



The Judiciary, State of Hawai‘i

Testimony to the House Committee on Judiciary

Representative Scott Y. Nishimoto, Chair
Representative Joy A. San Buenaventura, Vice Chair

Wednesday, March 1, 2017 12:00 PM
State Capitol, Conference Room 325

WRITTEN TESTIMONY ONLY

By
Calvin Ching
Deputy Chief Court Administrator, First Circuit

Bill No. and Title: House Bill No. 1184 HD1, Relating to Aeronautics

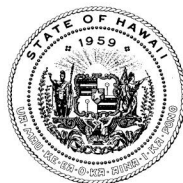
Purpose: Replaces criminal penalties for certain airport offenses addressed in Chapter 261, Hawai‘i Revised Statutes, or in certain administrative rules or orders issued pursuant thereto, with a civil penalty. (HB1184 HD1)

Judiciary's Position:

The Judiciary takes no position on the merits of House Bill No. 1184, House Draft 1; however, the Judiciary is concerned by the bill’s use of the term “civil penalty.” The bill would amend Section 261-21, Hawai‘i Revised Statutes to amend certain airport offenses from a misdemeanor to a violation which includes a “civil penalty.” There is no similar court procedure for processing a criminal case with a civil penalty. The Judiciary would like to suggest that the term “civil penalty” be replaced with the term “fine.” This change would be consistent with the intention of the bill and consistent with current Judiciary practices.

Thank you for the opportunity to testify on this measure.

DAVID Y. IGE
GOVERNOR



Testimony by:
FORD N. FUCHIGAMI
DIRECTOR

Deputy Directors
JADE T. BUTAY
ROSS M. HIGASHI
EDWIN H. SNIFFEN
DARRELL T. YOUNG

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

IN REPLY REFER TO:

March 1, 2017
12:00 p.m.
State Capitol, Room 325

H.B. 1184 H.D. 1
RELATING TO AERONAUTICS

House Committee on Judiciary

The Department of Transportation (DOT) **supports** with comments H.B. 1184 H.D. 1 Aeronautic Administrative Rules Penalties. Although there are incompatibilities with the degree of punishment versus the infraction, compliance must be standardized and adhered to regarding the enforcement of guidelines to be established by a General Aviation Handbook (GAH).

The GAH will define the infractions and associated penalties through a collaborative process to include but not limited to the DOT, State Attorney's office, Federal Aviation Administration and representatives of the General Aviation community.

We appreciate the opportunity to comment on this Bill.



General Aviation Council of Hawaii

Post Office Box 75623
Kapolei, Hawaii 96707
808-223-9991
www.gach.us.com

February 28, 2017

Senator Lorraine Inouye
Chair, House Judiciary Committee
415 South Beretania Street
Hawaii State Capitol
Honolulu, Hawaii 96813

RE: HB 1184 - RELATING TO AERONAUTICS

Aloha Representative Nishimoto:

The General Aviation Council of Hawaii (GACH) fully supports **HB 1184** that has been referred to your committee for a hearing on March 1, 2017.

The purpose of this bill is to decouple criminal charges from a section of the Hawaii Administrative Rules (HAR) related to hangar use or parking an aircraft that ties into the Hawaii Revised Statutes (HRS). Currently, any item found or stored in a hangar that the Airports Division of the Department of Transportation ("DOTA") of the State of Hawaii deems to be a violation of their rules, results in a criminal misdemeanor charge against the person or entity that rents the hangar. The DOTA had instructed the Sheriff's Department and their own security unit to bring such charges as a crude tool of property management, rather than working with its tenants in a more civilized and rational manner. GACH has tried to work with DOTA since 2012 to change their HARs, and the corresponding HRSs, but has been unsuccessful. In fact, we have come across no other airport in the country that levies such an extreme penalty on those who rent hangars and park aircraft on the ramp.

Currently, possession in the hangar of a set of golf clubs or a bicycle or incorrectly parking your aircraft on the parking ramp can qualify a person for a charge that could result in a permanent criminal record and up to one year in jail. In 2016, the DOTA even went as far as instituting charges against individuals for items the DOTA had *previously* approved to be stored.

To put these criminal charges into context, these are not simple parking tickets or civil infractions. These are criminal misdemeanor charges that are classified the same as, or more serious than, being charged with prostitution, committing domestic abuse, driving under the influence (DUI) or shoplifting. Moreover, the charges in question are punishable by up to a year in jail and can *destroy* the career of many professionals, not to mention give someone a criminal record for life. For example, if a professional pilot has been convicted of a misdemeanor, he can no longer fly into many countries. Furthermore, individuals who have government security clearances are now in trouble (military, reserve or DOD).

