

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

February 14, 2023

LATE

Members of the State Senate Committee on
Transportation and Culture and the Arts
The Honorable Chris Lee, Chair
The Honorable Lorraine Inouye, Vice Chair

RE: Senate Bill 969 Relating To Noise Pollution

Thank you for holding this hearing today to focus us all clearly on the safety and community disruption impacts of commercial tour helicopters and small aircraft throughout O‘ahu and our state. I am in strong support of Senate Bill 969, which 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. I understand that the proposed measure establishes fines and a private right of action for individuals to sue helicopter owners and operators for committing a public nuisance – and establishes exceptions including for aircraft owned by a government agency or organization, and aircraft used to supply emergency services.

First, to try to summarize current complaints and issues (focusing on O‘ahu, though the same complaints persist on other islands), allow me to share with the Committee these broader observations that I shared with our constituents last August:

1. Severe safety concerns with operations, for both passengers and crew and people and property on the ground, continue with ongoing crashes. The National Transportation Safety Board (NTSB), which is responsible for identifying the cause of crashes and for making recommendations to improve safety but has no direct regulatory authority, has increased its statements of concern and frustration with the failure of the FAA to fully focus on safety-related regulations and improvements.
2. The operators continue to fly over communities and other populated areas even where an easy out-to-sea and less disruptive route is available. On O‘ahu, this is especially true (and obvious from any review of a live online app like Flightradar 24) of communities like Hawai‘i Kai, Waimānalo, Kailua, Kāne‘ohe, the North Shore and around Pearl Harbor.
3. The operators continue to violate the basic requirement of a minimum altitude above actual ground level (not sea level), especially in higher communities located in Central O‘ahu.

(more)

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4. Some operators continue to refuse to turn on their ADS-B, meaning that they cannot be tracked in real time and there is no link from a complaint back to a specific aircraft and company.
5. The operators continue to violate the agreed airspace limitations around Pearl Harbor and its historic sites like the Arizona Memorial, disrupting the security and sanctity of these sites.
6. The operators continue to fly or hover over and circle other special and solemn sites like the National Memorial Cemetery of the Pacific at Punchbowl. On April 20, 2022, a veteran's burial was completely disrupted by a tour helicopter hovering and circling overhead. When my office complained to the FAA on behalf of the family, we were told that next time a family should alert the FAA in advance to ask helicopters not to fly over during the ceremony. That burden should not be on visitors and families at Punchbowl; aircraft, especially commercial tour helicopters, should not fly over or around Punchbowl at all.
7. The operators have increasingly violated what has been at least some understanding that they would cease operations before 8am and after 5 or 6pm to at least avoid disturbing communities in the earlier part of the morning and later part of the afternoon into the evening. To review these complaints, I checked out some recent days last August on my own Flightradar 24 and found the following: August 5, 6:25pm, two still flying (N357MH and N506CD, N357MH was still flying at 7:28pm); August 15, 6:31pm (N506CD again); August 18, 6:52pm (unidentified because specific identifier switched off but Robinson R22 used by tour operators); August 19, 6:14pm (N740RH); August 21, 6:01pm (N746RH); August 22, 6:12pm (N746RH again); August 23, 6:03pm (N741RH and N328SS); August 24, 7:56am (N948WB), 6:05pm (N740RH and N328SS again, N745RH, N808A); August 26, 7:56am, (N217DK, N556MH); August 27, 7:52am (N357MH); and August 28, 7:15am (N217DK) and 6:58pm (unidentified Robinson R44).
8. The operators have continued to operate along their flight routes by circling and hovering over specific locations as opposed to pursuing a straight line. As they know, this not only increases and focuses disruption in specific areas, but substantially increases the noise emanating from the aircraft during turns, changes in altitude or other maneuvering.
9. The operators have continued to fail to self-impose any common volume of flights limitations or route diversity so that some communities suffer dozens and dozens of overflights daily.

In terms of any real regulation, the FAA, through its Honolulu Flight Standards District Office, previously developed and administered the Hawai'i Air Tour Common Procedures Manual, which at least set some common expectations on flight operations. However, the FAA has been pursuing the abandonment of the Manual, and its status or of any effective replacement is uncertain.

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(3)

In terms of any common effort among governments and the air tour operators to understand and address increasing citizen complaints and concerns, the FAA, State and some of the operators (though not all as some opted out of any participation) previously operated the Hawai'i Air Tour Noise and Safety Task Force. However, participation in and commitment to this avenue of potential resolution lagged during the downturn in operations and complaints resulting from dramatically lower tourism during COVID-19, and there has been no real voluntary commitment to resume.

