

DAVID Y. IGE
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SHAN S. TSUTSUI
LT. GOVERNOR

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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
PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS
AND
COMMERCE, CONSUMER PROTECTION, AND HEALTH

TWENTY-NINTH STATE LEGISLATURE
Regular Session of 2017
Thursday, February 9, 2017
1:30 p.m.

**TESTIMONY ON SENATE BILL NO. 710, RELATING TO UNMANNED AERIAL
VEHICLES.**

TO THE HONORABLE CLARENCE K. NISHIHARA, CHAIR,
AND TO THE HONORABLE ROSALYN H. BAKER, 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. 710, Relating to Unmanned Aerial Vehicles.

Senate Bill No. 710 (“bill”) provides for certain prohibited acts, establishes prohibited uses by unspecified law enforcement agencies, prohibits “weaponizing” UAVs, establishes a private right of action for certain violations, and establishes civil and criminal

sanctions for violations. The Department and the Department's Director are referenced in the definition section on page 3 lines 1 to 4, but are otherwise not referenced in the bill.

DCCA takes no position with respect to Sections 3 through 6 of this measure that make certain UAV uses unlawful criminal activity within different provisions of HRS Chapter 711 (criminal offenses against public order). The Department would respectfully defer to the Legislature and the appropriate law enforcement agencies regarding any amendments to the Hawaii Penal Code.

Regarding Section 1 of the bill at page 2, lines 4 to 10, the Department notes that the FAA's Law Enforcement Guidance For Suspected Unauthorized UAS Operations, Version 3, issued August 11, 2016 may provide helpful guidance on the nature and scope of that federal agency's enforcement authority with regard to model aircraft.

Regarding Section 2 of the bill, the Department respectfully requests that the reference to the Department and the Department Director at page 3, lines 1 to 4, be deleted from the bill. Inclusion of these definitional terms is unnecessary.

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

DAVID Y. IGE
GOVERNOR OF
HAWAII



SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

KEKOA KALUHIWA
FIRST DEPUTY

JEFFREY T. PEARSON, P.E.
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

Testimony of
SUZANNE D. CASE
Chairperson

Before the Senate Committees on
PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS
and
COMMERCE, CONSUMER PROTECTION, AND HEALTH

Thursday, February 9, 2017
1:30 PM

State Capitol, Conference Room 229

In consideration of
SENATE BILL 710
RELATING TO UNMANNED AERIAL VEHICLES

Senate Bill 710 proposes to complement federal rules and regulations pertaining to the use of unmanned aerial vehicles (UAV) to protect personal information and residential privacy by establishing prohibited uses and penalties, and authorizes civil action for violations. Certain exceptions for UAV use by public agencies to conduct operations such as emergency response or monitoring natural resources and by commercial operators are provided in the bill. **The Department of Land and Natural Resources (Department) supports this initiative as long as the following concerns are addressed.**

The Department is charged with monitoring and managing the State's terrestrial and aquatic areas, including its natural resources, as well as with enforcing the laws and regulations pertaining to these areas and resources. UAVs have proven to be an efficient tool in achieving the Department's various objectives particularly for areas often undeveloped and geographically remote making access difficult and dangerous.

The Department supports aligning state regulation pertaining to UAV operation with federal regulation. However, the definition section of Senate Bill 710 appears to charge the Department of Commerce and Consumer Affairs (DCCA) with regulating the use of UAVs, which would make the adoption of such regulation to the Department's needs impractical, particularly considering rapid developments of UAV technology and federal UAV regulation. The Department believes it would be more efficient to limit UAV regulation of this bill to general guidance as much as possible and to authorize state agencies to establish administrative rules for

lands under their jurisdiction, which allow for health, safety, privacy, and security restrictions that are easier to adapt as technology evolves.

Further, Senate Bill 710 proposes to establish specific restrictions, such as limiting UAV operation to the airspace within line-of-sight of the pilot, which duplicate current federal regulation. The Department suggests referring to federal regulation instead, which would facilitate maintaining alignment of state regulations with federal regulations. As the technology is rapidly evolving, trends point toward allowing safe operations of extended scope and scale, which would allow natural resource management agencies and other partner organizations involved in natural resource management a safer and more cost effective alternative to helicopter flights and other aerial survey and monitoring operations involving aircraft. It would be beneficial for the legislation to be adaptable to both potential future improvements in technology increasing safety and scope of UAV operations and to potential changes in federal UAV laws and regulation. Therefore, the Department suggests the following changes to Section -2:

§ -2 Prohibited acts. (a) No person or public agency shall operate an unmanned aerial vehicle:

- (1) In violation of chapter 263 or part 107 or any other applicable federal laws and Federal Aviation Administration regulations relating to the operation of unmanned aerial vehicles;
- (2) At a height of less than two hundred fifty feet above a residential property without express permission from the property owner or tenant;
- ~~(3) Outside of the period spanning thirty minutes before official sunrise to thirty minutes after official sunset in local time;~~
- ~~(4) Outside the visual line of sight of the operator. The operator shall use natural vision to maintain at all times an unobstructed view of the unmanned aerial vehicle without the use of vision enhancing devices, including but not limited to binoculars, night vision goggles, powered vision magnifying devices, or similar devices; or~~

Further, it is unclear how the legal distance limit defined in Section -2(a)(2) needs to be measured to hold up in potential litigations and how potential additional cost for equipment required for distance mensuration would be funded.

UAVs can be a safe alternative to conduct potentially dangerous law enforcement activities in undeveloped and geographically remote for areas. For example, the Department's Commission on Water Resource Management may in the future desire to use UAVs to aid in the enforcement of instream flow standards or document the condition of water intake facilities in remote areas. Therefore, the Department suggests the following changes to Section -3:

(b) Notwithstanding subsection (a) and in addition to the authorized activities under section -4, a law enforcement agency may deploy an unmanned aerial vehicle for the following purposes:

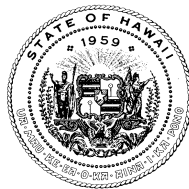
- (1) When there is a reasonable belief that an emergency situation exists, whether or not the situation involves criminal activity, and the use of an unmanned aerial vehicle is necessary to prevent immediate danger of death or serious physical injury to any person;
- (2) To conduct a search and rescue operation where the use of an unmanned aerial vehicle is determined to be necessary to alleviate an immediate danger to any person;
- (3) To respond to a hostage situation; ~~or~~
- (4) To conduct monitoring activities for enforcement purposes in undeveloped and geographically remote areas on state land if other means of investigation would pose an unreasonable risk to the safety of law enforcement staff; or
- (5) To conduct training exercises related to any of the purposes in this subsection.

