

SB1051

Measure Title: RELATING TO UNMANNED AERIAL VEHICLES.

Report Title: Unmanned Aerial Vehicles; Identification Label; Penalty

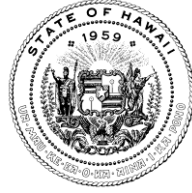
Description: Prohibits the use of an unmanned aerial vehicle without an affixed identification label that contains the operator's name, phone number, and address, beginning on 1/1/18.

Companion:

Package: None

Current Referral: CPH/JDL, WAM

Introducer(s): ESPERO, K. RHOADS, Nishihara, Shimabukuro



DAVID Y. IGE
GOVERNOR
SHAN S. TSUTSUI
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
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CATHERINE P. AWAKUNI COLÓN
DIRECTOR
JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

**PRESENTATION OF THE
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

TO THE SENATE COMMITTEES ON
COMMERCE, CONSUMER PROTECTION, AND HEALTH
AND
JUDICIARY AND LABOR

TWENTY-NINTH STATE LEGISLATURE
Regular Session of 2017
Friday, February 3, 2017
9:30 a.m.

**TESTIMONY ON SENATE BILL NO. 1051, RELATING TO UNMANNED AERIAL
VEHICLES.**

TO THE HONORABLE ROSALYN H. BAKER, CHAIR,
AND TO THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR,
AND MEMBERS OF THE COMMITTEES:

My name is Catherine Awakuni Colón, Director of the Department of Commerce and Consumer Affairs (“DCCA” or “Department”). DCCA appreciates the opportunity to offer comments on Senate Bill No. 1051, Relating to Unmanned Aerial Vehicles.

Senate Bill No. 1051 would require unmanned aerial vehicle (“UAV”) operators to affix identification labels to the UAVs they operate in the State with name and contact information, as well as additional, unspecified information to be determined by the Department. Those operators not properly affixing the required identification labels to

their UAVs would be subject to civil penalties of a to-be-determined amount, which would be deposited into the Compliance Resolution Fund.

Similar to other proposed measures that would require DCCA to regulate the general operation of UAVs in the State, DCCA has strong concerns that the regulation of non-commercial activity proposed in this bill is outside the scope of DCCA's mission and would potentially also be outside its jurisdiction as a state agency. DCCA's mission is to protect the interests of Hawaii consumers, depositors, and investors. To achieve this mission, the Department is charged specifically with regulating trades, businesses, and professions. Senate Bill No. 1051 would make DCCA responsible for monitoring UAV labeling in the State for what appear to be purposes other than consumer protection. For example, the measure defines "operators" of UAVs broadly to include "any person using or operating [a UAV]" regardless of whether that person is engaged in any business or commercial activity, and also regardless of whether that person's activity is somehow affecting an identified consumer class or type of transaction.

The Department does support the Legislature's efforts to ensure the safety and security of its citizens, so it would not recommend limiting consideration of UAV issues just to the area of commerce and consumer protection.

Finally, DCCA notes that the Committees may want to consider whether some of the prohibited acts and limitations listed in this measure would be preempted by federal regulation of Unmanned Aircraft Systems ("UAS" or "Drones") over which the federal government has exclusive jurisdiction. In particular, comprehensive UAS rules were recently adopted by the Federal Aviation Administration, see, Registration and Marking Requirements for Small Unmanned Aircraft; Final Rule, 80 Federal Register 78594,

effective December 21, 2015, and Operation and Certification of Small Unmanned Aircraft Systems; Final Rule, 81 Federal Register 42064, effective August 29, 2016. The federal rules require that the unmanned aircraft be marked and display a unique identifier in a condition that is legible and affixed to the aircraft to ensure that it will remain affixed for the duration of the operation. 14 CFR §48.200 and §48.205. As such, the language of the bill that requires labeling of the UAV appears to be unnecessary. The FAA's State and Local Regulation of Unmanned Aircraft Systems (UAS) Fact Sheet dated December 17, 2015, also provides helpful guidance on the federal legal landscape for UAVs, and a copy of that Fact Sheet is attached for the Committee's reference. That document at page 2 states "[a] navigable airspace free from inconsistent state and local restrictions is essential to the maintenance of a safe and sound air transportation system." The Fact Sheet also points to *Arizona v. U.S.*, 132 S.Ct. 2492, 2502 (2012) for the principle that: "[w]here Congress occupies an entire field . . . even complimentary state regulation is impermissible. Field preemption reflects a congressional decision to foreclose any state regulation in the area, even if it is parallel to federal standards."

Thank you for the opportunity to provide comments on this measure. I am happy to answer any questions the Committees may have.

State and Local Regulation of Unmanned Aircraft Systems (UAS)
Fact Sheet

Federal Aviation Administration
Office of the Chief Counsel

December 17, 2015

BACKGROUND

Unmanned aircraft systems (UAS) are aircraft subject to regulation by the FAA to ensure safety of flight, and safety of people and property on the ground. States and local jurisdictions are increasingly exploring regulation of UAS or proceeding to enact legislation relating to UAS operations. In 2015, approximately 45 states have considered restrictions on UAS. In addition, public comments on the Federal Aviation Administration's (FAA) proposed rule, "Operation and Certification of Small Unmanned Aircraft Systems" (Docket No. FAA-2015-0150), expressed concern about the possible impact of state and local laws on UAS operations.