HB 1184 would bring some sanity to the current situation by simply removing the ability of the DOTA to take these extreme steps for minor violations but still allows criminal charges to be filed by DOTA for serious security-related matters.

Thank you.

Sincerely,

Robert Moore
President

\gach-m-3.rm



421 Aviation Way
Frederick, Maryland 21701

T. 301-695-2000
F. 301-695-2375

www.aopa.org

LATE

Tuesday, February 28, 2017

The Honorable Scott Nishimoto
House Judiciary Committee
Chair
415 S Beretania St, Room # 421
Honolulu, HI 96813

Dear Representative Nishimoto:

The Aircraft Owners and Pilots Association (AOPA) is the world's largest aviation organization representing the general aviation interests of pilots in Hawaii. We would like to extend our support for House Bill 1184, which replaces criminal penalties for certain airport offenses with a civil penalty.

Executive Summary

In an effort to clean up non-aeronautical commercial practices at airports around the state of Hawaii, strict standards for hangar usage were established under the Hawaii Revised Statutes. The unintended consequences of these strict standards were an overreaching impact on pilots, their careers and the state judicial system.

House Bill 1184 provides a remedy for those un-intended consequences, increases state revenue and maintains fair and effective enforcement practices for airport rules and regulations.

Current Practices

Hawaii Department of Transportation Airports Division (DoTA) currently issues criminal citations for hangar and parking policy infractions resulting in misdemeanor charges for pilots. This practice is mandated under Hawaii Revised Statutes, Section 261-21 which reads: "... any person violating this chapter, or any of the rules or orders issued pursuant thereto... shall be guilty of a misdemeanor."

The Issue

There are two primary concerns with current Hawaii DoTA enforcement practices impacting Hawaii pilots. The first being the impact of misdemeanor offences reported on the Federal Aviation Administration (FAA) medical certifications. The second being the nonpayment of ticketed fines and the concurrent increase in judicial costs to both the state and pilots.

FAA regulations require pilots to report any criminal citations on FAA Form 8500-8, question 18-W; "History of non-traffic convictions, (misdemeanors and felonies.)" Airline pilots, military servicemen, and corporate pilots flying recreationally, or leasing a hangar, face career ending consequences if issued a criminal citation by the Hawaii DoTA.

Subsequently, if issued a criminal citation pilots are advised not to pay the fine or plead guilty to a misdemeanor but rather, are advised to fight the charge in court in an attempt to have the violations reduced. Many of these are hangar/parking infraction cases that cause delays and undue burden and coast on the Hawaii court system. Litigating a \$200 fine can end up costing thousands of dollars for pilots and tens of thousands for the state.

FAA Policy Clarification

On the 15th of June, 2016 the FAA issued a notice of final policy clarifying the non-aeronautical use of airport hangers. Regarding storage of non-aeronautical items, "the FAA recognizes that storage of



421 Aviation Way
Frederick, Maryland 21701

T. 301-695-2000
F. 301-695-2375

www.aopa.org

some items in a hangar this is otherwise used for aircraft storage, will have no effect on the aeronautical utility of the hangar.” This “common sense policy” allows pilots to store miscellaneous items in their hangars as long as aircraft can still use the hangar unimpeded.

State Comparison

Hawaii is the only state issuing misdemeanor for hangar policy violations. Every other state in the nation issues civil penalties and fines allowing the proper enforcement of aviation regulations; speedy collection of fines; and a safe atmosphere for pilots to admit mistakes without being condemned by them.

House Bill 1184

House Bill 1184 will reduce non-security infractions of aviation regulations from a misdemeanor to a violation. This will:

1. Align Hawaii aviation enforcement practices with FAA standards and nationally recognized enforcement practices,
2. Pilots will be able to pay fines quickly without fear of endangering their careers, and having a permanent criminal record,
3. The timely payment of these fines will result in increased revenue for the state and decrease in court costs.