The Department kindly requests adding language that provides exemptions for state agencies and partner organizations to deploy UAV's for work in natural resource management, surveying, and monitoring. The Department suggests the following changes to Section -4:

§ -4 Public agency exceptions. Nothing in this chapter shall prohibit the use of unmanned aerial vehicles by a public agency and its partner organizations:

- (1) To conduct environmental or disaster response, including but not limited to disaster relief, victim recovery or search and rescue, and monitoring, inspection, underwater repair, or structural damage assessments;
- (2) To dispose of a suspected or actual explosive device;
- (3) ~~To monitor plant or animal populations;~~ To conduct operations relating to natural resource management such as monitoring plant or animal populations and infrastructure;
- (4) To conduct atmospheric testing or monitoring; or
- (5) For farming and agricultural uses.

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:

February 9, 2017
1:30 p.m.
State Capitol, Room 229

S.B. 710
RELATING TO UNMANNED AERIAL VEHICLES

Senate Committees on Public Safety, Intergovernmental and Military Affairs
& Commerce, Consumer Protection and Health

The Department of Transportation (DOT) **opposes** S.B. 710 which establishes restrictions on the use of unmanned aerial vehicles (UAV) to include amending the offenses of violation of privacy in the first and second degrees to specifically address the use of unmanned aerial vehicles in the commission of these offenses.

Operation of aircraft, including UAV, in the National Airspace System is the province of the Federal Aviation Administration (FAA), and not the State. Specifically, Section 2, para 2, Prohibited Acts (2) through (4) prohibits operation of UAV below certain altitudes, at certain times of day and beyond visual line of sight. These restrictions are contained in 14 Code of Federal Regulations (CFR) Part 107; however, under 107.205, those same restrictions can be waived by the FAA in the granting of a Certificate of Authorization and this would put an operator who is in full compliance with federal regulation in conflict with state law.

Thank you for the opportunity to provide testimony.

DAVID Y. IGE
GOVERNOR

SHAN S. TSUTSUI
LIEUTENANT GOVERNOR



LINDA CHU TAKAYAMA
DIRECTOR

LEONARD HOSHIJO
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
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February 7, 2017

The Honorable Clarence Nishihara, Chair
Committee on Public Safety, Intergovernmental,
and Military Affairs
The State Senate
State Capitol, Room 214
Honolulu, Hawaii 96813

The Honorable Rosalyn Baker, Chair
Committee on Commerce, Consumer Protection,
and Health
The State Senate
State Capitol, Room 230
Honolulu, Hawaii 96813

Dear Chairs Nishihara and Baker:

Subject: Senate Bill (SB) 710 Relating to Unmanned Aerial Vehicles

I am Manuel P. Neves, Chair of the Hawaii State Fire Council (SFC) and Fire Chief of the Honolulu Fire Department (HFD). The SFC and the HFD support SB 710, which proposes to establish unmanned aerial vehicle (UAV) laws that complement federal regulation.

Currently, the four county fire departments have not implemented the use of UAVs. However, we recognize its value as another tool in meeting its mission to provide for a safer community through prevention, preparedness, and effective emergency response. UAVs eliminate the risk of a pilot and helicopter to survey a variety of incident areas. In the case of search or rescue missions, UAVs can pinpoint the exact location that a helicopter operation is needed before actual deployment. UAVs can be dispatched within minutes to remote areas, even in inclement weather. Aerial views provide an advantageous perspective for an incident commander and preplanning purposes.

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The Honorable Clarence Nishihara, Chair
The Honorable Rosalyn Baker, Chair
Page 2
February 7, 2017

Operational implementation by the county fire departments will include meeting federal and state regulations.

The SFC and the HFD urge your committees' passage of SB 710.

Should you have questions, please contact SFC Administrator Socrates Bratakos at 723-7105 or sbratakos@honolulu.gov.

Sincerely,



MANUEL P. NEVES
Chair

MPN/LR:clc



CITY COUNCIL

CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII 96813-3065

BRANDON ELEFANTE

Councilmember District 8
'Aiea, Pearl City, Waipahū
Chair, Committee on Public Health, Safety & Welfare
Telephone: (808) 768-5008
Email: belefante@honolulu.gov

February 8, 2017

To: The Honorable Clarence K. Nishihara, Chair
and Members of the Senate Committee on Public Safety, Intergovernmental,
and Military Affairs; and
The Honorable Rosalyn H. Baker, Chair
and Members of the Senate Committee on Commerce, Consumer Protection,
and Health

From: Councilmember Brandon Elefante

Subject: **SB 710: Relating to Unmanned Aerial Vehicles**

Hearing: Thursday, February 9, 2017, 1:30 pm

I am testifying in **SUPPORT** of SB 710 Relating to Unmanned Aerial Vehicles. On September 7, 2016, the City Council of the City and County of Honolulu voted 9-0 in unanimous support of Resolution 16-239, requesting the Hawai'i State Association of Counties (HSAC) to consider for inclusion in its 2017 legislative package a proposal that would regulate operators of unmanned aircraft systems island-wide.

The Federal Aviation Administration's (FAA) regulations related to the use of small commercial drones, which became effective on August 29, 2016, will result in approximately **600,000** drones operating in the U.S. within the next year, according to the FAA. This Resolution requested that the Hawai'i State Association of County support urging the Hawaii State Legislature to adopt regulations related to the use of drones, specifically as they relate to the collection and possible misuse of personal information as well as address broader privacy and safety concerns for residents in all four of Hawai'i counties.