Incidents involving unauthorized and unsafe use of small, remote-controlled aircraft have risen dramatically. Pilot reports of interactions with suspected unmanned aircraft have increased from 238 sightings in all of 2014 to 780 through August of this year. During this past summer, the presence of multiple UAS in the vicinity of wild fires in the western U.S. prompted firefighters to ground their aircraft on several occasions.

This fact sheet is intended to provide basic information about the federal regulatory framework for use by states and localities when considering laws affecting UAS. State and local restrictions affecting UAS operations should be consistent with the extensive federal statutory and regulatory framework pertaining to control of the airspace, flight management and efficiency, air traffic control, aviation safety, navigational facilities, and the regulation of aircraft noise at its source.

Presented below are general principles of federal law as they relate to aviation safety, and examples of state and local laws that should be carefully considered prior to any legislative action to ensure that they are consistent with applicable federal safety regulations. The FAA's Office of the Chief Counsel is available for consultation on specific questions.

WHY THE FEDERAL FRAMEWORK

Congress has vested the FAA with authority to regulate the areas of airspace use, management and efficiency, air traffic control, safety, navigational facilities, and 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). Congress has further directed the FAA to "prescribe air traffic regulations on the flight of aircraft (including regulations on safe altitudes)" for navigating, protecting, and identifying aircraft; protecting individuals and property on the ground; using the navigable

airspace efficiently; and preventing collision between aircraft, between aircraft and land or water vehicles, and between aircraft and airborne objects. 49 U.S.C. § 40103(b)(2).

A consistent regulatory system for aircraft and use of airspace has the broader effect of ensuring the highest level of safety for all aviation operations. To ensure the maintenance of a safe and sound air transportation system and of navigable airspace free from inconsistent restrictions, FAA has regulatory authority over matters pertaining to aviation safety.

REGULATING UAS OPERATIONS

In § 333 of the FAA Modernization and Reform Act of 2012 (Public Law No. 112-95), Congress directed the Secretary to determine whether UAS operations posing the least amount of public risk and no threat to national security could safely be operated in the national airspace system (NAS) and if so, to establish requirements for the safe operation of these systems in the NAS.

On February 15, 2015, the FAA proposed a framework of regulations that would allow routine commercial use of certain small UAS in today's aviation system, while maintaining flexibility to accommodate future technological innovations. The FAA's Notice of Proposed Rulemaking offered safety rules for small UAS (under 55 pounds) conducting non-recreational or non-hobby operations. The proposed rule defines permissible hours of flight, line-of-sight observation, altitude, operator certification, optional use of visual observers, aircraft registration and marking, and operational limits.

Consistent with its statutory authority, the FAA is requiring Federal registration of UAS in order to operate a UAS. Registering UAS will help protect public safety in the air and on the ground, aid the FAA in the enforcement of safety-related requirements for the operation of UAS, and build a culture of accountability and responsibility among users operating in U.S. airspace. No state or local UAS registration law may relieve a UAS owner or operator from complying with the Federal UAS registration requirements. Because Federal registration is the exclusive means for registering UAS for purposes of operating an aircraft in navigable airspace, no state or local government may impose an additional registration requirement on the operation of UAS in navigable airspace without first obtaining FAA approval.

Substantial air safety issues are raised when state or local governments attempt to regulate the operation or flight of aircraft. If one or two municipalities enacted ordinances regulating UAS in the navigable airspace and a significant number of municipalities followed suit, fractionalized control of the navigable airspace could result. In turn, this 'patchwork quilt' of differing restrictions could severely limit the flexibility of FAA in controlling the airspace and flight patterns, and ensuring safety and an efficient air traffic flow. A navigable airspace free from inconsistent state and local restrictions is essential to the maintenance of a safe and sound air transportation system. See *Montalvo v. Spirit Airlines*, 508 F.3d 464 (9th Cir. 2007), and *French v. Pan Am Express, Inc.*, 869 F.2d 1 (1st Cir. 1989); see also *Arizona v. U.S.*, 567 U.S. ___, 132 S.Ct. 2492, 2502 (2012) ("Where Congress occupies an entire field . . . even complimentary state regulation is impermissible. Field preemption reflects a congressional decision to foreclose any

state regulation in the area, even if it is parallel to federal standards.”), and *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 386-87 (1992).

EXAMPLES OF STATE AND LOCAL LAWS FOR WHICH CONSULTATION WITH THE FAA IS RECOMMENDED

- Operational UAS restrictions on flight altitude, flight paths; operational bans; any regulation of the navigable airspace. For example – a city ordinance banning anyone from operating UAS within the city limits, within the airspace of the city, or within certain distances of landmarks. Federal courts strictly scrutinize state and local regulation of overflight. *City of Burbank v. Lockheed Air Terminal*, 411 U.S. 624 (1973); *Skysign International, Inc. v. City and County of Honolulu*, 276 F.3d 1109, 1117 (9th Cir. 2002); *American Airlines v. Town of Hempstead*, 398 F.2d 369 (2d Cir. 1968); *American Airlines v. City of Audubon Park*, 407 F.2d 1306 (6th Cir. 1969).
- Mandating equipment or training for UAS related to aviation safety such as geo-fencing would likely be preempted. Courts have found that state regulation pertaining to mandatory training and equipment requirements related to aviation safety is not consistent with the federal regulatory framework. *Med-Trans Corp. v. Benton*, 581 F. Supp. 2d 721, 740 (E.D.N.C. 2008); *Air Evac EMS, Inc. v. Robinson*, 486 F. Supp. 2d 713, 722 (M.D. Tenn. 2007).

