

DAVID Y. IGE
GOVERNOR



TESTIMONY BY:

JADE T. BUTAY
DIRECTOR

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LYNN A.S. ARAKI-REGAN
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ROSS M. HIGASHI
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STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

February 24
2:00 p.m.
State Capitol, Room 325



H.B. 1907, proposed H.D. 2
RELATING TO TRANSPORTATION

House Committee on Judiciary

The Department of Transportation (DOT) offers **comments** to this proposed bill to establish a state-based requirement for commercial helicopter pilots and subject the pilot as well as the pilot's employer to a criminal penalty.

The proposed H.D. 2 is unfair because it would require that in order to operate within the State, commercial helicopter pilots would be required to have a valid instrument rating from the Federal Aviation Administration, whereas there is no such requirement for non-commercial helicopter pilots or fixed wing pilots.

Thank you for the opportunity to provide testimony.

HB-1907-HD-1

Submitted on: 2/23/2020 5:56:31 PM

Testimony for JUD on 2/24/2020 2:00:00 PM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Eileen Hilton	Windward Coalition	Support	No

Comments:

The Windward Coalition is strongluy supporting passage of HB 1907! Mahalo

LATE

HB-1907-HD-1

Submitted on: 2/23/2020 8:56:43 PM
Testimony for JUD on 2/24/2020 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Larry Veray	Pearl City Neighborhood Board Chair	Support	No

Comments:

Mandating IFR (Instrument Flight Rules) for tour helicopters could save lives and avoid future crashes

The following would enhance both aircrew and passenger safety on tour helicopters;

- 1' All tour copters operating in Hawaii should be equipped with FAA approved flotation,
2. All tour copters operating in Hawaii be equipped with and have turned on ADS-B,
3. And for the protection of those on the ground tour copters be mandated to not allow their noise footprints enter occupied properties.

LATE

HB-1907-HD-1

Submitted on: 2/24/2020 6:56:02 AM

Testimony for JUD on 2/24/2020 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
bob ernst	hicop	Support	No

Comments:

HICoP Testimony for HB1907:

HOUSE COMMITTEE ON JUDICIARY

Representative Chris Lee, Chair Representative Joy A. Buenaventura, Vice Chair

Committee Hearing Monday, February 24, 2020, State Capitol Conference Room 325
2:00 PM HOUSE BILL 1907 Relating to Transportation

TESTIMONY IN STRONG SUPPORT

Aloha Chair Lee, Vice Chair San Buenaventura and Committee Members Brower, Creagan, Lowen, McKelvey, Nakashima, Perruso, Say, Takayama, Yamane and Thielen

House Bill 1907, Relating to Tour Aircraft, provides that all commercial helicopter operators in the State shall be required to have a valid FAA-approved instrument flight rating: "§261- Helicopters; commercial purposes; instrument rating. (a) No person may operate a helicopter for commercial purposes within this State without a valid instrument rating from the Federal Aviation Administration. (b) Any individual who operates a helicopter in violation of this section and any employer for whom the individual operates the helicopter shall each be subject to penalties under section 261-21(a)(2)."

The HICoP Board asks you to support this bill for all the obvious and common sense reasons. The weather of Hawaii is influenced by the terrain, mountain/valley/shore and can change instantaneously. Deadly Hawaii tour copter crashes can attest to this.

Mandating IFR (Instrument Flight Rules) would have allowed the Kauai pilot to continue to fly safely in the sudden bad weather change that killed the 7 people in that horrific deadly totally unnecessary tour copter crash.

Please see the attached FAA/NPS report graph showing that Hawaii Volcanoes is the most tour copter impacted Park in the Nation, Haleakala is the 4th making **Hawaii the most tour copter impacted State in the Nation.**

The HICoP Board would like to recognize and Mahalo Hawaii Island Representatives Nakashima, Todd, San Buenventura and Lowen for cosponsoring this Bill and asks the other Hawaii Island Representatives Onishi, Creagan and Tarnas to also become cosponsors of HB1907.

