

Senate Committee on Ways and Means
Senator Donovan M. Dela Cruz, Chair
Senator Gilbert S. C. Keith-Agaran, Vice Chair

Decision-Making
Thursday, April 1, 2021
9:30 AM

House Bill 434, S.D 1
Relating to Tour Aircraft

Aloha Chair Dela Cruz, Vice Chair Keith-Agaran and Committee Members:

Excessive aircraft noise compromises the health and well-being of the Hawaii 's people, and statutory remedies are long overdue. State Legislation must ensure significant safety protection and quality of life relief to thousands of suffering citizens in Hawai'i, particularly on O'ahu and Hawai'i Island as well as Kaua'i and Maui.

Tour helicopters have been increasingly inundating and impacting established communities with incessant noise invasion. The crescendo of island-wide community complaints across the State over the past four years has demonstrated this. Despite this public outcry, tour helicopter operators have been unwilling to change their flight paths to prevent the significant negative effects of helicopter noise within and around these impacted communities.

Further, tour helicopters are an inherent safety risk to Hawaii's island communities, natural habitats and coastal defense areas. The following commercial helicopter crashes and emergencies have occurred in Hawai'i since September 2018:

- 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 crash in Sacred Falls State Park, Hau'ula, Oah'u;
- April 29, 2019- Novictor Robinson-44 crash with 3 fatalities on a Kailua town street;
- May 21, 2019- Schuman "Magnum" 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;
- March 5, 2020 - Blue Hawaiian Eurocopter 130 crash in Puna, Hawai'i Island;

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

House Bill 434, SD 1

Costs of Doing Business

The Proposed Senate Draft for House Bill 434 serves to defer all responsibilities for the public's safety to the Insurance Industry. Thus this measure is lightly engineered to avoid stepping on tour aircraft operators' delicate toes and thumping footprints that egregiously impact Hawaii's communities and natural resources, flying wherever, however and whenever desired into and through National and State Monument Parks; over residential rooftops, public parks and shoreline beaches; and through protected forest reserves and natural habitat areas.

Will it then be that the Insurance Industry will require tour helicopter safety flotation equipment attached to the aircraft for their unavoidable stretches over water from HNL to Diamond Head, and from Hawaii Kai to Waimanalo? Is there a provision in the State insurance code to require this, or has it yet to be enacted?

Will it then be that the Insurance Industry will require tour helicopters to be instrument-flight rated (IFR) for flying in Hawai'i's sudden inclement weather, and equipped with certified instrumentation and IFR-certified pilots, who are not merely tour guides? Is there a provision in the State's insurance code to require this, or has it yet to be enacted?

Helicopter instrument rating certification and pilot flight instrument certification requirements are essential for all tour helicopter operations on each island when inclement weather conditions that cannot be avoided arise, as per the following recent fatal tour helicopter crashes:

- April 29, 2019 – a Novictor Helicopters tour helicopter crashed in downtown Kailua on O'ahu, with three (3) fatalities; and
- December 26, 2019 – a Safari Helicopters tour helicopter crash into a Kaua'i cliff face, with seven (7) fatalities including three (3) children.

Will the State of Hawaii be assured as Additionally Insured on each tour aircraft operator's Certificate of Insurance in order to recover public damages following such catastrophes?

Together with the Insurance Industry, should not the State Tax Division also separately benefit from retrieving the lost State Excise Tax revenue presently not required to be paid by these businesses that fly separately within an individual island's territory? Surely this would not be a hardship for the frail tour aircraft operators, who would simply pass the additional cost on to their customers as they would their insurance increase, with the added benefit of claiming these costs of doing business on their \$5 million annual gross income tax returns?

Permit Reporting Requirements

The House Bill 434, SD1 serves to establish specific reporting requirements for each tour aircraft operator seeking annual State permits for tour aircraft operations using State land and facilities. However, the annual permitting requirement for the reporting of each tour flight taken must stipulate that these reports must be provided to the State Department of Transportation Airports Division (DOT-A) MONTHLY - not "annually," which would be an unduly burdensome and untimely task for DOT-A or any contractor to make available to the public as required.