EXAMPLES OF STATE AND LOCAL LAWS WITHIN STATE AND LOCAL GOVERNMENT POLICE POWER

Laws traditionally related to state and local police power – including land use, zoning, privacy, trespass, and law enforcement operations – generally are not subject to federal regulation. *Skysign International, Inc. v. City and County of Honolulu*, 276 F.3d 1109, 1115 (9th Cir. 2002). Examples include:

- Requirement for police to obtain a warrant prior to using a UAS for surveillance.
- Specifying that UAS may not be used for voyeurism.
- Prohibitions on using UAS for hunting or fishing, or to interfere with or harass an individual who is hunting or fishing.
- Prohibitions on attaching firearms or similar weapons to UAS.

CONTACT INFORMATION FOR QUESTIONS

The FAA’s Office of the Chief Counsel is available to answer questions about the principles set forth in this fact sheet and to consult with you about the intersection of federal, state, and local regulation of aviation, generally, and UAS operations, specifically. You may contact the Office of Chief Counsel in Washington, D.C. or any of the following Regional Counsels:

FAA Office of the Chief Counsel
Regulations Division (AGC-200)
800 Independence Ave. SW
Washington, DC 20591
(202) 267-3073

Central Region
Office of the Regional Counsel
901 Locust St., Room 506
Kansas City, MO 61406-2641
(816) 329-3760
(IA, KS, MO, NE)

Great Lakes Region
Office of the Regional Counsel
O'Hare Lake Office Center
2300 East Devon Ave.
Des Plaines, IL 60018
(847) 294-7313
(IL, IN, MI, MN, ND, OH, SD, WI)

Northwest Mountain Region
Office of the Regional Counsel
1601 Lind Ave. SW
Renton, WA 98055-4056
(425) 227-2007
(CO, ID, MT, OR, UT, WA, WY)

Southwest Region
Office of the Regional Counsel, 6N-300
10101 Hillwood Parkway Dr.
Fort Worth, TX 76177
(817) 222-5099
(AR, LA, NM, OK, TX)

Alaskan Region
Office of the Regional Counsel
222 West 7th Ave.
Anchorage, AK 99513
(909) 271-5269
(AK)

Eastern Region
Office of the Regional Counsel
1 Aviation Plaza, Room 561
Jamaica, NY 11434-4848
(718) 553-3285
(DC, DE, MD, NJ, NY, PA, VA, WV)

New England Region
Office of the Regional Counsel
12 New England Executive Park
Burlington, MA 01803
(781) 238-7040
(CT, ME, MA, NH, RI, VT)

Southern Region
Office of the Regional Counsel
1701 Columbia Ave., Suite 530
College Park, GA 30337
(404) 305-5200
(AL, FL, GA, KY, MS, NC, SC, TN)

Western-Pacific Region
Office of the Regional Counsel
P.O. Box 92007
Los Angeles, CA 90009
(310) 725-7100
(AZ, CA, HI, NV)

APPENDIX – LIST OF AUTHORITIES

Federal Statutes

- 49 U.S.C. §§ 40103, 44502, and 44701- 44735 (former Federal Aviation Act of 1958, as amended and recodified).
- FAA Modernization and Reform Act of 2012, Public Law No. 112-95 (Feb. 14, 2012), Subtitle B, “Unmanned Aircraft Systems.”

Federal Regulations

- Title 14 of the Code of Federal Regulations, Chapter 1.

The U.S. Supreme Court

- “Congress has recognized the national responsibility for regulating air commerce. Federal control is intensive and exclusive. Planes do not wander about in the sky like vagrant clouds. They move only by federal permission, subject to federal inspection, in the hands of federally certified personnel and under an intricate system of federal commands. The moment a ship taxis onto a runway it is caught up in an elaborate and detailed system of controls. It takes off only by instruction from the control tower, it travels on prescribed beams, it may be diverted from its intended landing, and it obeys signals and orders. Its privileges, rights, and protection, so far as transit is concerned, it owes to the Federal Government alone and not to any state government.” *Northwest Airlines v. State of Minnesota*, 322 U.S. 292, 303 (1944)(Jackson, R., concurring).
- “If we were to uphold the Burbank ordinance [which placed an 11 p.m. to 7 a.m. curfew on jet flights from the Burbank Airport] 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.” *Burbank v. Lockheed Air Terminal Inc.*, 411 U.S. 624, 639 (1973).
- “The Federal Aviation Act requires a delicate balance between safety and efficiency, and the protection of persons on the ground ... The interdependence of these factors requires a uniform and exclusive system of federal regulation if the congressional objectives underlying the Federal Aviation Act are to be fulfilled.” *Burbank* at 638-639.
- “The paramount substantive concerns of Congress [in enacting the FAA Act] were to regulate federally all aspects of air safety ... and, once aircraft were in ‘flight,’ airspace management....” *Burbank* at 644 (Rehnquist, J. dissenting).