Mahalo for addressing the much needed safety oversight of the tour copter operators where as the FAA has totally abdicated all responsibilities and duties regarding the tour copter operations in Hawaii.

Mahalo,

The HICoP Board

HB-1907-HD-1

Submitted on: 2/22/2020 2:41:20 PM

Testimony for JUD on 2/24/2020 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Charles Prentiss	Individual	Support	No

Comments:

The current spate of tour helicopter accidents is unacceptable. It is obvious that tour helicopter safety must be improved so that future accidents could be avoided or minimized.

A number of these tragic accidents have been weather related. As a retired instrument flight rated helicopter pilot for the Hawaii National Guard, I find it unconscionable that tour helicopter pilots are not required to be instrument flight rated. Once a visual flight rated pilot inadvertently enters a cloud, they don't know their location or the attitude of the helicopter. They are a danger to all on board and on the ground as well.

In addition to current proposals to modify flight routes, our Legislature should actively support increasing tour safety by adopting a requirement for tour helicopter pilots to be instrument flight rated.

Chuck Prentiss, Lt.Col., USA (Retired)

HB-1907-HD-1

Submitted on: 2/23/2020 8:52:16 PM

Testimony for JUD on 2/24/2020 2:00:00 PM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Debra Laeha	Individual	Support	No

Comments:

The out-of-control tour helicopter industry on Oahu needs to be addressed. We have lived and raised our family in Maunawili for 20 years. Over the past 4-5 years, we have been INUNDATED with tour helicopters and their incessant drone in our once peaceful valley. During the peak tourist summer season, there have been as many as 14 helicopters overhead/hour...one EVERY FOUR MINUTES!

These tour helicopters fly over Mt. Olomana and into the Maunawili Community even during rainy, cloudy, unsafe conditions, despite their lack of equipment needed to fly under the Instrument Flight Rules (IFR), needed to navigate safely under these conditions. The lack of this equipment is evidenced by the tragic helicopter accident that occurred under overcast conditions in Kailua Town in 2019. Because tour helicopters are only capable of operating under Visual Flight Rules (VFR), it is especially dangerous to those of us living in on the Windward side of the Island where weather conditions are unpredictable (a fact that the tour operators have openly acknowledged).

We have had face-to-face conversations with the HHA and various helicopter tour operators about our concerns. While some operators have made *SOME* changes, others (specifically Magnum Helicopters) have been operating uncontrolled and unregulated by the FAA for so long that they feel "untouchable". This operator takes pride in not having to "fly neighborly" and is now seemingly asserting its control over the airspace to target routes over the homes of those that have vocal about this issue. At a Kailua Board meeting, the owner of this company actually taunted a concerned citizen saying "good luck in trying to enact any control over the tour helicopter industry since they had been unable to do so after 25 years of trying". *SERIOUSLY??...*this has been an issue for 25 YEARS and nothing has been done to effectively control the helicopter tour industry? It is not a wonder we are in the desperate and out-of-balance position we are in now.

The tour helicopter operators hide behind and the FAA and its "preemptions". The HHA hosts galas to woo the FAA to their bidding. It is time to make a change to protect our sacred aina and island communities. Please help to enact legislation to control the tour helicopter industry that has gone amuck.

HOUSE COMMITTEE ON JUDICIARY
Representative Chris Lee, Chair
Representative Joy San Buenaventura, Vice Chair



HOUSE BILL 1907, PROPOSED HD2
TESTIMONY IN STRONG SUPPORT

Monday, February 24, 2020
State Capitol Conference Room 325
2:00 PM

Aloha Chair Lee, Vice Chair San Buenaventura and Committee Members:

House Bill 1907, Proposed HD2, Relating to Transportation, amends Aeronautics Section 261 of the Hawaii Revised Statutes to provide the following requirements in the greater public interest:

1. Commercial Helicopter Instrument Flight Rating Requirement

All persons who operate commercial helicopters in the State of Hawaii must have valid Instrument Flight Rating (IFR) from the Federal Aviation Administration (FAA), with any violation subject to penalties;

2. Helicopter Flight Reporting Requirements

A. Helicopter owners or operators shall submit monthly reports to the State Department of Transportation (DOT) and subject advisory committee for the county in which each helicopter departs and/or lands, including the description of each aircraft and number of occupants during each flight; the dates and times of departure and landing; the duration of flight and the flight route and altitudes for each flight undertaken, and explanation of any deviations from the flight plan; with failure to submit the report accordingly subject to penalties.