The FAA has issued a position paper affirming the right of state and local governments to legislate drone activity through their traditional police powers, including the areas of land use, zoning, privacy, trespass, and law enforcement operations. States across the country are adopting and/or considering legislation to address privacy and safety concerns proactively and comprehensively.

Proactive legislative action by the state is needed to set guidelines and establish standards that can apply uniformly and statewide. Drone operators, individuals, and county governments, including

police departments, are all stakeholders in the use of this new technology and need definitive rules and laws. Now that the FAA has established the licensing process for drones, the concern is that privacy rights be protected and that safety be assured, in the use of aerial surveillance drones. Drones can photograph, videotape, and audio record all activity whether on public or private property. All of these can be uploaded to internet sites and shared across the entire internet. Drones can also be used to collect personal or location details from cellphones, via license plate scanners or facial recognition software, and drone operators can provide or sell that information to private businesses or individuals.

A few recent incidents related to drone usage cited from across the country:

- Privacy: Drone flew onto private balcony in Hawai'i and recorded a private conversation.
- Privacy: Hawai'i resident woke one morning to a drone hovering outside her bedroom window.
- Privacy: Drone disrupted wedding by lingering over private backyard ceremony for more than 20 minutes such that conversation could not be heard and the ceremony had to be delayed. (California)
- Privacy: Woman in 20-story high rise observed a drone hovering just outside her apartment windows as she was getting dressed. (Washington)
- Privacy: Drone was hovering over teenage daughter sunbathing in back yard of a private home. (Kentucky)
- Safety: Drone created a power outage flying into power lines. (California)
- Safety: Drone crashed into empty seats at the U.S. Tennis Open. (New York)
- Safety: Drones interfered with fire and rescue operations. (California)
- Safety: Drone was intercepted flying "car-high" near President Barak Obama's motorcade in Kailua. (Hawai'i)
- Safety: Near collisions between drones continue to occur with hundreds of incidents documented. (Nationally)

While allowing legitimate use of the new technology throughout the state, we urge protections for the entire state from the possible misuse, nuisance, harassment and voyeurism that may result from this technology and to establish statewide standards that accord with a reasonable expectation of privacy and an assurance of safety and security.

I urge your **SUPPORT** for this important legislation in addressing protections for all of our citizens.

Sincerely,



Brandon Elefante
Councilmember, District 8

Bernard P. Carvalho, Jr.
Mayor



Robert F. Westerman
Fire Chief

Wallace G. Rezendes, Jr.
Managing Director

Kilipaki K. F. Vaughan
Deputy Fire Chief

KAUA'I FIRE DEPARTMENT
County of Kaua'i, State of Hawai'i
4444 Rice Street, Suite 315, Lihu'e, Hawai'i 96766
TEL (808) 241-4980 FAX (808) 241-6508

February 7, 2017

The Honorable Clarence Nishihara, Chair
Committee on Public Safety, Intergovernmental,
and Military Affairs
The State Senate
State Capitol, Room 214
Honolulu, Hawaii 96813

The Honorable Rosalyn Baker, Chair
Committee on Commerce, Consumer Protection,
and Health
The State Senate
State Capitol, Room 230
Honolulu, Hawaii 96813

Dear Chairs Nishihara and Baker:

Subject: Senate Bill (SB) 710 Relating to Unmanned Aerial Vehicles

I am Robert F. Westerman, Vice-Chair of the Hawaii State Fire Council (SFC) and Fire Chief of the Kauai Fire Department (KFD). The SFC and the KFD support SB 710, which proposes to establish unmanned aerial vehicle (UAV) laws that complement federal regulation.

Currently, the four county fire departments have not implemented the use of UAVs. However, we recognize its value as another tool in meeting its mission to provide for a safer community through prevention, preparedness, and effective emergency response. UAVs eliminate the risk of a pilot and helicopter to survey a variety of incident areas. In the case of search or rescue missions, UAVs can pinpoint the exact location that a helicopter operation is needed before actual deployment. UAVs can be dispatched within minutes to remote areas, even in inclement weather. Aerial views provide an advantageous perspective for an incident commander and preplanning purposes.

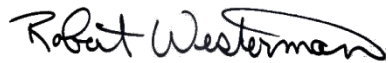
The Honorable Clarence Nishihara, Chair
The Honorable Rosalyn Baker, Chair
Page 2
February 7, 2017

Operational implementation by the county fire departments will include meeting federal and state regulations.

The SFC and KFD urges your committee's support on the passage of SB 710.

Please contact me at (808) 241-4975 or rwesterman@kauai.gov should you have any questions or require additional information regarding this matter.

Sincerely,

A handwritten signature in black ink that reads "Robert Westerman". The signature is written in a cursive style with a long, sweeping underline that extends across the name.

Robert Westerman
Fire Chief, County of Kaua'i

RFW/eld

February 8, 2017

Senator Clarence Nishihara
Chair, Senate Committee on Public Safety, Intergovernmental and Military Affairs
Hawaii State Legislature
Hawaii State Capitol
Honolulu, HI 96813

Senator Rosalyn Baker
Chair, Senate Committee on Commerce, Consumer Protection and Health
Hawaii State Legislature
Hawaii State Capitol
Honolulu, HI 96813

Re: **Senate Bill No. 710 – Proposed Drone Legislation**

Dear Chair Nishihara, Chair Baker, and Members of the Joint Committees:

The Consumer Technology Association (“CTA”) urges the Hawaii legislature to reject proposed Senate Bill No. 710 (“SB 710”). Although well-intentioned, CTA cautions against adoption of laws specifically targeted at unmanned aircraft systems (“UAS” or drones). 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.

The explosive growth of the UAS industry has prompted legislators in many states and localities to propose legislation regulating the industry or otherwise trying to address potential concerns related to UAS. Before considering new legislation, however, lawmakers should evaluate whether (i) proposed regulations are preempted, (ii) the conduct at issue may already be addressed by existing state laws, and (iii) UAS-specific legislation is warranted.

Creating technology-specific criminal offenses and penalties is a reactionary approach to innovation. To arbitrarily treat identical harms differently based on their enabling

instrumentality would create a patchwork of regulation where similar offenses lead to different results, chilling development and forestalling exciting new technologies. SB 710 should not be adopted because it would be preempted, would arbitrarily regulate conduct based on the use of a UAS, and would duplicate existing laws.

