



March 27, 2023

COMMITTEE ON JUDICIARY

Senator Karl Rhoads, Chair

Senator Mike Gabbard, Vice Chair

*HB1201SD1: RELATING TO NOISE POLLUTION. Establishes a private right of action for any person aggrieved by a violation of the Federal Aviation Act and existing federal laws to bring a civil action against the owner or operator of the helicopter in violation and collect damages and litigation costs.*

Committee Hearing Date: March 31, 2023 @ 10:00AM

Aloha Chair Rhoads, Vice Chair Gabbard, and Committee Members,

Jack Harter Helicopters opposes *HB1201SD1* would make to Hawaii Revised Statute 342F.

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. If passed, 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)), subject to legal actions by anyone who feels that the helicopter was operated contrary to those regulations.

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. The FAA has established and enforces regulations related to the operation of helicopters in the NAS. There are means for any person to report violations of the FARs to the FAA. Each and every credible report of a possible violation is documented and investigated by the FAA. If the State of Hawaii were to enact this legislation, the FAA would be unlawfully removed from the process that the FAA has established to deal with the regulation of the nation's aviation system. This would be a violation of the sole preemptive authority granted by the US Congress.

A bill similar to *HB1201SD1* 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 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 HB1201SD1 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 HB1201SD1.**



Casey Riemer  
Special Project Manager

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



Senate Judiciary Committee  
Hawaii State Legislature

Friday, March 31, 2023

**RE: Opposition to House Bill 1201**

As representative of the international vertical flight and general aviation industry, the Aircraft Owners and Pilots Association (AOPA) and the Helicopter Association International (HAI), would like to express our serious concerns regarding HB 1201.

HAI and AOPA strongly oppose HB 1201. The bill, as currently amended, would authorize civil lawsuits premised on helicopter noise. Federal preemption of aviation regulation entails that the state cannot itself interfere with aircraft operations and **that the state cannot authorize private litigation that interferes with aircraft operations.**

For example, in *Whitten v. Vehicle Removal Corp.*, 56 S.W.3d 293, 310 (Tex. App. 2001), the court – interpreting the similar federal oversight of motor carrier regulation – explained that “[t]he State may not escape the preemptive effect of federal statutes by using private litigation as a means of enforcement rather than its own police power.” Notably, the *Whitten* court specifically relied on the Supreme Court’s aviation-centric decision in *American Airlines, Inc. v. Wolens*, 513 U.S. 219 (1995), holding that private litigants’ claims against an air carrier which relied on a state’s consumer fraud statute were preempted. In Hawaii, a court reached a similar conclusion in *Ventress v. Japan Airlines*, 2011 WL 6819001 (D.Haw. December 27, 2011), affirmed 747 F.3d 716 (9th Cir. 2014), finding that a pilot’s claims premised on a state labor law were preempted. Other jurisdictions concur – see, e.g., *Lawal v. British Airways, PLC*, 812 F.Supp. 713, 719 (S.D.Tex. 1992) (rejecting claim that preemption “bars only actions by states or other political agencies”); *Botz v. Omni Air International*, 134 F.Supp.2d 1042, n.3 (D.Minn. 2001).

In sum, the Senate should have no doubt that, if adopted, the enforcement mechanism of HB 1201 would be illegal – and would result in litigation that would be both costly to and without benefit to the taxpayer. 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 amended bill continues to present many unlawful legal and logistical problems. HAI and AOPA remain committed to working with other operators, legislators, leaders, and community members around the state to proactively address concerns and answer questions.

Sincerely,

Helicopter Association International (HAI)  
Aircraft Owners and Pilots Association (AOPA)

**HB-1201-SD-1**

Submitted on: 3/26/2023 4:46:17 PM

Testimony for JDC on 3/31/2023 10:00:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>            |
|---------------------|---------------------|---------------------------|---------------------------|
| Gerard Silva        | Individual          | Oppose                    | Written Testimony<br>Only |

Comments:

This iks some ones Lively hood that you are Screwing with!!!!

**HB-1201-SD-1**

Submitted on: 3/24/2023 5:47:53 PM

Testimony for JDC on 3/31/2023 10:00:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>            |
|---------------------|---------------------|---------------------------|---------------------------|
| B.A. McClintock     | Individual          | Support                   | Written Testimony<br>Only |

Comments:

Noise pollution is a problem on our islands. Please support this bill. Mahalo.