However, as a result of widespread citizen concerns, as reflected in resolutions approved in neighborhood boards across O'ahu, county councils (the Honolulu City Council approved Resolution 19-188 on September 4, 2019, entitled "Urging The Federal Aviation Administration To More Effectively Regulate Air Helicopters and Small Commercial Aircraft Operations"), as well as the Hawai'i State Legislature, which last session passed Senate Bill 3272 (now Act 311). This new law, introduced by Senator Chris Lee and others, (1) requires operators to file reports of their flight paths and other details of their operations to allow for appropriate monitoring of their operations, compliance with regulations and tracking of citizen complaints to specific operators and flights, and (2) formally establishes the Hawai'i Air Tour Noise and Safety Task Force as a matter of state law (with funding assistance from the federal government).

This seemingly straightforward proposal met with great resistance from the air tour operators, who urged Governor Ige to veto the measure. Many concerned citizens, though, weighed in urging its enactment. I also sent a letter of support [here](#). The Governor agreed with the community and signed the measure.

As your Committee considers SB 969, I believe the states are entitled to fairly regulate noise emanating from tour helicopters above levels impermissible for any other noise source as a public nuisance. I will also be re-introducing legislation in Congress, my Safe and Quiet Skies Act, to require the FAA to take these steps to make these flights safer and reduce their ground impacts. I look forward to working with the State Legislature and other interested parties to advance my bill and other efforts to regulate the industry. Attached to my testimony is the text of my bill.

Please feel free to contact me and my office to discuss this and any further efforts to ensure that residents and visitors can enjoy Hawai'i without excessive intrusion from tours in our skies and that the safety of these tours and our communities is paramount.

Thank you again, I look forward to continuing to work together for our shared constituency.

Aloha,



Congressman Ed Case
Hawaii – First District

(more)

Attachment:

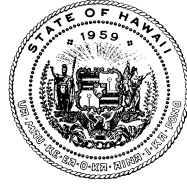
- Text of Safe and Quiet Skies Act



Safe and Quiet
Skies Act.pdf

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JOSH GREEN, M.D.
GOVERNOR OF HAWAII
KE KIA'AINA O KA MOKU'AINA 'O HAWAII



KENNETH S. FINK, MD, MGA, MPH
DIRECTOR OF HEALTH
KA LUNA HO'OKELE

STATE OF HAWAII
DEPARTMENT OF HEALTH
KA 'OIHANA OLAKINO
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In reply, please refer to:
File:

**Testimony COMMENTING on SB969
RELATING TO NOISE POLLUTION**

SENATOR CHRIS LEE, CHAIR
SENATE COMMITTEE ON TRANSPORTATION AND CULTURE AND THE ARTS
Hearing Date: 2/14/2023 Room Number: 224

1 **Fiscal Implications:** This measure may impact the priorities identified in the Governor's
2 Executive Budget Request for the Department of Health's (Department) appropriations and
3 personnel priorities. Proposed requirements will require additional staff time and effort.
4 **Department Testimony:** The Department respectfully comments on this measure which
5 amends Chapter 342F, Hawaii Revised Statutes to address helicopters as a public nuisance due to
6 noise pollution. The Department understands that this measure may be preempted by the federal
7 government. The Department defers to testimony of the Department Attorney General.

8
9

10 Thank you for the opportunity to testify.

11 **Offered Amendments:** None

12



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

ON THE FOLLOWING MEASURE:

S.B. NO. 969, RELATING TO NOISE POLLUTION.

BEFORE THE:

SENATE COMMITTEE ON TRANSPORTATION AND CULTURE AND THE ARTS

DATE: Tuesday, February 14, 2023 **TIME:** 3:15 p.m.

LOCATION: State Capitol, Room 224

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

Chair Lee 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 subject to a fine. It would allow the Department of Health (DOH) to collect decibel readings obtained by complainants as evidence of violations for purposes of enforcing this new restriction. The bill also creates a private cause of action enabling individuals to pursue an injunction, recover damages, and collect attorney's fees from the owner or operator of a helicopter that is in violation of the 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).

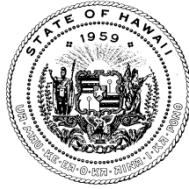
The responsibility of regulating air traffic, and the noise related to that air traffic, belongs exclusively to the federal government and any state or municipal effort to regulate in this area is subject to constitutional challenge and will be preempted by federal law. See City of Burbank v. Lockheed 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 attempts to create.

We appreciate the opportunity to testify on this measure.

JOSH GREEN, M.D.
GOVERNOR



TESTIMONY BY:
EDWIN H. SNIFFEN
DIRECTOR

Deputy Directors
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TAMMY L. LEE
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JAMES KUNANE TOKIOKA

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

February 14, 2023
3:15 PM
State Capitol, Teleconference

S.B. 969
RELATING TO NOISE POLLUTION

Senate Committee on Transportation and Culture and the Arts

The Department of Transportation (DOT) **supports** the intent of S.B. 969 but offers comments on the measure. The DOT acting in its role as airport proprietor of the State's airports, is able to regulate helicopter noise in the airports and in the immediate air space. However, DOT and the State lack the authority to regulate aircraft operations, including helicopter flight paths. Once the helicopter is in the air it becomes the jurisdiction of the Federal Aviation Administration (FAA).