Additionally, ground permitting regulations inclusive of clear reporting requirements to protect Hawai'i's people on the ground must be supported by consistent enforcement and penalties for non-compliance and repeated violations. No longer can this be excused as a difficult task with such new technology as apps that anyone can use to detect the maverick flights. Presently tour helicopter operators fly wherever, however and whenever desired, opting to submit only loose sketches of anticipated flight paths to DOT-A.

To ensure enforcement, accurate and timely reports from the now necessary DOT-A public reporting and records website must be submitted to the local FAA Flight Standards District Office for enforcement purposes. The State airport ground and facilities use permits and associated ground impact control violations penalties can then assist in funding the independent and accurate public monitoring and reporting system.



March 31, 2021

To: COMMITTEE ON WAYS AND MEANS
Senator Donovan M. Dela Cruz, Chair
Senator Gilbert S.C. Keith-Agaran, Vice Chair

NOTICE OF DECISION MAKING
DATE: Thursday, April 1, 2021
TIME: 9:30AM
PLACE: Conference Room 211 & Videoconference

LATE

From: Casey Riemer, Special Projects Manager
Jack Harter Helicopters

Subject: HB434 RELATING TO AIRCRAFT

Bill Description: Requires the Director of Transportation to adopt rules to require tour aircraft operators to have commercial general liability insurance coverage of at least \$10,000,000 and to report details of each flight taken by the tour aircraft operation in order to renew a tour aircraft operation permit. Effective 1/1/2050. (SD1)

Aloha,

We oppose HB434 SD1 because language in the bill changes Hawaii Revised Statute 261-12 in a manner that would place the State of Hawaii in violation of the Federal Grant Assurances.

We just learned about the amended version of HB434 moving through the legislature. This bill was originally focused on non-commercial aviation and was recently amended and refocused on air tour operations. The last-minute change of this bill seems very disingenuous and has limited many concerned Hawaii residents in their ability to learn about the contents of the bill, formulate an opinion about it, and to submit testimony. The effective date of the bill being January 1, 2050 is quite suspicious too.

The new language in HB434 includes a \$10,000,000 insurance coverage requirement and air tour reporting requirements. It is our position that the requirements on air tour operators in HB434 that are not imposed upon other operators that use HI DOT airports violates Paragraph 22 of the Federal Grant Assurances. Requiring air tour operators to have insurance limits not imposed on other types of operations and requiring tour operators to generate and make available reports on all tour operations, but not requiring similar reports of any other type of operation is unjustly discriminatory.

Additionally, HRS261-12 in its current form, established the Air Tour Permit that all air tour operators in Hawaii have been subject to for as long as I can remember. HRS261-12 requires all air tour operators to operate under a list of requirements in HRS261-12, Paragraph (b) that are not required of

other operators at HI DOT airports. This opens the State of Hawaii up to FAA Part 16 complaints from air tour operators. We feel it is pertinent for the Hawaii state legislature, HI DOT and FAA Airports to look at the Air Tour Permit required by HRS261-12 in its entirety because it is our opinion that it violates the Federal Grant Assurances.

Some of the amended language in HB434 SD1 came from SB1403. We submitted testimony earlier this year in opposition to SB1403. We included the following quotes from testimony on SB1403 from the State of Hawaii, Attorney General's office and from the Hawaii Department of Transportation. While we have not seen any testimony from either of these entities related to HB434 SD1, we are of the opinion that any testimony they submit would be similar to what they have previously submitted on this subject.

1: In the written testimony submitted for this bill, Mr. Duane M. Kokesch, Deputy Attorney General from the State of Hawaii, Department of Attorney General wrote,

"...We believe that these record requirements would be subject to challenge under the Supremacy Clause of the U.S. Constitution.

"Article VI, Clause 2, of the U.S. Constitution indicates that the federal constitution and federal laws made pursuant thereto are the supreme law of the land and contrary laws of a state may not stand. If the state law falls within or involves the "use of airspace," Congress has explicitly preempted it. 49 U.S.C. § 40103(a)(1)(1994)."...