U.S. Courts of Appeals

- “Air traffic must be regulated at the national level. Without uniform equipment specifications, takeoff and landing rules, and safety standards, it would be impossible to operate a national air transportation system.” *Gustafson v. City of Lake Angeles*, 76 F.3d 778, 792-793 (6th Cir. 1996)(Jones, N., concurring).
- “The purpose, history, and language of the FAA [Act] lead us to conclude that Congress intended to have a single, uniform system for regulating aviation safety. The catalytic events leading to the enactment of the FAA [Act] helped generate this intent. The FAA [Act] was drafted in response to a series of fatal air crashes between civil and military aircraft operating under separate flight rules In discussing the impetus for the FAA [Act], the Supreme Court has also noted that regulating the aviation industry requires a delicate balance between safety and efficiency. It is precisely because of ‘the interdependence of these factors’ that Congress enacted ‘a uniform and exclusive system of federal regulation.’” *Montalvo v. Spirit Airlines*, 508 F.3d 464, 471 (9th Cir. 2007), citing *City of Burbank v. Lockheed Air Terminal Inc.*, 411 U.S. 624, 638-39 (1973).
- “[W]hen we look to the historical impetus for the FAA, its legislative history, and the language of the [FAA] Act, it is clear that Congress intended to invest the Administrator of the Federal Aviation Administration with the authority to enact exclusive air safety standards. Moreover, the Administrator has chosen to exercise this authority by issuing such pervasive regulations that we can infer a preemptive intent to displace all state law on the subject of air safety.” *Montalvo* at 472.
- “We similarly hold that federal law occupies the entire field of aviation safety. Congress' intent to displace state law is implicit in the pervasiveness of the federal regulations, the dominance of the federal interest in this area, and the legislative goal of establishing a single, uniform system of control over air safety. This holding is fully consistent with our decision in *Skysign International, Inc. v. Honolulu*, 276 F.3d 1109 (9th Cir. 2002), where we considered whether federal law preempted state regulation of aerial advertising that was distracting and potentially dangerous to persons on the ground. In upholding the state regulations, we held that federal law has not ‘preempt[ed] altogether any state regulation purporting to reach into the navigable airspace.’ *Skysign* at 1116. While Congress may not have acted to occupy exclusively all of air commerce, it has clearly indicated its intent to be the sole regulator of aviation safety. The FAA, together with federal air safety regulations, establish complete and thorough safety standards for interstate and international air transportation that are not subject to supplementation by, or variation among, states.” *Montalvo* at 473-474.
- “[W]e remark the Supreme Court's reasoning regarding the need for uniformity [concerning] the regulation of aviation noise, see *City of Burbank v. Lockheed Air Terminal*, 411 U.S. 624 (1973), and suggest that the same rationale applies here. In *Burbank*, the Court struck down a municipal anti-noise ordinance placing a curfew on jet flights from a regional airport. Citing the ‘pervasive nature of the scheme of federal

regulation,’ the majority ruled that aircraft noise was wholly subject to federal hegemony, thereby preempting state or local enactments in the field. In our view, the pervasiveness of the federal web is as apparent in the matter of pilot qualification as in the matter of aircraft noise. If we upheld the Rhode Island statute as applied to airline pilots, ‘and a significant number of [states] followed suit, it is obvious that fractionalized control ... would severely limit the flexibility of the F.A.A.’ [citing *Burbank*] Moreover, a patchwork of state laws in this airspace, some in conflict with each other, would create a crazyquilt effect ... The regulation of interstate flight-and flyers-must of necessity be monolithic. Its very nature permits no other conclusion. In the area of pilot fitness as in the area of aviation noise, the [FAA] Act as we read it ‘leave[s] no room for ... local controls.’ [citing *Burbank*]. *French v. Pan Am Express, Inc.*, 869 F.2d 1, 6 (1st Cir. 1989).

DATE: February 2, 2017

TO: Senator Rosalyn Baker
Chair, Committee on Commerce, Consumer Protection & Health

Senator Gilbert Keith-Agaran,
Chair, Committee on Judiciary and Labor

Submitted Via Capitol Website

RE: **SB 1051, Relating to Unmanned Arial Vehicles**
Hearing Date: February 3, 2017 at 9:30 a.m.
Conference Room: 016

Dear Chairs Baker and Keith-Agaran and Members of the Joint Committees:

We offer these **comments** on behalf of the Consumer Technology Association (“CTA”). CTA represents more than 2,200 companies, 80 percent of which are small businesses and startups. As a champion of innovation, CTA is a long-time advocate of clear rules authorizing UAS in a safe manner within the national airspace. CTA has been continually involved in the Federal Aviation Administration (“FAA”) rulemaking activities concerning the operation and certification of small UAS. We also are a partner with several other organizations and the FAA in the *Know Before You Fly* campaign, which educates prospective drone users about the safe and responsible operation of UAS.

CTA appreciates the legislature’s efforts to ensure that unmanned aerial vehicles/unmanned aircraft systems (“UAS”) are properly marked to ensure quick identification of the owner/operator, but cautions against adoption of SB 1051, which prohibits the use of an unmanned aerial vehicle without an affixed identification label that contains the operator's name, phone number, and address.

SB 1051 is unnecessary because the FAA already has considered registration and marking requirements for small UAS (“small UAS”) and adopted both interim

Producer of



and final rules addressing these issues. In short, the FAA requires that small UAS be registered and marked with a unique registration number assigned by the FAA. The proposed marking requirement in SB 1051 would conflict with this federal regime.