B. DOT shall publicly post the reports received on its website within one week following the report deadline.

The purpose of the above is 1) to ensure safer commercial helicopter flights, and 2) to provide necessary information to commercial helicopter stakeholders and the impacted communities to secure meaningful resolution to the significant concern of dangers associated with commercial helicopter crashes, together with flight safety, altitude, noise, and frequency concerns.

Instrument Flight Rating and Certification

The fact that tour helicopter operators fly without instrument flight certification and instrument flight rules cannot be ignored. Three recent multi-fatality tour helicopter crashes illustrate the glaring necessity for commercial helicopter operators to implement instrument flight rated (IFR) aircraft under Instrument Flight Rules, with their pilots certified for same:

- April 29, 2019 – a Novictor Helicopters tour helicopter crashed in downtown Kailua on O‘ahu, with three (3) fatalities;
- December 26, 2019 – a Safari Helicopters tour helicopter crashed into a Kaua‘i cliff face, with seven (7) fatalities including three (3) children;
- January 26, 2020 – an Island Express charter helicopter crashed in Southern California, with nine (9) fatalities including three (3) children.

These helicopters were operated by pilots using only visual flight rules (VFR) in overcast conditions.

If the registered commercial aircraft operators had been required to operate their helicopters by instrument flight rules with pilots certified for IFR operations, far less devastating outcomes would have been possible.

These emergency events are three (3) incontrovertible reasons why pilot instrument flight certification and implementation of instrument flight rules are absolutely necessary in adverse weather conditions that suddenly appear.

IFR compliance requirements attached to HRS 261 are consistent with FAR 14 CFR Part 61, §61.65:

**FAR 14 CFR Part 61 §61.65
Instrument Rating Requirements**

<https://www.law.cornell.edu/cfr/text/14/61.65>

(c) **Flight proficiency**. A person who applies for an instrument rating must receive and log training from an authorized instructor in an aircraft, or in a full flight simulator or flight training device, in accordance with paragraph (g) of this section, that includes the following areas of operation:

- (1) Preflight preparation
- (2) Preflight procedures
- (3) Air traffic control, clearances and procedures
- (4) **Flight by reference to instruments**
- (5) Navigation systems
- (6) Instrument approach procedures
- (7) **Emergency operations**
- (8) Postflight procedures

The IFR requirement, when included under Hawai'i Revised Statutes Section 261-12, will help ensure tour aircraft and operator compliance with federal regulations. IFR capability and certification for all air tour operations will not only best protect those in the air during sudden and unexpected inclement weather, but will dually serve to protect the larger public on the ground within the range of danger.

NTSB Video

<https://www.ktvu.com/video/648897>

“NTSB releases new video of helicopter crash site”

Crash Range Photo and FAA ATC ADS-B Video

<https://www.npr.org/2020/01/27/800100632/what-we-know-the-helicopter-crash-that-killed-kobe-bryant-and-8-others>

Flying in low clouds and fog . . . operating without IFR

Adverse weather conditions was a factor in the Kauai helicopter crash:

<https://www.staradvertiser.com/2020/01/16/hawaii-news/ntsb-says-adverse-weather>

How Many More? How Many Children?