I. SB 710 UNLAWFULLY ATTEMPTS TO ESTABLISH NO-FLY ZONES

SB 710 would create a patchwork of no-fly zones in the airspace above residential property. As discussed below, no-fly zones may be established only by the federal government. State and local laws purporting to establish such zones are preempted.

The Supremacy Clause of the U.S. Constitution states that “the Constitution and the laws of the United States which shall be made in pursuance thereof . . . shall be the supreme law of the land.”¹ As noted by the Supreme Court, this gives Congress the power to preempt state law.² There are three types of preemption: express preemption (when Congress specifically preempts a state law);³ field preemption (when a federal framework of regulation is “so pervasive . . . that Congress left no room for the States to supplement it” or where a “federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject”);⁴ and conflict preemption (when state laws “conflict with federal law, including when they stand ‘as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress’”).⁵ Congress has occupied the field with regard to air navigation.⁶

The FAA has issued numerous letters to localities cautioning against the adoption of no-fly zones.⁷ Additionally, the FAA released a UAS Fact Sheet reminding state and local jurisdictions that they lack authority to regulate airspace.⁸ Through these letters and the UAS Fact Sheet, the FAA has made clear that regulations imposing operational bans or otherwise regulating navigable airspace are problematic.⁹ It notes that “[s]ubstantial air safety issues are raised when state and local governments attempt to regulate the operation or flight of aircraft” and “[a] navigable airspace free from inconsistent state and local restrictions is essential to the maintenance of a safe and sound air transportation system.”¹⁰ SB 710 would intrude into this

¹ U.S. Const., Art. VI, Cl 2.

² See, e.g., *Arizona v. United States*, 132 S. Ct. 2492 (2012).

³ *Id.*

⁴ *Id.* (quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)).

⁵ *Id.* (quoting *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)).

⁶ See *Burbank v. Lockheed Air Terminal*, 411 U.S. 624, 633-34 (1973).

⁷ See, e.g., Letter from Christopher R. Stevenson, FAA Office of the Chief Counsel, Enforcement Division, to Mark A. Winn, Assistant City Attorney, City of Petersburg (Sept. 16, 2016) (“St. Petersburg Letter”); Letter from Brandon C. Goldberg, FAA Office of the Regional Counsel, Southern Region to Alexander Karden, City Prosecutor, City of Orlando, Florida (Jan. 21, 2016); Brandon C. Goldberg, FAA Office of the Regional Counsel, Southern Region to Austin D. Roberson, Cobb County Attorney’s Office (Jun. 9, 2016); Brandon C. Goldberg, FAA Office of the Regional Counsel, Southern Region to David Wolpin, Esq., Counsel for the City of Aventura, Florida (May 26, 2016) (“FAA Aventura Letter”).

⁸ State and Local Regulation of Unmanned Aircraft Systems (UAS) Fact Sheet, Federal Aviation Administration Office of the Chief Counsel (Dec. 17, 2015) (“UAS Fact Sheet”)

https://www.faa.gov/uas/resources/uas_regulations_policy/media/UAS_Fact_Sheet_Final.pdf.

⁹ UAS Fact Sheet at 3.

¹⁰ UAS Fact Sheet at 2; accord Letter from Reginald C. Govan, Chief Counsel, FAA, to Victoria Mendez, Esq., City Attorney, City of Miami (Dec. 9, 2015).

purely federal regulatory system by establishing no-fly zones at the local level. The 250 foot altitude restriction on UAS operations without consent as set forth in SB 710, constitutes “an operational limitation that is not consistent with the Federal statutory and regulatory framework as discussed in the FAA’s UAS Fact Sheet.”¹¹

For these reasons, at minimum the sections of SB 710 proposing to establish no-fly zones below 250 feet over residential property should be stricken.

II. DRONE-SPECIFIC REGULATIONS DIRECTED AT PRIVACY ARE UNNECESSARY

SB 710 also proposes drone-specific prohibitions on privacy that are unnecessary. Specifically, SB 710 would create new statutory provisions criminalizing the use of drones to (i) “intentionally collect personal information,” which includes photographs, and/or (ii) “record a person in a private place” without consent. The FAA has previously noted that similar prohibitions directly “solely at UAS” constitute operational restrictions which are preempted.¹²

FAA explains that states remain “free to apply any generally applicable voyeurism laws” to drone operations.¹³ As SB 710 implicitly recognizes, existing Sections 711-1110.9 and 711-1111 of the Hawaii Revised Statutes establish a right to privacy and preclude the use of “any device” to invade a person’s privacy without their consent. There is no reason to single out drone operations. Simply put, a person’s rights to privacy should not hinge on the technology used to collect personal information, conduct surveillance, or engage in harassment. Moreover, amending existing laws and adopting new statutes targeting specific technologies may cause confusion for both law enforcement and for harmed parties, and would unnecessarily generate the need to amend laws as new technologies that potentially could be used to invade a person’s privacy are developed.

For the above reasons, CTA opposes enactment of SB 710. In lieu of advancing this legislation, we would suggest the Committees consider establishing a stakeholder working group to address the issues raised in SB 710 and other pending drone-related legislation.

Sincerely,

/s/

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

¹¹ See St. Petersburg Letter at 2.

¹² FAA Aventura Letter at 1.