We thank you and appreciate your introduction of this important bill. These necessary changes to the Hawaii Revised Statutes is a step in the right direction in rectifying the extreme situation at hand. If you have any questions or require additional information, please do not hesitate to contact me at 301-695-2228 or Melissa.McCaffrey@aopa.org

Very truly yours and Mahalo,

Melissa McCaffrey, Western Pacific Regional Manager

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 28, 2017 12:18 AM
To: JUDtestimony
Cc: lindadou2@hotmail.com
Subject: Submitted testimony for HB1184 on Mar 1, 2017 12:00PM

HB1184

Submitted on: 2/28/2017

Testimony for JUD on Mar 1, 2017 12:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
linda m. douglas	Individual	Support	No

Comments: I strongly support this bill. The DOTA has been unreasonable and uncompromising regarding on the penalties associated with a violation of the airport rules. This bill will make administration of the airport rules fairer and equitable. Thank you.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 28, 2017 12:10 AM
To: JUDtestimony
Cc: vbakke@yahoo.com
Subject: Submitted testimony for HB1184 on Mar 1, 2017 12:00PM

HB1184

Submitted on: 2/28/2017

Testimony for JUD on Mar 1, 2017 12:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Victor Bakke	Individual	Support	No

Comments: Please support this bill. As an attorney, I have represented several pilots who have been charged with a misdemeanor for a violation of the airport Hawaii Administrative Rules. Passing this bill will bring some rationality and fairness when it comes to enforcement of those rules. Thank you.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 27, 2017 7:20 PM
To: JUDtestimony
Cc: robmoorehawaii@hotmail.com
Subject: Submitted testimony for HB1184 on Mar 1, 2017 12:00PM

HB1184

Submitted on: 2/27/2017

Testimony for JUD on Mar 1, 2017 12:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Robert Moore	Individual	Support	Yes

Comments: Aloha, I am an USAF retired Colonel and an aircraft owner. Hawaii is my home. I also am a commercial pilot and a FAA Certified Flight Instructor and have owned three aviation businesses in Hawaii. I have been flying for over 48 years, all around the world and Hawaii is the least friendly location I have ever experienced for flying and owning an airplane. This is very surprising for a State so reliant on aviation and a very beautiful place to fly. Let me tell you of my unfriendly aviation experiences in Hawaii: In 2010, I owned an antique airplane location in a State T Hangar at Honolulu International Airport (HIA). The State DOTA conducted a hangar inspection which they are entitled to do which they gave notice like in years passed. In previous years, if there was any discrepancy, DOTA left you a note or call you and said correct this (like trash in your hangar, etc.). We usually corrected it immediately. In September 2010, DOTA conducted a hangar inspection of all the hangars at HIA. I was not present at the inspection. This time, DOTA left criminal citations to ALL the hangar renters when they discovered a discrepancy. I did not know I had any citations until I went to the hangar 6 days later and saw them lying on the hangar floor. The citations were for a golf cart used to move the airplane in and out of the hangar and for a bicycle in the hangar that I used to travel the ramp. These items were in the hangar during previous inspections with no comments from the DOTA. The citations stated that these items were unauthorized to have in the hangar. I later found out that the citations were criminal citations and that I had to appear in criminal court to defend myself. It took me several month, a lot of money and a lawyer to get the charges reduced to "parking tickets" equivalents and to pay a fine to a court system not equipped at the time to deal with charges like these. I and other hangar tenants tried to discuss the matter with DOT and DOTA on what it means to a pilot and a professional to have a criminal record based upon minor infractions and to stop administering this type of punishment. The reply from DOTA was that these law breakers should be punished and too bad if they have a criminal record. In 2015/6, DOTA completed another round of hangar and ramp inspections. This time, I received four citations for my airplanes that I leased to a flight school for incorrect parking. The flight school had rented seven contiguous parking spaces on the ramp and each airplane was assigned a parking spot by DOTA for administrative reasons. When student pilots would come back from a flight, they

sometimes did not get the airplane in the correct spot but always would park the airplane in one of the flight school's assigned parking. The DOTA deemed that even though the airplanes were located in the flight schools assigned parking the airplanes were not on their assigned spot and issued citations by taping the illegible copies of the citation onto the airplane. They did not notify me or the flight school of the citations. Again, I found out when a friend walking on the ramp called me to say something was taped on my airplane. I received four criminal citations for incorrect parking of my airplanes that required me to go to District Court on five separate occasions (the Prosecutor was not prepared at anytime to proceed since DOTA did not give guidance on how to handle these cases), hire a criminal lawyer at a fee of \$3500, just to get the charges dismissed. Again I tried to talk to the airport manager, DOTA and DOT as to the silliness of this approach to correct parking problems. They said that they would continue issuing criminal citations for ALL violations whether minor or not. I asked if any of them ever received a parking violation on their car for illegal parking in Honolulu. A few said yes and I asked if they expected a criminal citation for that action which they replied no. I asked the difference why a car gets a parking ticket and an airplane gets a criminal citation for the same act. They had no reply but would not change. Pilots by nature obey rules since it keeps them safe. If they make an error they correct it but they do not get a criminal citation which is career ending as a pilot (cannot fly to certain counties and cannot have an airport badge to access the airport) and most professions (like the military, lawyer, etc.). The current situation at Hawaii airports is hostile and needs to be immediately corrected. Since DOTA is unwilling to change the law, I ask our legislators to provide common sense on what should be done at our airports. Please support and pass HB1184. Thank you.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 28, 2017 12:03 PM
To: JUDtestimony
Cc: robbon1@yahoo.com
Subject: Submitted testimony for HB1184 on Mar 1, 2017 12:00PM