<https://www.ktvu.com/video/648728>

Transparent Reporting of Helicopter Flights

It is entirely appropriate that the State Department of Transportation and their website should become the clearinghouse for comprehensive and clearly-defined monthly helicopter flight reports as required to be submitted by tour helicopter operators with specific information required for each helicopter flight undertaken. Additional recommendations relating to required information are underscored as follows:

- the FAA registered “N-number” of each aircraft, and verification of ADS-B compliance
note: certain tour helicopter operators have opted to replace their individual aircraft N-numbers with code numbers on the public flight tracking app FlightRadar24; for example all Schuman “Magnum” helicopters are coded “H500,” all Novictor helicopters are coded “R44;” Dorn K&S “Paradise” Bell helicopters are coded “B407”, etc., which precludes identification of the specific aircraft and ultimately enforcement of any violations, while the same tour helicopter operators have been known to deactivate their aircraft flight transponders during overflights;
- the flight altitudes of each flight from takeoff to landing, to include the altitudes over and distances from significant land forms, communities and natural reserves;
- the certified pilot of the aircraft on each flight, and the level of certification
note: many commercial helicopter pilots are not IFR-certified, which invites safety risks, miscalculations and fatalities in sudden adverse weather conditions;
- the number of individuals on each flight, and the number of safety devices and type of safety equipment on the subject aircraft;
- any other information deemed necessary or helpful for public and professional comparison, evaluation and analysis of tour helicopter flight operations.

Further, a neutral public website administered by the Department of Transportation with unaltered data is necessary for public transparency, and industry accountability that has been consistently absent.

County Advisory Committees

All counties in the State have been increasingly impacted by tour helicopter operations. Therefore community-based advisory committees for each county must be established by statute to ensure direct communication and collaboration with the State Airports Division, together with the local FAA Air Traffic Control Manager and Flight Standards District Managers; and to ensure transparency in the exchange of factual information, the definition of problems, and the determination of solutions.

The tour helicopter industry’s so-called self management and “self policing” have been ultimately ineffective with no signs of improvement over time. Instead, this insular industry should be publicly responsive to the serious community concerns and formal statements calling for safer conditions and stronger regulation due to continuing commercial helicopter crashes and emergencies:

- September 18, 2018- Novictor Robinson-44 crash in Wahiawa, O’ahu;
- October 22, 2018- Novictor Robinson-44 crash at Kaneohe Bay recreational sand bar;
- February 21, 2019- K&S “Paradise” Hughes-369E crash in Waipio Valley, Hawai’i Island;
- April 16, 2019- K&S “Paradise” Hughes-369E in Sacred Falls State Park, Oah’u;
- April 29, 2019- Novictor Robinson-44 crash with 3 fatalities on a Kailua town street;
- May 21, 2019- Schuman “Magnum” Hughes-369D emergency landing in Diamond Head National Natural Landmark and State Historic Monument crater park with 3,300 daily visitors;
- December 26, 2019 - Safari Eurocopter-AS350 crash with 7 fatalities on a Kauai cliff face near the Na Pali Coast.

Additionally in 2016, a fatal tour helicopter crash occurred near the USS Arizona memorial and Pearl Harbor nuclear submarine base.

<https://www.youtube.com/watch?v=1BdDmRijKjA>

Doors off, no flotation equipment, fatality of a 15-year-old boy

Despite all of the above, nothing has changed. The tour helicopter operators continue to fly whenever, however and wherever they wish in uncontrolled airspace.

We can no longer risk tour helicopters crashing and burning in Hawai'i's communities and neighborhoods or within protected natural reserves and coastal defense areas.

The people and communities throughout the islands of Hawai'i Nei are now relying on the State Legislature to effect change with a series of measures in 2020 that promise a reliable way forward toward resolution of this pervasive and threatening situation.

Thank you for considering the above support for House Bill 1907 Proposed HD2, and the related recommendations.

Respectfully,
Michelle S. Matson

O'ahu Tour Helicopter Safety and Noise Inter-Action Group
Diamond Head/Kapahulu/St. Louis Heights Neighborhood Board #5
DLNR Diamond Head Citizens Advisory Committee

Bruce Lum
99-546 Iwaiwa Street
Aiea, Hawaii 96701

February 23, 2020

HOUSE COMMITTEE ON JUDICIARY
THE 30TH LEGISLATURE
REGULAR SESSION OF 2020



RE: In strong support of House Bill 1907 HD2

Aloha kākou Chair Lee, Vice-Chair San Buenaventura
and committee members,

My name is Bruce Lum, I am a great grandfather, a registered voter, a homeowner, and a taxpayer residing in Aiea. I appreciate the opportunity to testify at this hearing.