¹³ See, e.g., *id.*

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 8, 2017 10:01 AM
To: PSMTestimony
Cc: mike.elliott@droneserviceshawaii.com
Subject: Submitted testimony for SB710 on Feb 9, 2017 13:30PM

SB710

Submitted on: 2/8/2017

Testimony for PSM/CPH on Feb 9, 2017 13:30PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Michael Elliott	Drone Services Hawaii	Oppose	Yes

Comments: Drone Services Hawaii is in opposition to this bill. Issues: The FAA preempts any rule making wrt to airspace. Recommend a bill that says, "...must follow all FAA rules and regulations under PART 107... The altitude limit of 250' is arbitrary and much of the mapping and survey work requires optimal altitudes of approx 130'. We as a company do notifications or have the company we contract with make notification that a drone is in use for a project. Notification vice permission will be more effective. Use for Fire, Police, Ocean Safety and other state/county agencies is the one positive piece that we see as a seperate stand alone bill. It would be highly supported and easily passed. We disapprove of applying technology specific rules to the privacy laws. We would rather see law enforcement with broad latitude to act when privacy violations occur, reckless endangerment, disorderly conduct, trespassing etc. We have seen how HPD has been allowed to partner with the FBI, DEA and FAA. We think that HPD should have the direct ability to support FAA enforcement of existing rules governing drones. Only training would be required for officers. Mahalo Please feel free to contact us.

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.

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Cc: gyrmedia@mac.com
Subject: Submitted testimony for SB710 on Feb 9, 2017 13:30PM

SB710

Submitted on: 2/8/2017

Testimony for PSM/CPH on Feb 9, 2017 13:30PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
George Russell	Hlvantage, LLC	Oppose	Yes

Comments: Aloha, as an ethical, legal, and insured owner and operator of a locally owned UAS business. I am opposed to this bill. Believe me, we fully understand citizens' concerns about privacy and safety issues with these aerial devices. But there are strict privacy laws already in use. Terms such as 'any device', would include UAS. In the filming permit request stage, I fully outline where and when I intend to fly and I answer any interdepartmental concerns about safety, jurisdiction, and privacy concerns. I would welcome local or governmental enforcement agency, on any one of my aerial operations, to ensure that I am not abusing any privacy laws already in place. Mahalo for this opportunity to testify.

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.

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Vans Stevenson
Senior Vice President
State Government Affairs

202-378-9140 direct
202-744-4009 mobile

TO: Senator Clarence Nishihara, Chair Public Safety, Intergovernmental and Military Affairs (PSM)
Senator Glenn Wakai, Vice-Chair, Public Safety, Intergovernmental and Military Affairs
Senator Rosalyn Baker, Chair Consumer Protection & Health (CPH)
Senator Michelle Kidani, Vice-Chair Consumer Protection & Health
Members of the Joint PSM/CPH Committee

FR: Vans Stevenson, Senior Vice-President of State Government Affairs for the Motion Picture Association of America (MPAA).

RE: SENATE BILL 710 RELATING TO UNMANNED AERIAL VEHICLES
Testimony in **OPPOSITION with suggested amendments**

Dear Chairs Nishihara and Baker, Vice-Chairs Wakai and Kidani, and Members of the Joint Committee:

The Motion Picture Association of America (MPAA)'s members include the leading distributors of television programs and motion pictures worldwide. MPAA members include CBS, Fox, Disney, Paramount, NBC, Universal, Sony Pictures and Warner Bros. We thank you for the opportunity to provide our testimony in respectful **opposition** to House Bill 314. We have suggested **amendments** that if incorporated, will ameliorate our objections so that we will then be in a neutral position on this measure. Alternatively, Hawaii could consider modeling its state law on that of other states, such as Arizona or Louisiana, that have taken a comprehensive approach to drone regulation that does not raise federal preemption or First Amendment challenges.

While we find the proposed purpose of the bill laudable in its attempt to grapple with an emerging technology and potential associated issues, we find that:

- there are significant First Amendment issues generated by this bill;
- fails to recognize that there may be significant public safety information that could be provided via the activity;
- the bill does not recognize and distinguish existing Federal Aviation Authority (FAA) jurisdiction and existing allowed activity; and

- creates a new civil liability which is problematic in the approach and language.

MPAA is not seeking a blanket exception and carve out from the bill because there are approaches and prohibitions in the bill that we agree with. For example, MPAA has no objection to Section 3's amendments to Haw. Rev. Stat. Ch. 711 that creates a criminal liability since these activities are not intended to be covered by MPAA's members filming activities. Likewise, in the new civil liability sections of the bill, we have no opposition to subsections (1), (3), (7), (8), (11), (12), (13), or (14).

However, there are some of the prohibited acts in this bill that raise significant concerns. Occasionally an operator will be granted FAA authorization to operate beyond these restrictions, and we believe the bill should be crated to preserve that ability.

Most problematic is subsection (4)'s prohibition on the distribution of personal information, which is defined to include photographs. This would appear to prohibit distribution, even where the images are of trespassers or law breakers who would have no reasonable expectation of privacy while on the property. For example, the language of the bill would criminalize the taking of photos of a drug deal taking place in a backyard of a private residence. There is, however, no right of privacy for commission of a crime. The bill would also criminalize the taking of images even when the property owner has no reasonable expectation of privacy in the property – for example, when the property is on fire or is the subject of a home invasion. By criminalizing the taking of and distribution of photos, the bill interferes with constitutionally protected activity that MPAA member companies undertake in the coverage of newsworthy events and matters of public concern.

As such, we would respectfully request the following amendments be incorporated into the bill:

- 1) On Page 4, line 16, the following language be added:

(4) To intentionally collect personal information or intentionally publish or distribute personal information acquired through the operation of an unmanned aerial vehicle without express written consent from the person whose personal information is acquired, unless the information acquired is newsworthy or in the public's interest;

- 2) On Page 6, under "Section -3 Prohibited acts, penalty" we would suggest an amendment to certain provisions as follows:

(b) Subsections (2), (4), (5), (6), (9) and (10) shall not apply to the operation of an unmanned aircraft system by a person or entity that the Federal Aviation Administration has authorized to operate an unmanned aircraft system for a commercial purpose if the unmanned aircraft system is operated in a manner that complies with that authorization;

Finally, while the above amendments are aimed at addressing MPAA's concerns, other state's have a more balanced comprehensive approach to regulating this area, which we provide for your consideration.

Arizona:

<http://www.azleg.gov/legtext/52leg/2r/bills/sb1449h.pdf>

Louisiana:

<http://www.legis.la.gov/legis/ViewDocument.aspx?d=1012765>

Thank you for the opportunity to testify. Please let us know if you have any questions or if there is any additional information we can provide.