Prior to adopting these federal registration and marking requirements, the FAA convened a task force to consider, among other things, the best method for marking small UAS “to create a connection between the aircraft and its owner.” The FAA adopted the task force’s recommendation to require that small UAS be marked with the unique registration number assigned by the FAA.

The FAA also indicated that any state efforts to regulate in this sUAS registration/marketing area require prior FAA approval. See State and Local Regulation of Unmanned Aircraft Systems (UAS) Fact Sheet, Federal Aviation Administration Office of the Chief Counsel at 2 (Dec. 17, 2015), https://www.faa.gov/uas/resources/uas_regulations_policy/media/uas_fact_sheet_final.pdf. We have enclosed a copy of this fact sheet with our testimony highlighting the relevant discussion.

For the above reasons, we would respectfully request that SB 1051 should be deferred so that these issues can be considered. Thank you for the opportunity to testify regarding this measure.

Sincerely,

/s/

Douglas K. Johnson
Vice President, Technology Policy
djohnson@cta.tech



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

Office of the Chief Counsel

800 Independence Ave., S.W.
Washington, D.C. 20591

DEC 17 2015

By electronic mail

RE: Fact Sheet on State and Local Regulation of Unmanned Aircraft Systems (UAS)

Dear Colleague:

We write to share with you the Federal Aviation Administration's (FAA) new Fact Sheet on legal policy considerations applicable to State and Local Regulation of UAS (also commonly referred to as "drones"). It is intended to serve as a guide for state and local governments as they respond to the increased use of UAS in the national airspace.

The Fact Sheet summarizes well-established legal principles as to the Federal responsibility for regulating the operation or flight of aircraft, which includes, as a matter of law, UAS. It also summarizes the Federal responsibility for ensuring the safety of flight as well as the safety of people and property on the ground as a result of the operation of aircraft.

Substantial air safety issues are implicated when state or local governments attempt to regulate the operation of aircraft in the national airspace. The Fact Sheet provides examples of state and local laws affecting UAS for which consultation with the FAA is recommended and those that are likely to fall within state and local government authority.

As noted on the Fact Sheet, the FAA's Office of the Chief Counsel maintains offices throughout the United States which are available to provide additional guidance as state and local governments continue to respond to the use of UAS in the national airspace. A copy of the Fact Sheet is attached to this letter. The document is also available at:

www.faa.gov/uas/regulations_policies/.

Thank you in advance for your consideration.

Sincerely,

Reginald C. Govan
Chief Counsel

Earl Lawrence
Director, UAS Integration Office

Enclosure

State and Local Regulation of Unmanned Aircraft Systems (UAS)
Fact Sheet

Federal Aviation Administration
Office of the Chief Counsel

December 17, 2015

BACKGROUND

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Consistent with its statutory authority, the FAA is requiring Federal registration of UAS in order to operate a UAS. Registering UAS will help protect public safety in the air and on the ground, aid the FAA in the enforcement of safety-related requirements for the operation of UAS, and build a culture of accountability and responsibility among users operating in U.S. airspace. No state or local UAS registration law may relieve a UAS owner or operator from complying with the Federal UAS registration requirements. Because Federal registration is the exclusive means for registering UAS for purposes of operating an aircraft in navigable airspace, no state or local government may impose an additional registration requirement on the operation of UAS in navigable airspace without first obtaining FAA approval.

Substantial air safety issues are raised when state or local governments attempt to regulate the operation or flight of aircraft. If one or two municipalities enacted ordinances regulating UAS in the navigable airspace and a significant number of municipalities followed suit, fractionalized control of the navigable airspace could result. In turn, this 'patchwork quilt' of differing restrictions could severely limit the flexibility of FAA in controlling the airspace and flight patterns, and ensuring safety and an efficient air traffic flow. A navigable airspace free from inconsistent state and local restrictions is essential to the maintenance of a safe and sound air transportation system. See *Montalvo v. Spirit Airlines*, 508 F.3d 464 (9th Cir. 2007), and *French v. Pan Am Express, Inc.*, 869 F.2d 1 (1st Cir. 1989); see also *Arizona v. U.S.*, 567 U.S. ___, 132 S.Ct. 2492, 2502 (2012) ("Where Congress occupies an entire field . . . even complimentary state regulation is impermissible. Field preemption reflects a congressional decision to foreclose any

state regulation in the area, even if it is parallel to federal standards.”), and *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 386-87 (1992).

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- Mandating equipment or training for UAS related to aviation safety such as geo-fencing would likely be preempted. Courts have found that state regulation pertaining to mandatory training and equipment requirements related to aviation safety is not consistent with the federal regulatory framework. *Med-Trans Corp. v. Benton*, 581 F. Supp. 2d 721, 740 (E.D.N.C. 2008); *Air Evac EMS, Inc. v. Robinson*, 486 F. Supp. 2d 713, 722 (M.D. Tenn. 2007).

EXAMPLES OF STATE AND LOCAL LAWS WITHIN STATE AND LOCAL GOVERNMENT POLICE POWER

Laws traditionally related to state and local police power – including land use, zoning, privacy, trespass, and law enforcement operations – generally are not subject to federal regulation. *Skysign International, Inc. v. City and County of Honolulu*, 276 F.3d 1109, 1115 (9th Cir. 2002).