Amidst a growing concern about the inadequate regulation of commercial air tours in Hawaii, U.S. Rep. Ed Case noted that 21 individuals were killed in Hawaii in three accidents in 2019 alone, which should “spark unanimous concern” for the basic safety of these operations.

I urge this honorable committee to also take up the torch to protect the public and visitors by acting to adopt HB1907 and send a hopeful message to all that Hawai‘i concurs with Rep. Ed Case’s [“Safe and Quiet Skies Act”](#) to address growing concerns about the inadequate regulation of commercial air tours in Hawaii.

Case’s proposed “Safe and Quiet Skies Act” would direct the Federal Aviation Administration (FAA), which has virtually exclusive jurisdiction over such aircraft, to adopt tighter safety recommendations long advanced by the National Transportation Safety Board (NTSB).

On December 26, 2019, an Airbus AS350 B2 helicopter operated by Safari Helicopters was destroyed by impact forces and a post-crash fire after striking a cliff face in Koke‘e. The crash killed all on board. Of the 7 killed, The NTSB report following the tragedy says adverse weather conditions was a factor in the Kaua‘i helicopter crash that killed 7.

The six passengers who died due to fatal injuries from the crash were identified as visitors from two families:

1. Sylvie Winteregg, 50, Christophe Winteregg, 49, Alice Winteregg, 13, and Agathe Winteregg, 10, of Switzerland
2. Amy Gannon, 47, and Jocelyn Gannon, 13, of Madison, Wis.

According to a preliminary report from the National Transportation Safety Board, it was in heavy rain and fog at the time the tour helicopter crashed into the cliff face on Kauai. “The weather at the closest official weather observation station — Barking Sands Pacific Missile

Bruce Lum
99-546 Iwaiwa Street
Aiea, Hawaii 96701

Range Facility — about 9 miles from the crash site, reported winds at 12 to 25 knots, 10 miles of visibility and broken clouds at an elevation of 3,400 and 4,700 feet.”

“The The helicopter had left Lihue Airport at 4:31 p.m. on Dec. 26 under **visual flight rules**, meaning **the pilot would fly based on sight without instruments**. It was the pilot’s eighth and last scheduled 50- minute aerial tour flight of the day. **The helicopter did not have flight tracking equipment on board**, so its exact flight path remains unknown.”

Robert Katz, a commercial pilot and certified flight instructor, said based on information in the report, it appeared the pilot encountered rapidly changing weather he was not qualified to handle.

Rep. Case expressed his personal dismay and concern by saying, “A pilot flying his eighth 50-minute tour in one day, without instrument certification and flying in a rough and variable terrain, rapidly changing weather environment, on visual flight rules only. According to a close-by witness and other observations, probably in ‘20 ft visibility in rain and fog.’ No flight tracking equipment aboard.”

In the decades of growing aerial tours on all islands it has been a decade’s norm for commercial tour pilots to fly by visual flight rules (flying based on sight without instruments) as many pilots learned to do during the Vietnam War. Very necessary and acceptable during war, but this practice is not necessary or acceptable during peace time.

“Following these recent tragedies in Kailua and at Dillingham Air Field, which are not isolated instances nationally, the NTSB, which is responsible for investigating accidents but not for direct safety regulation, strongly suggested to the FAA that safety-related regulation of commercial tour helicopters and small aircraft skydiving operations is generally insufficient. Clearly the FAA should now follow the NTSB’s lead before any more lives are lost.”

“These tragedies occurred amidst a rapid increase in commercial helicopter and small plane overflights of all parts of Hawai’i including residential, commercial and industrial neighborhoods, cemeteries and memorials, land and marine parks and other recreation areas, and sensitive military installations. These have disrupted whole communities with excessive noise and other impacts, destroyed the peace and sanctity of special places, increased risk to not only passengers but those on the ground, and weakened security and management of defense operations.”