February 7, 2017

Hawaii State Legislature

sent via electronic submission

Senate Committee on Public Safety,
Intergovernmental and Military Affairs
Senator Clarence K. Nishihara, Chair
Senator Glenn Wakai, Vice-Chair

Senate Committee on Commerce,
Consumer Protection and Health
Senator Rosalyn H. Baker, Chair
Senator Clarence K. Nishihara, Vice-Chair

RE: SB 710, Unmanned Aerial Vehicles - NAMIC's written testimony IN SUPPORT

Thank you for affording the National Association of Mutual Insurance Companies (NAMIC) an opportunity to submit written testimony to the joint committee public hearing on SB 710 scheduled for February 9, 2017.

The National Association of Mutual Insurance Companies (NAMIC) is the largest property/casualty insurance trade association in the country, with more than 1,400 member companies. NAMIC supports regional and local mutual insurance companies on main streets across America and many of the country's largest national insurers. NAMIC members represent 40 percent of the total property/casualty insurance market, serve more than 170 million policyholders, and write nearly \$225 billion in annual premiums. NAMIC has 84 members who write property/casualty/workers' compensation in the State of Hawaii, which represents 28% of the insurance marketplace.

Thank you for providing NAMIC with an opportunity to submit written testimony in support of the proposed legislation. NAMIC commends the bill sponsor for modeling the proposed legislation after the Federal Aviation Administration's (FAA) law and for recognizing the plenary authority of the federal government in regulating aircraft, including unmanned aircraft (UAS), in navigable airspace. The proposed legislation is thoughtfully drafted to address local regulatory needs of citizens of the State of Hawaii in an appropriate way that avoids needless conflict with significant substantive provisions carefully debated, analyzed, and adopted by the FAA in their recent regulations.

NAMIC supports SB 710, because the bill specifically has a "business exception" designed not to hinder the growing and beneficial use of unmanned aircraft by the public and business

community; or adversely impact insurers' ability to safely use modern technology (UAS) to assist them in addressing the insurance claims and underwriting needs of consumers in an administratively efficient, consumer convenient, and cost-effective manner.

Thank you for your time and consideration. Please feel free to contact me at 303.907.0587 or at crataj@namic.org, if you would like to discuss NAMIC's written testimony.

Respectfully,

A handwritten signature in black ink, appearing to read "Christian John Rataj". The signature is fluid and cursive, with the first name "Christian" being the most prominent.

Christian John Rataj, Esq.
NAMIC – Senior Director of State Affairs
Western Region

**SENATE COMMITTEE ON
PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS
and
SENATE COMMITTEE ON
COMMERCE, CONSUMER PROTECTION, AND HEALTH**

February 9, 2017

Senate Bill 710 Relating to Unmanned Aerial Vehicles

Chair Nishihara, Chair Baker, and Committee Members, I am Rick Tsujimura, representing State Farm Mutual Automobile Insurance Company (State Farm).

In light of the information contained below, if the Committees decide to approve this legislation, 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. The NPRM offers safety rules for small UAV (under 55 pounds), including:

- Flights are restricted near airports or other restricted airspace;
- UAS can fly up to 100 miles per hour and up to 500 feet above ground level;
- Flights can occur only during daylight hours;
- Flights must be within visual line of sight only;
- Operators must obtain an unmanned operator certificate that is renewable every two years;
- Certificate testing will be widely available at local testing centers;
- A medical exam of operators will not be required; and
- Operators must conduct a pre-flight inspection of the UAS.

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.

My name is Joe West... I have operated a photography business, in Maui Country, since 2000 (www.JoeWestPhotography.com). For the past 5 years, I have spent thousands of dollars and hundreds of hours trying to add aerial drone services to my photography business. To that end, I have taken, and passed, the FAA's Remote Controlled Pilot's Certification (Part 107 Exam). This is an exhaustive test to ensure that commercial drone operators have extensive knowledge of drone technology and airspace regulations... in order to operate drones in a professional and safe manner.

I am already burdened by rules and regulations placed on commercial drone operators by the FAA. It is, already, no easy task to fly a drone, under all the regulations placed on us by the FAA, and deliver what our clients request.

In my view, the state would be stepping into an area where they have neither experience or jurisdiction in trying to regulate drones beyond what the FAA is already doing.

The FAA already regulates use of drones. Airspace regulation falls under the FAA, not the state. Asking for prior permission from a bureaucratic entity is unnecessary and does not reduce the perceived risk. If regulation is blindly desired as the end goal then at least realize that drone operators certified under part 107 have already been vetted by the FAA and the Department of Homeland Security and have the necessary knowledge to operate safely. Licensed drone pilots already face many barriers from the FAA with restrictions or flat out denials to operate in areas of most concern to the State.

I can possibly see the need for the state to try and regulate unlicensed drone users... but, even in this, the state would be stepping into the arena of national airspace regulation... which, once again, falls under the jurisdiction of the FAA. The FAA actually has guidelines for "recreational" drone users as well. I know the FAA has frowned on local and state agencies trying to step into their jurisdiction by trying to regulate airspace.

Why is there so much emphasis on regulating the use of drones based on public safety when there have been other present and potentially more lethal dangers to the public on the roads, parks and beaches for a long time already? What effort has been made to protect the public with the same degree of zealousness when it comes to mopeds, bicycles, skate boards, surf boards, segways, scooters, etc.? Where does one draw the line? The state should gather data related to time, effort and resources utilized to respond to injuries, crimes and moving violations concerning some of the items previously mentioned and compare the data which involves drone use.

How many people, in Hawaii, have been severely insured or killed by mopeds? How many people, in Hawaii, have been severely injured or killed by a drone? We, truly, need some perspective here.

Most drones are more technologically advanced than the vehicles freely operating in the state. Features such as automatic return to home, active collision avoidance and satellite tracking are available in the overwhelming majority of drones that the government seeks to regulate. Even manufacturers already restrict operating in prohibited airspace, their software alerts and even forces a return to home if the drone enters prohibited airspace.

