

SB 436

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STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
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February 13, 2019
1:25 p.m.
State Capitol, Room 224

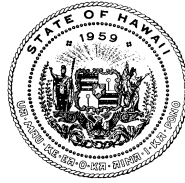
S.B. 436
RELATING TO NOISE CONTROL.

Senate Committee on Agriculture and Environment

The Department of Transportation (DOT) **supports the intent** of S.B. 436, which would require the Department of Health (DOH), in collaboration with the Federal Aviation Administration (FAA) and DOT, to conduct a study on the impacts of aviation noise on the residents of the State and appropriates funds to the Department of Health to conduct the study.

However, the DOT would like to make it clear that, although it provides facilities such as terminals and runways for various aircraft operations, the DOT is not responsible for the aircraft once it leaves the ground and does not have jurisdiction regarding noise emitted by aircraft in flight.

Thank you for the opportunity to provide testimony.



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WRITTEN TESTIMONY
ONLY

Testimony COMMENTING on SB436
RELATING TO NOISE CONTROL

SENATOR MIKE GABBARD, CHAIR
SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT

Hearing Date: February 13, 2019
1:25 pm

Room Number: 224

1 **Fiscal Implications:** The Department of Health appreciates the intent of this measure but defers
2 to the priorities set forth in the Executive Budget.

3 **Department Testimony:** This measure requires the Department of Health (DOH), in
4 collaboration with the Federal Aviation Administration (FAA) and the State Department of
5 Transportation (DOT), to conduct a study on the impacts of aviation noise on residents of the
6 State and report its findings and recommendations, including any proposed legislation, to the
7 legislature no later than twenty days prior to the convening of the regular session of 2020.

8 The Governor and Legislature have already appropriated funds to DOT in Act 049 for the
9 purpose of planning noise monitoring and noise compatibility studies for fiscal years 2017-2018
10 and 2018-2019. While DOH could provide a noise study, we would be ill-equipped to
11 recommend legislation to address aircraft noise because the regulation of Hawaii's airspace in
12 general, and the management of flight paths in particular, in addition to the noise of an aircraft at
13 its source, are governed exclusively by federal law (the Aviation Safety and Noise Abatement
14 Act of 1979) and are under the purview of FAA. It has been observed by the Supreme Court that
15 "[i]t is the pervasive nature of the scheme of federal regulation of aircraft noise that leads us to
16 conclude that there is pre-emption." City of Burbank v. Lockheed Air Terminal Inc. 411 U.S.
17 624, 633 (1973). Consequently, any undertaking by DOH to regulate in these areas would be
18 subject to federal preemption and would likely be invalidated. In addition, the intent of HRS

1 Chapter 342F and HAR 11-46 was to regulate noise emanating from stationary equipment, and
2 equipment related to agricultural, construction, and industrial activities. These types of sources
3 are either fairly constant in it nature, stationary or restricted to a certain location. Finally, it is
4 our understanding that under certain circumstances, local government, as the proprietor of an
5 airport, has some discretion to address local concerns regarding aircraft noise without violating
6 federal law where those efforts are “reasonable, nonarbitrary and nondiscriminatory”. National
7 Helicopter Corp. of America v. City of New York 137 F.3d 81, 88 (2d Cir 1998). Therefore, we
8 suggest the Legislature continue working with DOT to explore ways in which DOT, as an airport
9 owner/operator, in concert with the FAA, may be able to address the concerns of the
10 communities impacted by aircraft noise.

11 Thank you for the opportunity to testify.

SB-436

Submitted on: 2/10/2019 12:36:25 AM

Testimony for AEN on 2/13/2019 1:25:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
andy levin	Testifying for county of hawaii, Mayor's office	Support	No

Comments:

Thank you for this opportunity to testify in support of SB 436.

Helicopters are a valued component of our tourism industry. They also have been a source of endless complaints from communities that lie in their flight paths, and there should be no doubt that noise can constitute both a nuisance and a health hazard, especially in otherwise tranquil rural areas.