This information above was provided by the FAA's Regional Administrator Raquel Girvin in an August 13, 2021, response letter to then Department of Land and Natural Resources (DLNR) Chair Suzanne Case regarding the regulation of helicopter air tour flight paths and community concerns.

DOT is in support of anything that reduces helicopter noise in our local communities statewide.

Thank you for the opportunity to provide testimony.



February 10, 2023

COMMITTEE ON TRANSPORTATION AND CULTURE AND THE ARTS

Senator Chris Lee, Chair
Senator Lorraine R. Inouye, Vice Chair

SB969: 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: February 14, 2023 @ 3:15PM

Aloha Chair Lee, Vice Chair Inouye, and Committee Members,

Jack Harter Helicopters opposes the proposed changes SB969 would make to Hawaii Revised Statute 342F.

Although the language in SB 969 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 noise 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 SB969 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 that letter in this document 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 SB969 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 SB969.**



Casey Riemer
Special Project Manager



U.S. Department
of Transportation
**Federal Aviation
Administration**

Western-Pacific Region
Office of the Regional Administrator

777 S. Aviation Blvd., Suite 150
El Segundo, CA 90245

August 13, 2021

Ms. Suzanne D. Case
Chair, Hawaii Board of Land
and Natural Resources
P.O. Box 621
Honolulu, HA 96809

RE: Regulation of Helicopter Air Tour Operations

Dear Ms. Case:

Thank you for your May 28, 2021 letter raising the issue of regulation of helicopter air tour flight paths throughout Hawaii and alerting us to community concerns in Hawaii regarding helicopter noise in residential neighborhoods, and over natural and cultural areas. You indicate that the Bureau of Land and Natural Resources (BLNR) has jurisdiction over the uses of State land, including the “staging and operation of aircraft in Hawai’i airports...,” and acknowledge that the Federal Aviation Administration (FAA) is the sole regulator of aircraft flight paths. Your letter requests the FAA to address community noise concerns through regulation and to confirm the agency’s position on the permissible scope of State regulation of helicopter flight operations.

Your letters seeks to:

1. Relay community concerns regarding “noise disruption and safety issues” from air tour helicopters, request the FAA to address these concerns through “meaningful regulation to avoid and mitigate these impacts,” and include community input in the process, and
2. Confirm the FAA’s position on the permissible scope of State regulation over helicopter flight regulations. You ask whether BLNR has the authority to condition its approval of leases and revocable permits in state airports for helicopter operations,” and regulate flight paths and “limits such as on altitude, frequency and time of operation, to minimize widespread disruption....”

Community Noise and Safety Concerns

Thank you for sharing community concerns regarding helicopter noise in residential neighborhoods and over natural and cultural areas in Hawaii. The FAA works with State and local government partners, within our respective Constitutional and statutory authorities, as well as operators and local communities to address citizens’ noise concerns through a variety of statutory, regulatory, and voluntary mechanisms. For

example, currently we are serving as a technical advisor to the Hawaii Air Noise and Safety Task Force; which was developed to address safety and noise issues related to rotor and fixed-wing aerial tours in the State of Hawaii. We champion efforts to advance the development and industry adoption of source reduction technologies and noise abatement operations. We have also promulgated informed, well-reasoned and scientifically grounded regulatory standards and noise policies intended to protect the traveling public and those on the ground.

The FAA is required by statute to protect the public health and welfare from aircraft noise by prescribing standards that measure aircraft noise and by promulgating regulations to control and abate aircraft noise (49 U.S.C. § 44715). FAA has fulfilled these requirements by promulgating noise certification standards for helicopters in 14 CFR part 36. Those regulations ensure that new helicopter type designs incorporate noise reduction technologies as needed to comply with lower noise limits. The most recent change in the certification regulations was the reduction to Stage 3 noise limits for newly certificated helicopter models. 79 FR 12040 (Mar. 4, 2014). As operators retire and replace older aircraft with those that meet the newer standards, community noise impacts are expected to improve.

The FAA also works to address helicopter noise with partners in academia through our ASCENT Center of Excellence¹ as well as with industry through collaboration with regional operators and with the Helicopter Association International (HAI) Fly Neighborly training program.² These efforts are designed to advance research and adoption of voluntary measures related to scheduling and flying aircraft to minimize the impact of noise on people on the ground. Noise abatement measures developed with input from engaged stakeholders remain one of the most effective approaches to reducing helicopter noise.