Does the state mandate the same requirements to anyone with a digital camera in parks, beaches and other public spaces? Under the first amendment, a citizen is free to take photographs in public. Using drones for photography is no different. I can purchase a painter's pole at the hardware store that can be extended as high as 30 feet and attach a camera to it. Does that need permission too? Drones are a new tool and just because the majority of the population does not understand them or realize their potential... does it mean that this type of regulation is warranted?

The state should focus on the long term benefits of drone use to the benefit of the community and the State coffers. Drones can be used for policing, firefighting assistance, search and rescue, wild life research, etc. Drones are even helping construction and real estate, why not focus on helping the industry instead of choking its development. Ask realtors if they can wait a couple of weeks to get a permit so that their listing can be photographed or videotaped? Ask a roof repair company or an engineering firm if they can wait a while for their surveys to be completed?

The state should ask drone operators already doing business about any needed adequate regulation. The FAA has been at it for a while and possesses deeper knowledge than anyone at the state or local level.

I have a great deal invested in drone technology here in Hawaii. I am, already, under quite a financial strain to make my drone operations profitable here in the islands. I, already, have to work through considerable barriers of rules and regulations imposed by the FAA. This legislation, if passed, could have the potential of ruining my commercial drone operations here in Hawaii. I can't imagine having to work through any more "red tape" that could be imposed by the state with regard to drone operations.

After over 26 years in Hawaii, I am coming to the "end of my rope" with trying to make a small business work here in the islands. Endless bureaucracy and expense has made it almost impossible for my small business to survive here. There is, already, more than enough regulations on commercial drone operations. I, respectfully, ask that the state stay out of the business of trying to regulate airspace. This is the job of the Federal Aviation Administration.

As one of the pioneers of commercial drone operations, in Hawaii, I would be glad to offer any additional insight on specific questions regarding drone operations here in the islands.

Respectfully,
Joe West

Testimony SB710 2017 In Favor with Amendments

Under -2, para (2), drone flight over private property is permitted, without landowner permission, provided a minimum altitude of 250 is held. Federal law prevents all drone flight over private property, without landowner permission, regardless of altitude, for 3 of the 4 allowable cases for drones – recreation/hobby, education, and Section 333 exemption. Removing the 250 ft altitude allowance from this paragraph would retain the longstanding intention to enforce gaining landowner permission for all UAS flight over private property.

Under -2, para (3) and (4); and section 711-B, are all controlled by Federal law, which is introduced in (1) above. FAR 107 has a significant waiver provision and the very flight items listed in (3) and (4) are waivable under 107. In fact UH execution of testing in Pan Pacific UAS Test Range Complex (PPUTRC) is intended specifically to go beyond the (3) and (4) limits, and beyond all 107 limits. We cannot perform PPUTRC with these limits imposed.

Testing at PPUTRC, for IED detection and destruction (using ordinance) are possibilities.

Thus these limits would prevent PPUTRC from achieving FAA's objectives. An amendment would be to remove the altitude limit of 250' in (1), eliminate (3) and (4) and 711-B

Under -4, Public Agency Exceptions, two items of major importance to UH should be incorporated by amendment:

Generate a para (6) adding UH ARL PPUTRC to the exempted Public Agencies, such that it can proceed with Test & Evaluation and Aeronautical Research in UAS as intended by FAA's award of authority under the FAA Test Range Program.

Generate a para (7) adding an exemption for Educational Institutions to conduct UAS education and training for general advancement of STEM and for workforce development, as envisioned by FAA in its Educational Interpretation (attached).

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 8, 2017 10:31 PM
To: PSMTestimony
Cc: geryll@hawaii.edu
Subject: *Submitted testimony for SB710 on Feb 9, 2017 13:30PM*

SB710

Submitted on: 2/8/2017

Testimony for PSM/CPH on Feb 9, 2017 13:30PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Geryll Anthony Agno	Individual	Support	No

Comments:

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From: mailinglist@capitol.hawaii.gov
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To: PSMTestimony
Cc: rickyli99@gmail.com
Subject: Submitted testimony for SB710 on Feb 9, 2017 13:30PM

SB710

Submitted on: 2/8/2017

Testimony for PSM/CPH on Feb 9, 2017 13:30PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Ricky Li	Individual	Oppose	No

Comments: I stand opposed to this bill as written.

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Tuesday, February 7, 2017

Testimony for the Hearing by the

[COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS](#)
[COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH](#)

on Thursday February 9th 2017

1:30 PM

Conference room 229

State Capitol

Regarding SB710

Relating to unmanned Aerial Vehicles (and privacy concerns)

Aloha Senators,

Mahalo nui loa for taking my testimony on this bill presently under consideration.

My name is Tim Orden. I am a UAV pilot of approximately three years. I use UAVs (Unmanned Aerial Vehicle System) to capture both still and video images of outdoor weddings for photographers and wedding coordinators. As a professional photographer of 40+ years I have been considered an authority on the technicalities and esthetics of photography. I am currently evolving my business to utilize the UAVs platform to bring my expertise to the Hawaii wedding photography market, exclusively through other wedding photographers and wedding organizers.

I am presently studying for my part 107 FAA license to operate UAVs commercially.

I have no problem whatsoever with the intention of the proposed law. I steadfastly agree that UAVs should not be used to invade a citizens' privacy.

Minimum altitude and privacy

I do find it somewhat disingenuous that this Bill addresses the proximity of UAVs to private property ,when in fact, that proximity has little to do with the UAVs ability to record the private activity of a citizen on their property. Ie: Satellite Imagery

May I remind us that technology by way of Moore's law finds that the capabilities of technology double every year and also decrease in cost by half every year. We see this in our phones, cameras, computers, etc.

What that means as far as UAVs go is that what is possible today with capture technologies will soon be considerably more capable of much higher resolution imagery from greater distances. Additionally as the capabilities of UAVs camera platforms become more capable and sophisticated, they will get cheaper. As an example, it won't be long before existing zoom lens technology will be incorporated into UAVs capability, thus making higher resolution and greater distance no more of an issue than it is for land based photography presently. Press and sports photographers can capture images of identifiable people from a half mile away or even more.

An arbitrary measure of proximity of the visual capture to the potential is not a good mitigating factor with regards to the issue of privacy. It will inevitably become even more so in the near technological future..