I have met with tour operators and asked them to develop a plan to address noise and safety. They have taken some initial steps, and I commend them for that. Moreover, I am hopeful that tour operators and community members can work together. However, the history laid out in SCR 183 (2018) is eye-opening:

“In 2000, the National Environmental Policy Act, in conjunction with the National Parks Air Tour Management Act of 2000, required an Air Tour Management Plan to be implemented at various national parks throughout the country... The objective of an Air Tour Management Plan is "to develop acceptable and effective measures to mitigate or prevent the significant adverse impacts, if any, of commercial air tour operations upon the natural and cultural resources, visitor experiences and tribal lands...In 2005, the project was upgraded to an Environmental Impact Statement, and the Federal Aviation Administration published a notice of opportunity for commercial air tour operators granted interim operating authority to review and self-correct annual authorizations. In 2008, Federal Aviation Administration and National Park Service staff met with Hawai'i air tour operators, and acoustic monitoring of three sites at Hawai'i Volcanoes National Park was conducted. In 2011, a preliminary draft Air Tour Management Plan for Hawai'i Volcanoes National Park was published, but...seven years later, in 2018, there [was] still no final Air Tour Management Plan for Hawai'i Volcanoes National Park...In addition, after more than sixteen years, no Air Tour Management Plan for any national park in the nation has been completed...”

How can our residents be asked to tolerate the status quo when it has been 15 years since the Federal Aviation Administration and National Park Service asked for comments on an Air Tour Management Plan Environmental Assessment, and eight

years since a preliminary draft Air Tour Management Plan for Hawai'i Volcanoes National Park was published. That is an outrage.

SB 436 correctly goes beyond the impact on the National Park, and would study the impact on all our residents. That is the right way to go, and I urge a favorable vote.

Respectfully submitted,

Harry Kim, Mayor

SB-436

Submitted on: 2/6/2019 1:48:41 PM

Testimony for AEN on 2/13/2019 1:25:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Karen Winslow	Individual	Support	No

Comments:

SB-436

Submitted on: 2/8/2019 12:01:06 PM

Testimony for AEN on 2/13/2019 1:25:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Larry Obermann	Individual	Oppose	No

Comments:

Why would we need to spend money on a study when there are dozens available for download from the internet ? Here is a link to a very good one :

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5437751/>

SB-436

Submitted on: 2/8/2019 12:10:54 PM

Testimony for AEN on 2/13/2019 1:25:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Franny Brewer	Individual	Support	No

Comments:

As a resident of upper Puna, I was fortunate to avoid the tragic circumstances that befell many of my lower Puna friends and family over the summer. Over the Christmas holidays this year, we were so excited to have the opportunity to return to our favorite vacation spot in lower Puna, a site that after 12 years of of being our twice-a-year-respite, we had feared may stop existing. Without wifi, without phone reception, without traffic noises, it was always place to disconnect and relax. Until this year. This year, we battled multiple cars and buses who were unfamiliar with the narrow, twisting roads in lower Puna while we were on the way to our destination. We heard traffic as we never had before - but worst of all were the helicopter flights. Immediately after we awoke and exited our tents, a helicopter flew overhead. In the last decade, we'd seen helicopters in this area only when a water rescue was taking place, so this was a real surprise. But then another, and another, and another...in less than an hour, I counted 18 overhead flights - and very, very low. At times I was sure they could see the inappropriate hand gestures I was making toward the windows after the dozenth fly-by. My father-in-law, a resident of Kehena nearby, advised me to stop counting the flights or I would drive myself crazy. He and other residents had been dealing with the constant noise for weeks. People may think that a helicopter is just a momentary interruption, but it is hard to describe just how jarring and intrusive it is when it is happening every 5 minutes - especially in a rural district which lacks the noise pollution of urbanized areas. As we'd grown accustomed to hearing copters in that area only during a rescue, it felt as though my body was reacting with fear and alarm every time one went by. In talking to my ohana in the area, I learned how weary and unhappy so many were because of the disruptions. Many are dealing with depression and trauma after the events of this past summer, and it hurts my heart to see them feeling like zoo animals to be ogled at even as they are trying to put their lives back together - still in a state of uncertainty about what the future holds. Please, there must be a more respectful way to allow the visitors and residents who want to view the lava to be able to enjoy their view without further adding to the burden of the eruption survivors. Your positive vote in this matter is much appreciated!

SB-436

Submitted on: 2/8/2019 8:16:11 PM

Testimony for AEN on 2/13/2019 1:25:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Diane Ware	Individual	Support	No

Comments:

Dear Senators,

i am in support of this bill because I live in Volcano Golf Course and experience numerous helicopters flying near my home early in mornings. They seem to be quite low.