Examples include:

- Requirement for police to obtain a warrant prior to using a UAS for surveillance.
- Specifying that UAS may not be used for voyeurism.
- Prohibitions on using UAS for hunting or fishing, or to interfere with or harass an individual who is hunting or fishing.
- Prohibitions on attaching firearms or similar weapons to UAS.

CONTACT INFORMATION FOR QUESTIONS

The FAA’s Office of the Chief Counsel is available to answer questions about the principles set forth in this fact sheet and to consult with you about the intersection of federal, state, and local regulation of aviation, generally, and UAS operations, specifically. You may contact the Office of Chief Counsel in Washington, D.C. or any of the following Regional Counsels:

FAA Office of the Chief Counsel
 Regulations Division (AGC-200)
 800 Independence Ave. SW
 Washington, DC 20591
 (202) 267-3073

Central Region
 Office of the Regional Counsel
 901 Locust St., Room 506
 Kansas City, MO 64106-2641
 (816) 329-3760
 (IA, KS, MO, NE)

Great Lakes Region
 Office of the Regional Counsel
 O'Hare Lake Office Center
 2300 East Devon Ave.
 Des Plaines, IL 60018
 (847) 294-7313
 (IL, IN, MI, MN, ND, OH, SD, WI)

Northwest Mountain Region
 Office of the Regional Counsel
 1601 Lind Ave. SW
 Renton, WA 98055-4056
 (425) 227-2007
 (CO, ID, MT, OR, UT, WA, WY)

Southwest Region
 Office of the Regional Counsel, 6N-300
 10101 Hillwood Parkway Dr.
 Fort Worth, TX 76177
 (817) 222-5099
 (AR, LA, NM, OK, TX)

Alaskan Region
 Office of the Regional Counsel
 222 West 7th Ave.
 Anchorage, AK 99513
 (909) 271-5269
 (AK)

Eastern Region
 Office of the Regional Counsel
 1 Aviation Plaza, Room 561
 Jamaica, NY 11434-4848
 (718) 553-3285
 (DC, DE, MD, NJ, NY, PA, VA, WV)

New England Region
 Office of the Regional Counsel
 12 New England Executive Park
 Burlington, MA 01803
 (781) 238-7040
 (CT, ME, MA, NH, RI, VT)

Southern Region
 Office of the Regional Counsel
 1701 Columbia Ave., Suite 530
 College Park, GA 30337
 (404) 305-5200
 (AL, FL, GA, KY, MS, NC, SC, TN)

Western-Pacific Region
 Office of the Regional Counsel
 P.O. Box 92007
 Los Angeles, CA 90009
 (310) 725-7100
 (AZ, CA, HI, NV)

APPENDIX – LIST OF AUTHORITIES

Federal Statutes

- 49 U.S.C. §§ 40103, 44502, and 44701- 44735 (former Federal Aviation Act of 1958, as amended and recodified).
- FAA Modernization and Reform Act of 2012, Public Law No. 112-95 (Feb. 14, 2012), Subtitle B, “Unmanned Aircraft Systems.”

Federal Regulations

- Title 14 of the Code of Federal Regulations, Chapter 1.

The U.S. Supreme Court

- “Congress has recognized the national responsibility for regulating air commerce. Federal control is intensive and exclusive. Planes do not wander about in the sky like vagrant clouds. They move only by federal permission, subject to federal inspection, in the hands of federally certified personnel and under an intricate system of federal commands. The moment a ship taxis onto a runway it is caught up in an elaborate and detailed system of controls. It takes off only by instruction from the control tower, it travels on prescribed beams, it may be diverted from its intended landing, and it obeys signals and orders. Its privileges, rights, and protection, so far as transit is concerned, it owes to the Federal Government alone and not to any state government.” *Northwest Airlines v. State of Minnesota*, 322 U.S. 292, 303 (1944)(Jackson, R., concurring).
- “If we were to uphold the Burbank ordinance [which placed an 11 p.m. to 7 a.m. curfew on jet flights from the Burbank Airport] 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.” *Burbank v. Lockheed Air Terminal Inc.*, 411 U.S. 624, 639 (1973).
- “The Federal Aviation Act requires a delicate balance between safety and efficiency, and the protection of persons on the ground ... The interdependence of these factors requires a uniform and exclusive system of federal regulation if the congressional objectives underlying the Federal Aviation Act are to be fulfilled.” *Burbank* at 638-639.
- “The paramount substantive concerns of Congress [in enacting the FAA Act] were to regulate federally all aspects of air safety ... and, once aircraft were in ‘flight,’ airspace management....” *Burbank* at 644 (Rehnquist, J. dissenting).