“This current situation is not acceptable for both safety and community impact concerns. Regarding ground disruption and risk, the FAA takes the position that its responsibility is strictly operational safety and national airspace efficiency and does not extend to ground disruption and other negative impacts.”

“As a result, the operators, aside from strict takeoff and approach, avoidance of established flight paths and other limited circumstances, are virtually free to fly wherever, whenever and as often as they want. And they do, with little to no self-regulation.”

Bruce Lum
99-546 Iwaiwa Street
Aiea, Hawaii 96701

Case noted 21 individuals were killed in Hawaii in three accidents in 2019 alone, which should “spark unanimous concern” for the basic safety of these operations.

“Yet the air tour helicopter and small aircraft industry buries its head in the sand, claims all is well and refuses to acknowledge any concern or need to change, compounded by the Federal Aviation Administration, which is supposed to be ensuring safety, claiming that there is no reason to suspect any general industry concern,” he said. “The tragedy is not only the loss of life but the industry’s position ... an open invitation to further tragedies that very well might strike not only those in the air (but) the million-plus on the ground that they fly over repeatedly every day.”

I have lived in my Aiea home for over 58 years and the tour aircraft flying directly over my house has increased from a handful of military helicopters and occasional emergency aircraft over the first 27 years. The present commercial aircraft and helicopter count is as high as 20/hr from 6:45a to 7:45p every day. That means 260 total aircraft over my house from just one of 3 flight tracks daily during the summer. My estimate of an average number of commercial aircraft over my house is 300 to 320 per day, every day, coming from a minimum 3 tracks daily.

In conclusion, I strongly support House Bill 1907 HD2 and urge your committee’s adoption of this Bill today.

Mahalo for your kind attention.

Bruce Lum

HB-1907-HD-1

Submitted on: 2/24/2020 6:59:53 AM

Testimony for JUD on 2/24/2020 2:00:00 PM



Submitted By	Organization	Testifier Position	Present at Hearing
Dan Brown	Individual	Support	Yes

Comments:

I fully support HB 1907 - these measures will ensure the safe operation of tour helicopter companies in the state of Hawaii. The FAA can not be trusted to ensure safe compliance of rules governing the skies above our homes and communities and the lives of those who choose to fly in unsafe tour helicopters. 35 crashes and 45 deaths since the year 2000 testify to the lack of oversight on these companies. The crash in Kailua last April 2019 illustrates the danger to the communities of Hawaii - miraculously no one was killed on the ground. I urge you to support this bill and forward it for approval - Thanks - Dan Brown

I own a home in Kailua on Oahu and jointly own 10 acres on mountain above Kona on Hawaii Island - both are subject to tour helicopter overflights daily.

HB-1907-HD-1

Submitted on: 2/24/2020 8:37:23 AM

Testimony for JUD on 2/24/2020 2:00:00 PM



Submitted By	Organization	Testifier Position	Present at Hearing
Sharlene Chun Lum	Individual	Support	No

Comments:

I submitted testimony earlier for HB 1907 and I would like to voice my support for the proposed HB1907 HD2. The reporting feature added makes for better data and accountability.

Please adopt this HD2 version.

Mahalo for your actions to make both the industry and our communities better.

LATE

HB-1907-HD-1

Submitted on: 2/24/2020 9:29:35 AM

Testimony for JUD on 2/24/2020 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Claudine Tomasa	Kailua Neighborhood Board #31	Support	No

Comments:

Testimony in Support of Proposed HB1907HD1 Relating to Transportation -Commercial Helicopters; Operation; Instrument Rating; Penalty

Aloha Chair Chris Lee, Vice Chair Joy Buenaventura and members of the House Committee on Judiciary.

My name is Claudine Tomasa I am a member of the Kailua Neighborhood Board #31 and I Chair the Committee on Public Safety Public Health and Civil Defense.