Please help us residents have peace and quiet.

Diane Ware

7815 Kapoha PI Volcano HI

SB-436

Submitted on: 2/10/2019 9:54:31 AM

Testimony for AEN on 2/13/2019 1:25:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Shannon Rudolph	Individual	Support	No

Comments:

Strongly Support.

Some neighborhoods are being assaulted daily, destroying residents peace and property values and hardly any of our leaders are doing anything about it. Mahalo to introducers!

SB-436

Submitted on: 2/11/2019 2:36:35 PM

Testimony for AEN on 2/13/2019 1:25:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Catherine Brooks	Individual	Support	No

Comments:

SB-436

Submitted on: 2/12/2019 9:57:02 AM

Testimony for AEN on 2/13/2019 1:25:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Doran Vaughan	Individual	Support	No

Comments:

I Employe You to Support SB 436:

RELATING TO NOISE CONTROL.

Requires the Department of Health, in collaboration with the Federal Aviation Administration and the Department of Transportation, to conduct a study on the impacts of aviation noise on residents of the State. Appropriates funds to the Department of Health to conduct the study.

My spouse and I live uphill from Lelani Estates presently with 100+ steam vents on our property which attract helicopter overflights for tourists wanting to view the devastation from the East Rift Zone Volcanic Eruption. Dozens of helicopters fly over our property at altitudes lower than the FAA approved altitude between 7:00am and 7:00pm daily. To us, our immediate neighbors, and all the remianing residents of Leilani Estates and surrounding areas, the noise disturbance is exacerbating the psychological and physical stress already experienced due to loss or damage to homes and property as well as finances.

Please Support and Pass SB436 and require the Department of Health to complete this study expeditiously and then eliminate these tourist flights over residential properties in the East Rift Zone and island wide. **The health and well being of the citizens in our community are at stake.**

SB-436

Submitted on: 2/12/2019 11:58:01 AM

Testimony for AEN on 2/13/2019 1:25:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Steven Jacquier	Individual	Support	No

Comments:

Aloha

Being exhibited like a caged animal is wearing down many hundreds, perhaps thousands, of taxpayers who have lived through the Lower East Rift Zone 2018 eruption. We are being subjected to relentless harassment on a daily basis by low-flying commercial tour helicopters. Being cruelly tormented like an animal in a cage is exactly what life here has felt like, daily, since the ban was lifted by Mayor Harry Kim and commercial tour helicopters were allowed to surge into our airspace, hovering over homes in the lava disaster and steam vent area. The commercial helicopter tour companies fly from around ten to over a hundred low flights (many illegally so) over my family's house every day. That includes at 7:30am on Thanksgiving Day morning and on Sunday mornings, and almost always with their transponders turned off, of course, so there is no tracked and logged accruing as evidence. The irritating to deafening noise is really upsetting. The invasion of privacy and arrogant contempt shown to local people is even worse. Each day a couple of the helicopters curve around the house and hover, drawing out the torture while exploiting us against our will. Selling our experience for their profit.

The commercial tour helicopter operators are being really foolish, knowingly placing visitors at risk while flying so low. They are counting on stressed people throughout the LERZ to turn the other cheek and meekly submit to this ongoing, daily, cruel harassment. Day after day, week after week, month after month, year after year? Is that realistic? Ever see the movie "Babel" with Brad Pitt and Gweneth Paltrow? Please do watch it; just replace the bus with a commercial tour helicopter. It is very predictable that eventually someone's sanity is going to snap under this constant harassment with the result that tourists are injured or killed; at least ten people at the Nani Mau public meeting --months ago-- begged for low overflights to stop before exactly this predictable outcome happens. This would be a disaster for everyone and severely hurt Hawaii's economy as that tragic drama plays out on the national news. Will you act to prevent this sort of predictable disaster from happening? You can do so by supporting SB436. While I sincerely hope a Babel-Hawaii scenario never occurs, I see other health

tragedies occurring daily here in Puna stemming directly from commercial helicopter tour abuse. People's stress levels are off the charts. Veteran's PTSD and peoples' mental illness is exacerbated, as are substance abuse issues and social frictions & conflicts in general. Constant helicopter harassment is completely counter to lowering stress levels and subsequent illness in the affected disaster area. Everything about constant low commercial helicopter tour overflights is counter to economic and health recovery in the LERZ.