U.S. Courts of Appeals

- “Air traffic must be regulated at the national level. Without uniform equipment specifications, takeoff and landing rules, and safety standards, it would be impossible to operate a national air transportation system.” *Gustafson v. City of Lake Angeles*, 76 F.3d 778, 792-793 (6th Cir. 1996)(Jones, N., concurring).
- “The purpose, history, and language of the FAA [Act] lead us to conclude that Congress intended to have a single, uniform system for regulating aviation safety. The catalytic events leading to the enactment of the FAA [Act] helped generate this intent. The FAA [Act] was drafted in response to a series of fatal air crashes between civil and military aircraft operating under separate flight rules In discussing the impetus for the FAA [Act], the Supreme Court has also noted that regulating the aviation industry requires a delicate balance between safety and efficiency. It is precisely because of ‘the interdependence of these factors’ that Congress enacted ‘a uniform and exclusive system of federal regulation.’” *Montalvo v. Spirit Airlines*, 508 F.3d 464, 471 (9th Cir. 2007), citing *City of Burbank v. Lockheed Air Terminal Inc.*, 411 U.S. 624, 638-39 (1973).
- “[W]hen we look to the historical impetus for the FAA, its legislative history, and the language of the [FAA] Act, it is clear that Congress intended to invest the Administrator of the Federal Aviation Administration with the authority to enact exclusive air safety standards. Moreover, the Administrator has chosen to exercise this authority by issuing such pervasive regulations that we can infer a preemptive intent to displace all state law on the subject of air safety.” *Montalvo* at 472.
- “We similarly hold that federal law occupies the entire field of aviation safety. Congress’ intent to displace state law is implicit in the pervasiveness of the federal regulations, the dominance of the federal interest in this area, and the legislative goal of establishing a single, uniform system of control over air safety. This holding is fully consistent with our decision in *Skysign International, Inc. v. Honolulu*, 276 F.3d 1109 (9th Cir. 2002), where we considered whether federal law preempted state regulation of aerial advertising that was distracting and potentially dangerous to persons on the ground. In upholding the state regulations, we held that federal law has not ‘preempt[ed] altogether any state regulation purporting to reach into the navigable airspace.’ *Skysign* at 1116. While Congress may not have acted to occupy exclusively all of air commerce, it has clearly indicated its intent to be the sole regulator of aviation safety. The FAA, together with federal air safety regulations, establish complete and thorough safety standards for interstate and international air transportation that are not subject to supplementation by, or variation among, states.” *Montalvo* at 473-474.
- “[W]e remark the Supreme Court’s reasoning regarding the need for uniformity [concerning] the regulation of aviation noise, see *City of Burbank v. Lockheed Air Terminal*, 411 U.S. 624 (1973), and suggest that the same rationale applies here. In *Burbank*, the Court struck down a municipal anti-noise ordinance placing a curfew on jet flights from a regional airport. Citing the ‘pervasive nature of the scheme of federal

regulation,' the majority ruled that aircraft noise was wholly subject to federal hegemony, thereby preempting state or local enactments in the field. In our view, the pervasiveness of the federal web is as apparent in the matter of pilot qualification as in the matter of aircraft noise. If we upheld the Rhode Island statute as applied to airline pilots, 'and a significant number of [states] followed suit, it is obvious that fractionalized control ... would severely limit the flexibility of the F.A.A.' [citing *Burbank*] Moreover, a patchwork of state laws in this airspace, some in conflict with each other, would create a crazy quilt effect ... The regulation of interstate flight-and flyers-must of necessity be monolithic. Its very nature permits no other conclusion. In the area of pilot fitness as in the area of aviation noise, the [FAA] Act as we read it 'leave[s] no room for ... local controls.' [citing *Burbank*]. *French v. Pan Am Express, Inc.*, 869 F.2d 1, 6 (1st Cir. 1989).

**SENATE COMMITTEE ON
COMMERCE, CONSUMER PROTECTION AND HEALTH
and
SENATE COMMITTEE ON
JUDICIARY AND LABOR**

February 3, 2017

Senate Bill 1051 Relating to Unmanned Aerial Vehicles

Chair Baker, Chair Keith-Agaran, Vice Chair Nishihara, Vice Chair Rhoads, and
Committee Members:

I am Rick Tsujimura, representing State Farm Mutual Automobile Insurance Company (State Farm). State Farm offers the following comments about Senate Bill 1051 Relating to Unmanned Aerial Vehicles (UAV):

Although State Farm does not have any strong objections to this bill, recognizing that the Federal Government is actively regulating commercial UAV use, and in light of the information contained below, State Farm recommends the following amendment:

This chapter does not apply to a business entity doing business lawfully in this state, using UAV for legitimate business purposes, and operating the UAV in a manner consistent with applicable FAA rules, licenses or exemptions.

In 2012, the Federal Aviation Administration Modernization and Reform Act (FMRA) was enacted, which requires the FAA to develop regulations for how UAV will operate in U.S. airspace. The law called for regulations to be developed by 2015, and in February 2015 the FAA issued a Notice of Proposed Rulemaking for the Operation and Certification of Small UAS (NRPM), which lays out the agency's proposed regulatory environment for commercial entities.

On June 21, 2016, the Federal Aviation Administration (FAA) released its highly-anticipated regulations for the operation and certification of small Unmanned Aerial Vehicles (UAV) (Part 107)—those weighing less than 55 pounds—for non-hobby and non-recreational purposes (commercial purposes, research and development, and educational or academic uses. Although the FMRA and Part 107 do not include an “express” preemption clause, courts have clearly stated that the FAA preempts state and local laws dealing with air safety regulations. In addition, the FAA released a Fact Sheet in late 2015 outlining its position that it preempts state and local laws for operational and safety issues. Accordingly, the final FAA rules should form the basis for how UAV are used for commercial purposes in the United States.