The FAA is committed to developing meaningful and equitable solutions to the complex and nuanced issue of aviation noise. We recently announced our plans to conduct a noise policy review that is informed by research and leverages the development of new analytical tools and technologies. This effort will build on our partnerships with academia, industry, and government to better understand, manage, and reduce the environmental impacts of aviation, including but not limited to noise. As a core part of this effort, we are encouraging input from a broad range of stakeholders, including local communities. This will not be a short, simple, or superficial undertaking and the FAA

¹ Rotorcraft Noise Abatement Procedures <https://ascent.aero/project/rotorcraft-noise-abatement-procedures-development/>

² <https://www.rotor.org/initiatives/fly-neighborly>

encourages agency partners and communities to keep abreast of future opportunities to engage in dialogue with our agency.

Permissible Scope of State Regulation of Helicopter Flight Operations

Federal Statutory and Regulatory Framework

In your letter, you acknowledge that the State's jurisdiction is "limited to the land disposition itself," and that the "regulation of flight paths is the sole jurisdiction of the FAA." Your understanding is correct: the States lack the authority to regulate aircraft operations, including helicopter flight paths.

Congress enacted an express preemption provision stating that, "a State [or] political subdivision of a State . . . may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of an air carrier that may provide air transportation under this subpart." 49 U.S.C. § 41713(b)(1). The Supreme Court has interpreted the statute's "related to" language broadly, holding that it applies to State laws "having a connection with or reference to" prices, routes, and services. *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384 (1992).

By statute, the FAA is obligated to regulate for safety; the efficient use of the airspace; protection of people and property on the ground; air traffic control; navigational facilities; and the regulation of aircraft noise at its source. 49 U.S.C. §§ 40103, 44502, and 44701-44735. Congress has directed the FAA to "develop plans and policy for the use of the navigable airspace and assign by regulation or order the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace." 49 U.S.C. § 40103(b)(1). Other responsibilities of the FAA include prescribing air traffic regulations on the flight of aircraft for navigating, protecting, and identifying aircraft; protecting individuals and property on the ground; using the navigable airspace efficiently; and preventing collision between aircraft and between aircraft and land. 49 U.S.C. § 40103(b)(2). Since 1926, Federal law has provided that a citizen of the United States has a public right of transit through the navigable airspace. 49 U.S.C. § 40103(a)(2).

In furtherance of these statutory commands, the FAA has established a comprehensive regulatory scheme, governing, among other things, the certification of aircraft, airports, pilots and mechanics; aircraft equipage; air traffic control systems; aviation navigation and communication; airspace classifications, and more. The FAA has also promulgated safety regulations addressing commercial air tours nationally (14 CFR part 136, subpart A, *National Air Tour Safety Standards*) and specific regulations imposing special operating rules on air tour aircraft (including helicopters and special minimum flight altitudes for Hawaii) in Hawaii. See 14 CFR part 136, subpart A, *National Air Tour Safety Standards*, and Appendix A, *Special Operating Rules for Air Tour Operators in the State of Hawaii*. Since the 1950s, Federal courts in various circuits have upheld FAA's preemption of aviation safety and the efficiency of the airspace, and, more specifically, the Government's preemption of aircraft flight management, including flight altitude and traffic patterns.

Permissible Scope of State Regulation of Helicopter Air Tour Operations through Police Powers and Proprietary Powers

The States may generally protect their citizens through land use planning and development, zoning, and other police power measures not affecting aviation safety, operations, or airspace management. The States have the authority to mitigate the effects of noise independently of source noise control. “Local governments may adopt local noise abatement plans that do not impinge upon aircraft operations.” *San Diego Unified Port District v. Gianturco*, 651 F.2d 1306, 1314 (9th Cir. 1981), *cert denied*, 455 U.S. 1000 (1982).

However, because the State of Hawaii is the *proprietor* of the State’s airports, it has additional authority when acting in a proprietary capacity as an airport owner and operator.³ In the context of air carrier operations, Congress has codified the ‘proprietor exception’ by providing that the express preemption provision does not limit “a State, political subdivision of a State, or political authority of at least two States that owns or operates an airport served by [federally-certificated air carriers] from carrying out its proprietary powers and rights.” 49 U.S.C. § 41713(b)(3).

Your letter includes two specific questions:

1. Whether the State has authority to condition its approval of leases and revocable permits in state airports in order to regulate helicopter air tour operators’ flight paths, and place “limits such as on altitude, frequency and time of operation, to minimize widespread disruption....”

Through the exercise of its police power authority, the State may not utilize its lease or permit approval system to directly or indirectly⁴ regulate aviation safety, the efficient use of the airspace, protection of people and property on the ground, air traffic control, or the regulation of aircraft noise at its source. 49 U.S.C. §§ 40103, 44502, and 44701-44735; *City of Burbank v. Lockheed Air Terminal, Inc.*, 411 U.S. 624 (1973) (Court struck down

³ See *City and County of San Francisco v. FAA*, 942 F.2d 1391, 1394 (9th Cir. 1991). Proprietary powers generally include the authority to regulate airport noise levels, choose airport sites, acquire land, ensure compatible land use, and control airport design and scheduling.