HB1184

Submitted on: 2/28/2017

Testimony for JUD on Mar 1, 2017 12:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
robert bonham	Individual	Support	No

Comments: I am an emergency physician and pilot. I fly to the neighbor islands to give lectures at hospitals and to assist with the training of the paramedics as one of the medical directors. I am concerned because I own an airplane and hanger it at honolulu airport. I have now discovered that a violation of a hanger rule can lead to a misdemeanor -which seems overly harsh and unfair - because now I am at risk for incurring a criminal record. No other state has a similar law. This is overly burdensome and is having a negative effect on the aviation community and state revenues. Sincerely robert bonham MD, 2110 Nuuanu Ave #2005 Honolulu 96817

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

LATE

The Plum Law Office

A Law Corporation

700 BISHOP STREET, SUITE 2100
HONOLULU, HAWAII 96813
TELEPHONE (808) 528-0050
FACSIMILE (808) 524-3355
wplum@plumlaw.com

February 28, 2017

Rep. Scott Y. Nishimoto, Chair
Rep. Joy A. San Buenaventura, Vice Chair
House Judiciary Committee

RE: HB 1184 RELATING TO AERONAUTICS
HEARING: MARCH 1, 2017 @ 12:00 P.M.

Dear Chair and Vice Chair and Committee Members:

Please support **HB 1184**.

For background, I am a lawyer, pilot, and co-owner of a general aviation aircraft. I have been a hangar licensee for about 10 years and before that, a tie down space licensee for about 15 years - all at the Honolulu International Airport's South Ramp. I utilize my plane for business and personal transportation to all islands. I am also a board member of the General Aviation Council of Hawaii ("GACH"), however this testimony is in my individual capacity.

1. **What is General Aviation?** "All aviation other than military and commercial airlines." (Website of GAMA - The General Aviation Manufacturers Association). That usually includes operation of small planes, helicopters, flight instruction schools, air ambulance services, aerial photography, search and rescue services, tour services, non-regularly scheduled aircraft passenger, charter services, cargo services, and business aircraft.

2. **Why is this bill needed and how did we get to this point?** The reasons are many. Some are below.

a) The primary reason is the severity of the penalty for violations of the airport rules that affect general aviation is extreme and greatly disproportionate to the penalty that would be even be considered if the same event or violation in question was committed at any other public location. Most violations end up being charged as full criminal misdemeanors, subject to a year in jail, and creating a host of complications and inequities that will be discussed later. Simply put, the current penalty structure is unfair, unreasonable, and excessive. The Hawaii State Department of Transportation, Airports Division ("DOTA") has refused to make or support any changes.

February 28, 2017

Page 2

b) A close second, is the fact that DOTA has wielded the power they have without regard to the consequences of those they charge and have used it over the last few years as a substitute for proper property management techniques that the rest of the world (aka the private sector) would use to deal with the same situations.

For instance, if a private property owner/landlord does not like the fact that a tenant has a cat in the apartment, or a commercial tenant has parked a car in the wrong location, the landlord simply gives the tenant fair warning of the violation and if it is not corrected, the landlord terminates the lease. In the DOTA's world, if the cat is not removed, or the car is not parked elsewhere, a uniformed Sheriff is dispatched to charge the tenant with a full criminal misdemeanor. In fact, in all most all situations, no warning is even given. As a side note, I have represented in my practice, a number of residential and commercial landlords and managers of businesses that have many people come onto their property everyday, and I can say without hesitation, that I have never seen a set of properties more mis-managed than the Hawaii airport facilities across this state.

c) A third reason is despite years of requests, emails, letters, and meetings with DOTA management, attempts to correct the situation via amendments to the Hawaii Administrative Rules ("HAR") for the Airports, DOTA has failed to follow up on their promises to meet with the general aviation community and to act in good faith. For reference, the misdemeanor charges brought against pilots and other who use airport facilities are a result of the HAR's containing provisions requiring that the penalty for most violation of airport rules be the penalties provided for under Hawaii Revised Statutes ("HRS") §261-21. Other than parking your car improperly, ALL other violations under HRS §261-21 are misdemeanor violations.