State Farm is the first insurance company to receive FAA approval to use Unmanned Aircraft Systems (UAS) (or Unmanned Aerial Vehicles, UAV). State Farm commented upon the National Telecommunications and Information Administration (NTIA) efforts to establish a multi-stakeholder engagement process to develop and communicate best practices for privacy, accountability, and transparency regarding commercial and private use of UAV, and is the recipient of two grants issued pursuant to Section 333 of the FAA Modernization and Reform Act of 2012 (Exemptions No. 11175 and No. 11188) allowing State Farm to use UAV for insurance purposes. Specifically, State Farm has been granted permission to use UAV for roof

inspections, and research and development purposes, including catastrophe scene surveys. State Farm believes the use of UAV can benefit the lives and safety of its policyholders, employees, and the general public.

State Farm recognizes the importance of addressing privacy and safety as they relate to UAV technology. UAV use for insurance industry purposes are an extension of practices most insurers already employ. For example, underwriting or claims inspections would be with the consent of the customer and, if facilitated by a UAV, functionally no different than a traditional human inspection. In addition, UAV use immediately following catastrophes would likely produce minimal privacy concerns, because it would likely be simultaneous with emergency responder fly overs for similar purposes.

Thank you for the opportunity to present this testimony.

February 2, 2017

Senator Rosalyn H. Baker, Chair
Senator Clarence K. Nishihara, Vice Chair
Senate Committee on Commerce, Consumer Protection and Health
Hawaii State Legislature
State Capitol, Room 230
415 South Beretania Street
Honolulu, HI 96813

Senator Gilbert S.C. Keith-Agaran, Chair
Senator Karl Rhoads, Vice Chair
Senate Committee on Judiciary and Labor
Hawaii State Legislature
State Capitol, Room 221
415 South Beretania Street
Honolulu, HI 96813

RE: SB 1051

Dear Senators:

On behalf of our more than 7,500 members, the Association for Unmanned Vehicle Systems International (AUVSI) asks that you consider the potential impact the proposed language in Senate Bill 1051 could have on commercial operators of unmanned aircraft systems (UAS). If enacted, the ordinance would create inconsistencies with federal law and potentially limit the growth of the emerging unmanned systems industry in Hawaii.

AUVSI and its members appreciate the state of Hawaii's concerns that UAS display registration information to identify the operator. However, there is already a federal UAS registration program managed by the Federal Aviation Administration (FAA). To meet the federal regulation, a commercial UAS operator must supply their name, address and email in addition to the make, model and serial number for each UAS they intend to fly for business purposes. Once the UAS is registered, the operator is required to affix the registration number received from the FAA to the UAS before it can be flown in the national airspace. These requirements also apply to operators flying UAS for hobby or recreational purposes. However, they need only to register once and then apply their registration number to all the UAS they fly for fun.

In December 2015, the FAA asserted its regulatory authority over the U.S. airspace and cautioned states and municipalities against enacting conflicting UAS legislation such as SB 1051. "Congress has vested the FAA with the authority to regulate the areas of airspace use, management and efficiency, air traffic control, safety, navigational facilities, and aircraft noise at its source," the FAA wrote in a fact sheet. "A consistent regulatory

system for aircraft and use of airspace has the broader effect of ensuring the highest level of safety for all aviation operations.”

The FAA’s message is clear. Proposals such as SB 1051 have the potential to create a complicated patchwork of laws that may erode, rather than enhance, safety and privacy.

The establishment of a federal regulatory framework in the recently implemented small UAS rule by the FAA will allow Hawaii to reap the significant economic benefits of UAS. According to an AUVSI study, during the first 10 years after UAS are integrated into the national airspace, approximately 250 jobs are forecasted to be created in Hawaii along with nearly \$200 million in economic impact. It's clear that, now that a regulatory framework is being established, a burgeoning UAS market is waiting to be unleashed in the state.

We urge you to reconsider SB 1051 given the existing FAA registration program and to work closely with the agency to address any of the state’s concerns. Hawaii can continue to support UAS growth and reap its economic benefits rather than create duplicative laws and risk stunting a still-nascent industry. We greatly appreciate your consideration of this important issue and look forward to working with you.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian P. Wynne", with a horizontal line extending to the right.

Brian P. Wynne
President and CEO

CC: Sen. William C. Espero
Sen. Karl Allen Rhoads
Sen. Maile S.L. Shimabukuro

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, January 31, 2017 2:04 PM
To: CPH Testimony
Cc: mrckima@gmail.com
Subject: *Submitted testimony for SB1051 on Feb 3, 2017 09:30AM*

SB1051

Submitted on: 1/31/2017

Testimony for CPH/JDL on Feb 3, 2017 09:30AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Marcia Kimura	Individual	Support	No

Comments:

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

Testimony is support of SB1051, with ammendments

Federal Government already requires Registration and Identification of all UAS in excess of 0.55 lb. Penalties for non-compliant operation are up to \$27,500 per occurrence, \$250,000 maximum, and /or 3 years in prison, same as for similar non-compliance in manned aircraft.

I propose that SB1051 capitalize on that existent requirement, rather than generate a new HI identification requirement.

Proposed amendment:

Prohibited acts; penalty. (a) Beginning January 1, 2018, no person shall operate an unmanned aerial vehicle in this State unless the unmanned aerial vehicle is registered and identified by registration number plainly visible, as required by Federal Government (FAA).

Federal penalty is limited to \$27,000 per occurrence, \$250,000 maximum, and 3 years in prison. Hawaii penalty will be scaled from that determined by FAA.

Ted Ralston

Waimanalo, Hawaii

738.6814

Mailing address 1645 Ala Wai PH1

Honolulu HI 96815