⁴ In *Gianturco*, the State made extension of an airport noise curfew a condition of the variance needed by the Port District to continue to operate Lindbergh Field. The court held that the State action unlawfully impinged on Federal control of airspace management and aircraft noise at its source by restricting the permissible flight times.

an 11 p.m. to 7 a.m. curfew on jet flights imposed by the City in the exercise of its police powers at an airport not owned by it). If the State were to regulate flight paths indirectly through its lease or permit approval process rather than expressly by statute or regulation, the result would be the same – unlawful police power regulation of aircraft flight paths.⁵

Regulation by BLNR of helicopter air tour operators' flight paths and its establishing limits on altitudes, frequency, and time of operation would interfere with the FAA's "delicate balance[ing] between safety and efficiency, and the protection of persons on the ground," where the "interdependence of these factors requires a uniform and exclusive system of federal regulation" if Congress' objectives are to be fulfilled. *Burbank*, 411 U.S. at 638-639. Air traffic, including over the Hawaiian Islands, must be regulated at the national level to ensure safety, efficiency, and uniformity.

2. What specific requirements can the BLNR or other state agency impose on commercial air tour helicopter operations as a condition of use of state lands?

Acting in its role as airport proprietor of the State's airports, Hawaii may promulgate reasonable, non-arbitrary and non-discriminatory regulations that establish acceptable noise levels for its airports and their immediate environs. *City and County of San Francisco v. FAA*, 942 F.2d 1391, 1394 (9th Cir. 1991); *Friends of the East Hampton Airport, Inc. v. Town of East Hampton*, 841 F.3d 133, 153 (2d Cir. 2016). The Second Circuit held that proprietary restrictions must also comply with the Airport Noise and Capacity Act of 1990 (ANCA), 14 CFR part 161, and the Airport Improvement Program grant assurances (if applicable); it also stated that the exercise of proprietary authority may not produce a patchwork of "uncoordinated and inconsistent" airport restrictions that impede the national transportation system...." 841 F.3d at 154, *citing* 136 Cong. Rec. S13619 (Sept. 24, 1990) (statement of Sen. Ford).

Specifically, for example, the State would have proprietary authority at its airports to enact restrictions on time of day, weekday versus weekend, or a reduction in overall operations subject to the above limitations. In 1998, the Second Circuit upheld the following restrictions on New York City-based helicopter air tour operations including (1) a restriction of weekday operations to between 8 a.m. and 8 p.m.; (2) a restriction of weekend operations to between 10 a.m. and 6 p.m.; (3) the phasing out of weekend operations entirely; and (4) the reduction of operations by a minimum of 47 percent overall.⁶ In addition, New York City's decision to reduce the number of seaplane air tour

⁵ The Supreme Court stated in *Burbank*:

[i]f we were to uphold the Burbank ordinance and a significant number of municipalities followed suit, it is obvious that fractionalized control of the timing of takeoffs and landings would severely limit the flexibility of FAA in controlling air traffic flow. The difficulties of scheduling flights to avoid congestion and the concomitant decrease in safety would be compounded. 411 U.S. at 639.

See also *National Helicopter Corp. v. City of New York*, 137 F.3d 81, 91-92 (2d Cir. 1998) (the proprietor exception "... gives no authority to local officials to assign or restrict routes.").

⁶ *National Helicopter*, 137 F.3d at 90.

flights and prioritize transportation over tourism was upheld as a reasonable means to achieve noise reduction.⁷ Again, such restrictions would have to comply with part 161 and the grant assurances, if applicable.

I am hopeful that the above information will be helpful to the BLNR in its management of its public lands.

Sincerely,

A handwritten signature in black ink, appearing to read "Raquel Girvin". The signature is fluid and cursive, with a prominent loop at the end.

Raquel Girvin
Regional Administrator

⁷ *SeaAir NY, Inc. v. City of New York*, 250 F.3d 183, 187 (2d Cir. 2001).



Committee on Transportation and Culture and the Arts
Senate
Hawaii State Legislature

Tuesday, February 14, 2023

RE: Senate Bill 969

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 SB969. 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. AOPA is the world's largest aviation membership organization and represents the general aviation interests of hundreds of thousands of aircraft owners and pilots across the country, including hundreds of members from Hawaii state alone.

HAI and AOPA strongly oppose SB 969. The bill runs afoul of well-settled federal law and opens the door to frivolous lawsuits. The Federal Aviation Administration (FAA) has 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 boundaries where noise violations could be issued. See 49 U.S.C. § 47521 & 41713; Advisory Circular 36-1H (Nov. 15, 2001).