I am testifying in support of HB1907 HD1 which Prohibits the operation of a helicopter for commercial purposes without a valid instrument rating from the Federal Aviation Administration. Subject both a violating individual and an individual's employer to penalties. Effective 7/1/2050. (HD1)

The increased regulation serves to protect the safety of passengers and aircrew of commercial/tour helicopters as well as **protecting the safety of people and property on the ground.**

HB1907HD1 will also ensure that commercial/tour helicopter pilots have the ability to make safe decisions when flying in weather conditions below the visual flight rules, specifically in areas like Windward Oahu with uneven terrain and constant weather change.

On April 29, 2019, Kailua experienced a fatal tour helicopter crash on Oneawa Street - the third tour helicopter crash in the Windward Oahu area within a six month period between October 28, 2019 and April 29, 2019. Many community members expressed serious concerns about public safety for people on the ground. Subsequently the Kailua Neighborhood Board formed a Subcommittee on Low Flying Helicopter Flights Over Kailua; and on September 5, 2019, the entire Kailua Neighborhood Board passed a Resolution Relating to Public Safety and Urgency To Support Stringent Regulations and Enforcement of Tour Aircraft Operations Over Kailua. Copies of the Resolution were distributed to our Elected Federal, State, and City Representatives.

In the interest of Public Safety, I urge members of the Judiciary Committee to support and pass HB1907HD1. Thank you for allowing me to testify in support of this Bill.

DENNIS ODA / DODA@STARADVERTISER.COM Investigators inspect the helicopter wreckage on Oneawa Street near Nowela Place in Kailua on April 30, 2019.





**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2020**

ON THE FOLLOWING MEASURE:

H.B. NO. 1907, PROPOSED H.D. 2, RELATING TO TRANSPORTATION.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

LATE

DATE: Monday, February 24, 2020 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Clare E. Connors, Attorney General, or
Michael Q.Y. Lau, Deputy Attorney General

Chair Lee and Members of the Committee:

The Department of the Attorney General offers the following comments on this bill.

The purpose of this bill is to prohibit someone from operating a helicopter for commercial purposes if the person does not possess a valid instrument rating from the Federal Aviation Administration (FAA). The failure to comply with this requirement would subject the helicopter operator and the operator's employer to a misdemeanor charge.

The bill is subject to an air safety preemption challenge. The FAA was established to create a uniform and exclusive system of federal regulation in the field of air safety. *Air Trans. Ass'n of Am., Inc. v. Cuomo*, 520 F.3d 218, 224 (2d Cir. 2008). The FAA was created by Congress for the purpose of centralizing in a single authority the power to frame rules for the safe and efficient use of the nation's airspace. *Id.* Congress intended to occupy the entire field of air safety and field preemption applies to the area of air safety. *Goodspeed Airport LLC v. E. Haddam Inland Wetlands & Watercourses Comm'n*, 634 F.3d 206, 210 (2d Cir. 2011). Once Congress's intent is established, the court must look to the scope of the preemption to determine whether the state regulation sufficiently interferes with a federal regulation such that it should be deemed preempted. *Gade v. Nat'l Solid Wastes Mgmt. Ass'n*. 505 U.S. 88, 107 (1992).

The bill does not seek to enforce existing FAA regulations. Instead, section 1 on page 1, lines 5-12, would create a new, state-based requirement for commercial helicopter pilots and subject the pilot as well as the pilot's employer to a criminal penalty (assuming the employer is a natural person – a misdemeanor could not be assessed against a business entity). This is contrary to having a uniform and exclusive system of federal regulation in the field of air safety because the State would also be regulating the qualifications of commercial helicopter pilots operating within the State.

In addition, there is a federal grant assurance problem. The Airports and Airways Improvements Act of 1982, codified at 49 United States Code § 47107(a)(1), requires that airports receiving federal grant money must “be available for public use on reasonable conditions and without unjust discrimination.” See *R/T 182, LLC v. F.A.A.*, 519 F.3d 307, 309 (6th Cir. 2008). The state airport system has received federal grant money. The bill is discriminatory because it would require that in order to operate within the State, commercial helicopter pilots would be required to have a valid instrument rating from the FAA, whereas there is no such requirement for non-commercial helicopter pilots or fixed wing pilots.

Thank you for the opportunity to comment on this bill.