Prevention should be the order of the day, but the FAA does nothing despite hundreds to thousands of complaints and public meetings with hundreds of residents pleading for intervention (in fact, the FAA website makes it essentially impossible to even submit a formal complaint from Puna). Commercial helicopter tour pilots routinely break the law with impunity; they know the FAA will do nothing. The pilots want big fat tips from thrilled tourists (tips they do not report to the IRS, quite likely) so fly unsafely low under cloud cover, race above the steam vents & nearby homes while close to the ground --often only 200 to 500 feet above us all day long, every day--, and hover over homes as tourist photos are taken of local people laboring to repair houses, sort belongs, and repair their lives. The DC political delegation from Hawaii must be corruptly on the take, receiving big contributions and free rides and photo opps from the helicopter companies; they could put pressure on the FAA if they chose to do so, but there is dead silence and total inaction from them. So, it falls to decent and thoughtful state legislators such as yourselves to take action; please do so. As we saw with the foot-dragging, sweeping under the carpet, skewing numbers to minimize perceived effect, and other obfuscation and inaction by the Hawaii Department of Health on rat lungworm disease, the HI DoH is often worthless unless forced to action. The HI DoH priority is usually more on maintaining the status quo and attracting tourists than on the health of residents. Please do make the HI DoH actually do its job; we, the taxpayers, are the ones paying the bill. Not the commercial helicopter tour companies, freeloaders that they are, imposing huge daily costs on local residents without any compensation whatsoever while also having the audacity to demand further tax concessions. For shame!

When I was a child I was bullied and physically abused to the point I ended up in the critical care ward of a hospital for a month, went through major operations, and almost died. So, I can and do testify from my own personal life experience: this vicious psychological bullying from the helicopter companies feels much the same and triggers up the same stress responses as being bullied by cruel cowards. This is horrible for health and well-being; it interferes with my ability to focus and function at work (both at home and away) and is placing secondary stress on family relationships. My spouse wants to move away from Hawaii because of the incessant helicopter Hell we are being subjected to; we will take our tax payments with us if we go and the commercial tour helicopter operators are not going to pay up the difference in lost income from all the

many people who cannot stand it any more and are moving out of state. Want to improve tax revenues? Stop the commercial helicopter tour cowards from abusing the taxpayers. The commercial tour helicopter operators are like serial rapists and pornographers. Sadistic, selling the suffering of others to ghouls and gawkers. To date, you legislators are the enablers of this abuse! Even wearing ipod earbuds with music turned up full blast under shooter's hearing protection earmuffs while trying to work I can still hear the helicopters fly over; they shake the whole house. They upset my birds and dogs, which are not even aware of being photographed by the ghouls. This is all so frustrating and exhausting.

Please support SB436 and do not allow any amendments or manipulations which allow HI DoH and the commercial helicopter tour operators to wriggle out of accountability and real change. Their callous and arrogant needs to change and it falls to you to make that change happen before this whole situation descends into chaos.

Mahalo,

Steven Jacquier

PS: Today, just while composing this testimony, at least twenty helicopters passed my home office window. Probably more than thirty flights, but I do not want to exaggerate. They were so close that if you subpoenaed the photos taken by those illegally low flights then you would quite clearly see me giving them the middle finger and then mooning them. "Ha, ha, how amusing," they are probably thinking, but several of those especially low flights could have been hit by bow and arrow, let alone by a magazine full of .308 carbine bullets. I will never take violent action against these abusers (rather, I want to hit them where it really hurts, in the pocketbook, and that is a dish best served cold via systemic and lasting organized action, not an ultimately Pyrrhic once-off heated spasm) but there are so many people around here who have lost so much more than I have, who are far more stressed and less able to cope than I am, who are financially destitute, feeling desperate, abandoned, and like they have little left to live for. Their situation is very different from mine, even as annoyed as I am by the commercial tour helicopter abuses and as genuinely stressed as I am by the daily noise. This is very worrisome. Please do take all this very seriously, folks, as I really do fear it will not end well for some poor hapless tourists who happen to be on the wrong helicopter if this vile cruelty by the commercial tour exploiters is allowed to continue unabated. You can stop this; please do.