It is important to note that SB969 replicates the intent of New York SB7493-A; a bill that was vetoed for violating federal preemption. If enacted, NY SB7493-A would have created a right of action against any person generating an unreasonable level of sustained noise at ground level from a helicopter. Although Bill 7493-A managed to pass the New York State Assembly on June 3, 2022, Governor Kathy Hochul vetoed the bill on December 15, 2022. In a letter addressed to the NY Senate, Governor Hochul stated 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." Therefore, we urge the state of Hawaii to recognize the federally mandated processes 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 SB969 intends to address, the proposed bill presents many impractical and 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,

Cade Clark, Vice President of Government Affairs - HAI

Jared Yoshiki, Western Pacific Regional Manager - AOPA



STATE OF NEW YORK
EXECUTIVE CHAMBER
ALBANY 12224

VETO # 107

December 15, 2022

TO THE SENATE:

I am returning herewith, without my approval, the following bill:

Senate Bill Number 7493-A, entitled:

“AN ACT to amend the general obligations law, in relation to allowing for compensation for noise pollution by rotorcraft; and to amend chapter 592 of the laws of 1998, constituting the Hudson River Park Act, in relation to the use of certain heliports in the city of New York”

NOT APPROVED

This legislation would establish a cause of action against any person who creates an unreasonable level of sustained noise at ground level from a helicopter. It amends the Hudson River Park Act to ban non-essential helicopter use from the park.

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 and must be attentive to federally mandated processes for enacting policy in this area. 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.

The bill is disapproved.

Ruth Hochul



601 Pennsylvania Ave NW, Suite 250
Washington, D.C. 20001
T. 202-851-7513
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www.aopa.org

LATE

February 13, 2023

Honorable Chris Lee
Hawaii State Senate, District 25
State Capitol, Room 219
Honolulu, HI 96813

TRANSMITTED VIA ELECTRONIC SUBMISSION
SUBJECT: SB 969 – Helicopter Noise - OPPOSE

Honorable Senator Lee,

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.

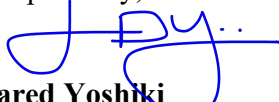
Simply put, SB 969 runs afoul of well-settled federal law and could open the door to frivolous lawsuits. The Federal Aviation Administration (FAA) has exclusive authority over aviation leaving the state of Hawaii with no legal grounds to set acceptable or unacceptable noise thresholds for helicopter 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 SB 969 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 SB 969.

Respectfully,


Jared Yoshiki
Western Pacific Regional Manager

SB-969

Submitted on: 2/10/2023 10:54:36 PM

Testimony for TCA on 2/14/2023 3:15:00 PM

Submitted By	Organization	Testifier Position	Testify
Cory Harden	Individual	Support	Remotely Via Zoom

Comments:

The sound and sight of low-flying aircraft is often reported to impact native Hawaiian cultural practices.

And the noise and vibration of tour helicopters has been bedeviling people statewide in their homes for decades. Repeated and widespread concerns voiced by beleaguered communities have largely been ignored. The noise terrifies children and animals, sets off PTSD in war veterans, intrudes on sleep, interrupts conversations, and causes inescapable stress. On Hawai'i Island, during the eruption, tour helicopters never let up—they kept flying, over people who were losing their homes, their neighborhoods, and their livelihoods.

In addition, ultrafine particles from aircraft emissions affect human health, and are likely to affect the health of insects and other animals under the path of air tours.

From Quiet Skies Hawai'i <https://www.quietskieshawaii.org/environmental-impacts:>

Aircraft emissions have environmental and health impacts. Ultra Fine Particles (UFPs) have been associated with cardiovascular and neurological effects to humans, as they have been shown to cross the blood-brain barrier. Dr. Neelakshi Hudda, Research Professor, Department of Civil & Environmental Engineering at Tufts University, has been studying the impacts of aviation emissions and has published peer-reviewed research.

[Preterm Birth Rates Among Mothers Exposed to Ultrafine Particles from Jet Exhaust](https://static1.squarespace.com/static/6177480970b3541175fcd91/t/6195765977aeb37bb55e5459/1637185117613/Dr+Hudda+ANE+Symposium+.pdf)

<https://static1.squarespace.com/static/6177480970b3541175fcd91/t/6195765977aeb37bb55e5459/1637185117613/Dr+Hudda+ANE+Symposium+.pdf>

[Preterm Birth Among Infants exposed to In Utero Ultrafine Particles from Aircraft Emissions](https://static1.squarespace.com/static/6177480970b3541175fcd91/t/6195765977aeb37bb55e5459/1637185117613/Dr+Hudda+ANE+Symposium+.pdf)

<https://ehp.niehs.nih.gov/doi/full/10.1289/EHP5732>

[Emissions from an International Airport Increase Particle Number Concentrations 4-Fold at 10km Downwind](#)