Perhaps even more concerning is that the bill makes no distinction between UAVs with image and/or audio capture capability and those that do not. If a UAV were not to have any data capture capability, how could it possibly be an affront to one's privacy?

As relating to privacy, I believe that the this bill is not addressing privacy so much as it is addressing the perceived sense of privacy for the private citizen.

Being that proximity of a UAVs is not effectively addressing privacy, I'm suggesting that what it actually addresses is the possible nuisance and peaceful environmental issues with regards to UAVs. Such legitimate concerns are already addressed in our State and local laws. Perhaps those sort of laws should be enhanced to reflect the UAVs environmental concerns.

The arbitrary, ill considered and possibly dangerous boundary of 250'

In this bill, The minimum altitude is not clear. Is the specification from sea level, ground level, or from a person's property? Is the boundary one that ends at virtual vertical walls extending up to 250' or within the horizontal radius of 250' from the boundary of the property creating a "dome" of Hawaii State prohibited airspace?

What about public places that are adjacent to private property?

Suppose one establishes that one's private property is the determining factor for a minimum UAVs altitude. Let's say that the property has a four story building on it, thereby affecting the projected minimum altitude? What if they have something like a 100' tall ham operator's antennae? That would mean that the UAVs would have to fly within a dangerous airspace corridor, above 350' and below 400' (maximum allowable altitude for a UAVs.) It's conceivable that the varying height restriction could cause a UAVs and say, helicopter to have a collision. Where would the culpability of such a patchwork of air traffic control be?

Perhaps, in a damaged party seeking relief, that party might claim and it be judicially determined, that the state was at least partially culpable because of it's confusion with federally controlled airspace.
..Which brings me to the next point...

The legal purview of airspace above the United States.

Without question, the federal government has said to local and State lawmakers, “Don’t mess with FAA controlled airspace.” That airspace is clearly from the ground or perhaps 80’ above one’s ground, all the way to outer space, directly above the land and sea of the United States of America and it’s protectorates. If the state wants to get a variance or special consideration from the federal government, it should suit for that right. To simply “take” that airspace is illegal by Federal law.

Here is some info from the FAA on this:

<https://www.faa.gov/news/updates/?newsId=84369>

https://www.faa.gov/uas/resources/law_enforcement/

(documents attached)

Excerpts from the Office of Chief Counsel of the FAA attached document:

*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 3 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).

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.**

(Note that the Federal Government says it just fine for local and state laws to address privacy. But **it does not include local regulation of the airspace.**)

- 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

Some comments from the US 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).

- “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).

OK, perhaps the FAA would not deal with airspace up to 400’? Perhaps UAVs are not controlled by the FAA.

Well, they were not actively involved until recently. But UAVs are now registered by the Federal Government. What was uncontrolled airspace is now specifically controlled by the FAA. Nevertheless, it was never, and is not now the airspace of localities and States to control.

If this law is enacted, someone who finds that the law is improper will likely file suit on the state of Hawaii. This law would likely get the scrutiny of the Federal Courts. Such a law would set an intolerable precedent for the Federal Government and would encourage a vigorous defense by the Federal Government.

Bottom line Senators...

The State of Hawaii has no jurisdiction with regards to airspace. We can't make the rules for the Federal Government's airspace. It's not our sandbox. Our State should no more interfere with the airspace than it should print Hawaii State Currency.

I respectfully recommend that you avoid any contention with the Federal Government, and simply amend the bill by deleting the reference to controlling the airspace.

Mahalo nui loa for taking my testimony.

Tim Orden

www.timorden.com

45-223 Makahinu street

Kaneohe, HI 96744

808 620-8876

tim@timorden.com

Testimony opposing SB710

By Bernard Partridge

Dear Committee:

SB #710 proposes “No person or public agency shall operate an unmanned aerial vehicle: At a height of less than two hundred fifty feet above a residential property without express permission from the property owner or tenant.”

The Federal Aviation Administration (FAA) has ultimate jurisdiction and regulatory authority over all navigable airspace in the United States.

Effective August 29, 2016, the FAA established small unmanned aircraft systems (sUAS) regulations in part 107 to Title 14 Code of Federal Regulations (14 CFR). Therefore, part 107 certified sUAS pilots are regulated by the FAA in navigable airspace.

It is excessively restrictive to limit flight over a residential property to maintain between 250' and 400'. Further, I contend that 200', 150' or even 100' above the highest obstacle to include safe landing and takeoff areas is navigable airspace as defined by the FAA.

Sincerely,

Bernard Partridge

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 6, 2017 7:34 PM
To: PSMTestimony
Cc: matt.tom.rn@gmail.com
Subject: *Submitted testimony for SB710 on Feb 9, 2017 13:30PM*

SB710

Submitted on: 2/6/2017

Testimony for PSM/CPH on Feb 9, 2017 13:30PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Matt Tom	Individual	Oppose	No

Comments:

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To: PSMTestimony
Cc: teresa.parsons@hawaii.edu
Subject: Submitted testimony for SB710 on Feb 9, 2017 13:30PM

SB710

Submitted on: 2/6/2017

Testimony for PSM/CPH on Feb 9, 2017 13:30PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Teresa Parsons	Individual	Support	No

Comments: There are too many people operating drones in residential neighborhoods. This creates a potential for invasion of privacy.

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Subject: *Submitted testimony for SB710 on Feb 9, 2017 13:30PM*

SB710

Submitted on: 2/6/2017

Testimony for PSM/CPH on Feb 9, 2017 13:30PM in Conference Room 229

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

Comments:

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Sent: Friday, February 3, 2017 6:28 PM
To: PSMTestimony
Cc: aehough@gmail.com
Subject: *Submitted testimony for SB710 on Feb 9, 2017 13:30PM*

SB710

Submitted on: 2/3/2017

Testimony for PSM/CPH on Feb 9, 2017 13:30PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Amy Hough	Individual	Oppose	No

Comments:

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SB710

Submitted on: 2/3/2017

Testimony for PSM/CPH on Feb 9, 2017 13:30PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Javier Mendez-Alvarez	Individual	Support	No

Comments:

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