3. When is a crime, a misdemeanor crime? Misdemeanors carry a penalty of imprisonment of up to one year, a fine of up to \$2,000 and the right to have a jury trial. An example of a misdemeanor crime, besides violating an airport HAR, is being a "peeping tom." For comparison, a petty misdemeanor is a first time drunk driving charge or shoplifting a bag of candy bars at Longs Drug.

4. Why is being charged with a misdemeanor a big deal? If a person is confesses to a misdemeanor charge or is convicted, that person now has a lifetime criminal record. We are talking about one level below a felony. If that person holds security clearance at his job (say DOD civilian or military), that person may lose his or her clearance and his or her job, if the person is a pilot, a doctor, a lawyer, a nurse, a real estate agent or anyone else who must complete forms every so many years to keep a license,

they must often tell the licensing authority if they have committed a crime. That can cause problems for those holding those licenses or attempting to obtain one of those licenses. Additionally, having a criminal record can bar a person from entry into some countries. For pilots, the impact is significant. Canada for instance, will not allow a pilot to act as a captain with a misdemeanor record. Even if the person managed to bargain with the prosecutor to reduce the crime down to a lesser crime, if that person is ever "asked" if they were "charged" with a misdemeanor, that person will have to answer "yes."

5. **What can get a person charged with a misdemeanor at the Hawaii airports?** Try keeping a fishing rod in your hangar. Under HAR §19-17.1-16, you would be a criminal. Even if you legitimately used your fishing rod to fish on other islands that you travelled to in your plane. That is considered by definition under that HAR, a safety violation.

On a more personal note, my hangar partner and I had some boxes stored in the back of our hangar. The boxes were kept there because the space was unused and the boxes in no way hampered the ability of our plane to exit or enter the hangar. The boxes had been there for 7 years. About 3 years ago, the DOTA announced an inspection. Thinking the inspection was nothing more than the many other inspections we had experience, we thought nothing of it.

Shortly after the inspection, I went to the hangar to fly the airplane. I found inside, sitting a desk, a yellow slip of paper. As it turns out, the paper was a criminal charge against one of the two of us for storage of the boxes. As it further turns out, the inspection was not like all the others. This time a posse of uniformed Sheriffs officers swept through all the hangars and wrote as many criminal charges as they could think of. On our end, we were shocked. We had no trouble with our prior inspections and had we known that the boxes were an issue or been given some notice, we would have removed them. We also found out the Sheriff's Department, under direction of the DOTA, did this state wide and charged hundreds, if not thousands, of pilots, plane owners, hangar licensees, and others, with aviation businesses, with criminal misdemeanors under HRS 261-21.

On top of that, what the Sheriff's found as a violation varied greatly from one hangar to another. This arbitrary and inconstant application of the rules by the DOTA has led to an overall fear by pilots and others that one day what might be an acceptable activity, the next day might not, and vice-versa.

February 28, 2017
Page 2

Once charged, my hangar partner had to retain a criminal attorney to represent him. Moreover, the yellow slip was not completed properly, nor was it served properly.¹ Notwithstanding the fact that the DOTA, the Prosecutors office, and the Sheriffs Department are well aware of these service defects, I have not heard of one person being *personally* served over the last 3 years.

Conclusion. Pilots and others who use the airport need your help. This bill needs to be passed. The DOTA has refused to make changes at the administrative level and I can see why; they like the power they have. It is a power no private sector property manager or business operator has. Without your help, honest and otherwise law abiding people are going to continue to be subject to worrying about ending up with a criminal record, not to mention the \$1,000 to \$5,000 or more many have spent on attorneys to try to deal with these charges. According to the national Airplane Owners and Pilots Association ("AOPA"), Hawaii is the **ONLY** state in the country that makes a rule violation of these types at an airport a criminal act. Putting that fact aside, common sense alone says this picture is not right.

Thank you.

Sincerely,



William J. Plum

bb1184-3.wjp

¹ Something the Sheriff's Department has been incapable of doing to this day. I know, I share office space with a criminal attorney and have seen dozens of these slips. Moreover, misdemeanor charges need to be personally served - not left on some table or stuck in the tail of a plane sitting on the ramp outside.