<https://pubs.acs.org/doi/pdf/10.1021/es5001566>

[International Airport Impacts to Air Quality: Size & Related Properties of Large Increases in Ultrafine Particle Number Concentrations](#)

<https://pubs.acs.org/doi/pdf/10.1021/acs.est.5b05313>

[Impacts of Aviation Emissions on Near-Airport Residential Air Quality](#)

<https://pubs.acs.org/doi/abs/10.1021/acs.est.0c01859>

TO: HI state senate committee on TCA (Transportation and Culture and the Arts)
RE: testimony in favor of SB969, relating to helicopter noise pollution
DATE: Tues., 02/14/23
FROM: Barbara Mayer
41-1019 Nenu Street
Waimānalo, HI 96795
259-8342
bamayer@gmail.com

I have lived in Waimānalo since 1976. I support SB969 in the strongest possible terms, because increasing helicopter flights are swamping the neighborhood with very irritating and unpleasant noise pollution.

In the late 1970s, helicopter flights over Waimānalo occurred maybe twice per day. Since then, tourist helicopter flights have increased dramatically.

For 4 days in August 2021 I counted the number of tourist helicopter flyovers. I was able to distinguish tourist helicopters from military by using my binoculars. Here is a reduced version of the data I collected, with data from 9:02 am through 3:06 pm edited out to make the spreadsheet fit on this testimony document.

Barbara Mayer bamayer@gmail.com		AIRCRAFT NOISE CONCERN DATA: helicopters flying shore toward Pali				Kailua-end of the Waimānalo beach lots					
Wed., 8/11		Thurs., 8/12		Fri., 8/13		Sat., 8/14		Sun., 8/15			
mostly sunny		mostly sunny		-----		mostly sunny		mostly sunny			
AM	PM	AM	PM	AM	PM	AM	PM	AM	PM		
8:10		8:09		No data collected		8:10		8:31			
8:11		9:00				8:25		9:02			
8:19		9:02				8:33		9:03			
	3:20		1:45						2:20		5:27
	3:35		1:46						2:58		5:35
	4:26		1:51						3:00		5:50
	4:40		1:52						3:11		
	4:41		1:55						3:14		
	4:42		3:00						3:15		
	5:31		3:10						3:21		
	5:34		3:17						3:48		
	5:42		3:22						4:03		
	5:49		3:34						4:26		
			3:36						4:32		
			3:59						4:39		
			4:24						5:02		
			4:35						5:16		
			4:37						5:25		
			4:39						5:35		
			4:53						5:38		
			4:54				5:39				
			5:02								
			5:32								
			5:53								
			5:55								
TOTAL = 32	TOTAL = 44					TOTAL = 41	TOTAL = 27				

Ultimately, I would like to see tourist helicopter flights over land made illegal. They should be restricted to a proper height and distance away from shore so that their noise impact on residential neighborhoods is eliminated.

I urge you to support, strengthen, and design enforcement for, SB969.

SB-969

Submitted on: 2/12/2023 7:45:42 PM

Testimony for TCA on 2/14/2023 3:15:00 PM

Submitted By	Organization	Testifier Position	Testify
Will Caron	Individual	Comments	Written Testimony Only

Comments:

As far as I'm concerned, this bill is basically useless as long as it exempts government helicopters. It's the damn military helicopters that cause the real noise pollution. Prohibit their constant low-altitude flyovers above our neighborhoods. Then I would support the bill.

SB-969

Submitted on: 2/13/2023 11:22:14 AM

Testimony for TCA on 2/14/2023 3:15:00 PM

Submitted By	Organization	Testifier Position	Testify
kellycollinsjk@gmail.com	Individual	Support	Written Testimony Only

Comments:

Aloha and thank you for the opportunity to testify on SB 969.

I have one question for all of you: Would you enjoy having up to 200 helicopters a day, averaging one every three minutes, from 8am to 6pm, 7 days a week, 365 days a year, flying behind your house, often only a couple of blocks away? This is accompanied by an almost constant loud drone and roaring noise. If your answer to this question is no, I ask you to please consider the quality of life for those of us who live with this intrusion every day and pass SB 969.

In addition to the negative acoustic impact on our lives, the tour helicopters' physically and acoustically impact the special cultural and natural resources of the island, including wildlife. These resources intrinsically deserve protection and are officially protected by State and Federal laws. For example, the tour helicopters fly through sea bird habitat and these birds are protected under the Federal Endangered Species Act and the Federal Migratory Bird Act.

The U.S. Fish and Wildlife Service has been sued by the Center for Biological Diversity for failing to designate and protect critical habitat for 49 endangered Hawaiian species, 9 of which have gone extinct since they were listed in 2016. Noise pollution can effect distribution, breeding and communication of species and the FAA should be required to consult with the Fish and Wildlife Service to ensure the tour helicopters and their noise are unlikely to impact species' critical habitat.

