to set other requirements for where, when, or how noise violations could be issued. Below we provide a brief overview of several of the larger issues with the Act.

First, HB 1201 appears to directly infringe federal law related to aircraft noise emissions. The FAA has been delegated exclusive responsibility by Congress to regulate aircraft noise, and has exercised that authority, preempting any state or local regulation. See, e.g., 49 U.S.C. § 44715; 14 C.F.R. Part 36; *Advisory Circular 36-1H* (Nov. 15, 2001); and *City of Burbank v. Lockheed Air Terminal*, 411 U.S. 624 (1973).

Second, the FAA has also been delegated (and further exercised) exclusive responsibility over the safe and efficient management of the U.S. navigable airspace system. See, e.g., *Blue Sky Entertainment, Inc. v. Town of Gardiner*, 711 F.Supp. 678, 692 (N.D.N.Y. 1989). The provisions for private injunctions, private damages, and state fines all would directly restrict how helicopters operate in Hawaii, and all of them are preempted by federal oversight.

Third, 49 U.S.C. § 41713, as enforced by DOT, expressly prohibits Hawaii from regulating the prices, routes, and services of air carriers. See, e.g., *Friends of the East Hampton Airport v. Town of East Hampton*, 841 F.3d 133, 139 (2d Cir. 2016). Likewise, many helicopter operations over Hawaii are conducted by air carriers, as federally defined, and this bill would restrict their routes, as well as impact their services and prices. Hawaii may not directly or indirectly implement requirements that re-regulate air carriers.

Fourth, Hawaii cannot circumvent the preemptive effect of federal statutes by using private litigation as a means of enforcement. If enacted, HB 1201 would allow any person who is "aggrieved by a violation" to bring a civil action against the operator or owner of the helicopter. Preemption also applies if a state, rather than regulating directly, grants individuals a private right of action. See, e.g., *Whitten v. Vehicle*

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*Dedicated to the Advancement of the International Helicopter Community*

*Removal Corp.*, 56 S.W.3d 293, 310 (Tex. App. 2001). HAI is also concerned that HB 1201 would allow Hawaii's Department of Transportation to rely on decibel readings collected by private residents, without any independent verification of their accuracy. In comparison, speed cameras for traffic enforcement must be carefully calibrated and are used only by trained law enforcement officers.

Fifth, the bill describes the noise that it prohibits as a "public nuisance." Yet courts previously have concluded that a nuisance claim cannot be premised on the operation of aircraft in compliance with federal law. For example, in *St. Lucie County v. Town of St. Lucie Village*, 603 So.2d 1289, 1293 (Fla. 4th Dist. Ct. 1992), the court held that noise from aircraft operating at an airport in compliance with FAA requirements could not constitute a nuisance. *See also Wells v. Kentucky Airmotive, Inc.*, 2014 WL 4049894, \*4-5 (Ky. App. August 15, 2014) and *Friends of Merrymeeting Bay v. Central Maine Power Co.*, No. BCD-CV-2020-36, slip op. (Me. Super. Jan. 15, 2021), *aff'd* No. BCD-21-43, slip op. (Me. January 11, 2022).

Lastly, it is important to note that HB 1201 replicates the intent of New York SB7493-A; a bill that was vetoed on December 15, 2022, for being at odds with federal preemption. In a letter addressed to the NY Senate, Governor Hochul explained that "regulation of aircraft and airspace is primarily a federal responsibility, and federal law significantly constrains the State's ability to legislate in this area. Recent federal case law makes clear that non-federal actors must carefully consider how state and local restrictions interact with federal laws governing aviation." HAI understands that the Hawaii Attorney General provided similar testimony regarding HB 1201 on February 8, 2023. Therefore, we urge the state of Hawaii to recognize the federal mandates and prohibitions for enacting policies within this realm.

The helicopter community strives to be good stewards of the environment and good neighbors to residents who live and work in the Aloha state. While we appreciate the issues that HB 1201 intends to address, the proposed bill presents many impractical, insurmountable, and unlawful legal and logistical problems. HAI remains committed to working with other operators, legislators, leaders, and community members around the state to proactively address concerns and answer questions.

Sincerely,



Cade Clark  
Vice President of Government Affairs, HAI



**HB-1201-HD-1**

Submitted on: 2/28/2023 9:31:22 PM

Testimony for JHA on 3/2/2023 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Dana Keawe	Individual	Support	Written Testimony Only

Comments:

support