Operating a tour helicopter business is a privilege, not a right, and should not be allowed at the expense of residents' quality of life, or the well-being of cultural and natural resources and wildlife. SB 969, in conjunction with SB 3272, can be effective in managing an industry that up to now has not had to be accountable as to where or how many helicopters are flying or how loud they are. The State of Hawaii's Noise Pollution Law was passed for a reason and it is time to put it to use with regard to tour helicopters.

Thank you for your time and consideration of SB 969.

LATE

February 13, 2023

Hawaii State Legislature
415 S Beretania St,
Honolulu, HI 96813

Aloha,

The purpose of this letter is to provide testimony regarding SB969, which establishes that noise generated by helicopters in excess of a certain decibel level constitutes a public nuisance. This is an issue near-and-dear to my heart, as I live in Kaneohe where I have to deal with constant, daily, low-altitude over-flights from helicopter tour operators.

I appreciate the opportunity to submit my testimony for consideration in this important matter. I have been actively monitoring this issue for about 3 years, ever since I moved from town to Kaneohe.

Kaneohe is a quiet neighborhood. That is until right about 8am in the every morning when the first tour helicopter buzzes directly overhead and the neighborhood dogs begin barking. And the flights do not stop until late into the afternoon.

In my experience, the issue with tour helicopters has been progressively getting worse since the pandemic. It has been my observation, with some exceptions, that most tour helicopter operators try to be good neighbors by flying at-altitude and offshore. The noise from these flights is still detectable from onshore, but certainly is not as jarring as direct over-flights. There is one company that in my experience is the exception: Schuman Aviation Co. Ltd., dba Magnum Helicopters and Makani Kai Air ("Magnum"). This is the company I have the most experience with because they fly directly over my home all day long.

Magnum operates several small, doorless, Vietnam-era helicopters which fly counter-clockwise daily around Oahu (much of it over residential neighborhoods). You will see them flying low over the Pearl Harbor area, Queens Beach, Kaneohe and all the way up the windward coastline. Their helicopters are especially loud because they are old, they have no doors, and have none of the latest noise suppression technology.

After filing many complaints with no responses, I was finally able to speak to the Magnum owner and GM on different occasions. Both listened intently but were basically unapologetic about the noise and safety issues

and instead seemed to keep reminding me that only the FAA can tell them when, where, and how to fly. When asked why they cannot just fly off-shore like others, they say their helicopters are not equipped with proper flotation devices so they cannot safely fly over the water. Of course this is a silly excuse, why not just properly equip the helicopters, we are on an island after all? They will go on to tell you how much more dangerous it is for their passengers if they have to crash into the ocean versus on the land. Any concerns for the safety for the residents are quickly dismissed. They seemed more interested in trying to convince me that there was nothing that I could do about it. Bottom line is that they aren't going to change anything until they are forced to - period.

Kailua and Kaneohe even adopted neighborhood board resolutions prohibiting helicopter tour over-flights and requiring other well-thought out controls such as requiring the latest noise suppression technology etc. However, Magnum refuse to acknowledge the boards authority.

As we all understand by now, these companies are regulated by the FAA. It's become clear that the FAA does not have the resources (or will, it seems) to deal with small tour helicopter operators. This represents a massive regulatory loophole which (some) tour operators seems to exploit.

These overflights may sound like a minor nuisance, right? But consider that each overflight generates about 7 minutes of noisy disturbance from above as the helicopter slowly travels up the coastline. Magnum alone flies 2x helicopters, 6x days/week, 5x flights per day each. That amounts to 60 over-flights per week. That's one full hour per day or 7 full hours a week of noisy disturbances for thousands (or tens of thousands) of residents — all from just this one company.

An example to consider, I'll be enjoying the day at a quiet windward park like Kuala Regional Park or Mele Kahana. A few families, kids and couples are scattered around and fisherman dot the coastline. The scene is peaceful and serene. Then, from many miles away, a high-pitched buzzing sound becomes apparent.

For several more minutes this buzzing continues to intensify as it nears and, one-by-one, each of the park visitors who was previously enjoying their day at the beach looks up and searches the sky to find the source of the loud disturbance. The helicopter flies over and then several more minutes of buzzing as it continues up the pristine coastline. The park visitors look back down, shake their head and try to get back to their day. Then, 30-40 minutes later, this whole scene plays out again. Its really hard to quantify the impact this has on people and the community.

I cannot think of another example of an industry in Hawaii that disproportionately impacts so many... all for the enjoyment of so few.

Please help us resolve the noise and safety issues with tour helicopters in Hawaii and you'll be doing a tremendous service to everyone in the community. I am here to help in anyway possibly, Mahalo nui loa!

Sincerely yours,

A handwritten signature in cursive script that reads "Kevin Doherty". The signature is written in a dark ink and is positioned above the printed name.

Kevin Doherty
Kaneohe Resident