2: The State of Hawaii, Department of Transportation, under the letterhead of Director Butay, submitted written testimony regarding SB1403 regarding the Federal Grant Assurances,

"The Department of Transportation (DOT) appreciates the intent of this bill which is aimed to improve helicopter safety by requiring helicopter operators to report flight operation data.

"While flight data may assist in helicopter safety, DOT cannot single out helicopter operations and force this single entity to provide flight information. This is a violation of Federal Grant Assurances No. 22."

The very real consequences that would result from the passage of this bill would be extremely costly for the State of Hawaii. The preemption of the US Constitution would result in tremendous legal fees for the State of Hawaii. The Federal Grant Assurance violation(s) would put the grant funding from the Federal Airports Grant Program received by the Department of Transportation, Airports Division in grave jeopardy.

Respectfully Submitted,





March 31, 2021

LATE

To: COMMITTEE ON WAYS AND MEANS
Senator Donovan M. Dela Cruz, Chair
Senator Gilbert S.C. Keith-Agaran, Vice Chair

NOTICE OF DECISION MAKING
DATE: Thursday, April 1, 2021
TIME: 9:30AM
PLACE: Conference Room 211 & Videoconference

From: Hawaii Helicopter Association
Christopher Riemer, Board Member & President
Calvin Dorn, Board Member & Treasurer
Doug Froning, Board Member & Secretary
Paul Morris, Board Member

Subject: HB434 RELATING TO AIRCRAFT

Bill Description: Requires the Director of Transportation to adopt rules to require tour aircraft operators to have commercial general liability insurance coverage of at least \$10,000,000 and to report details of each flight taken by the tour aircraft operation in order to renew a tour aircraft operation permit. Effective 1/1/2050. (SD1)

Aloha,

We oppose HB434 SD1 because language in the bill changes Hawaii Revised Statute 261-12 in a manner that would place the State of Hawaii in violation of the Federal Grant Assurances.

HB434 SD1 was originally focused on non-commercial aviation and was recently amended and refocused on air tour operations. Because of this last-minute change, our members were not aware of the bill and the effects it could have on their companies until today. They feel that they were not permitted to fully engage in the legislative process because of the manner that this bill was changed at the last minute.

The new language in HB434 SD1 includes a \$10,000,000 insurance coverage requirement and air tour reporting requirements. It is our position that the requirements on air tour operators in HB434 SD1 violates Paragraph 22 of the Federal Grant Assurances. Requiring air tour operators to have insurance limits not imposed on other types of operations and requiring tour operators to generate and make available reports on all tour operations, but not requiring similar reports of any other type of operation is unjustly discriminatory.

Additionally, HRS261-12 in its current form, established the Air Tour Permit that all air tour operators in Hawaii have been subject to for as long as I can remember. HRS261-12 requires all air tour operators to operate under a list of requirements in HRS261-12, Paragraph (b) that are not required of other operators at HI DOT airports. This opens the State of Hawaii up to FAA Part 16 complaints from air tour operators. We feel it is pertinent for the Hawaii state legislature, HI DOT and FAA Airports to look at the Air Tour Permit required by HRS261-12 in its entirety because it is our opinion that it violates the Federal Grant Assurances.

We reviewed other bills with similar language like SB1403 earlier this year. We saw in the testimony from the State of Hawaii, Attorney General's office and from the Hawaii Department of Transportation that they both opposed the previous bills. Excerpts from their testimony is quoted below,

1: In the written testimony submitted for this bill, Mr. Duane M. Kokesch, Deputy Attorney General from the State of Hawaii, Department of Attorney General wrote,

"...We believe that these record requirements would be subject to challenge under the Supremacy Clause of the U.S. Constitution.

"Article VI, Clause 2, of the U.S. Constitution indicates that the federal constitution and federal laws made pursuant thereto are the supreme law of the land and contrary laws of a state may not stand. If the state law falls within or involves the "use of airspace," Congress has explicitly preempted it. 49 U.S.C. § 40103(a)(1)(1994)."...

2: The State of Hawaii, Department of Transportation, under the letterhead of Director Butay, submitted written testimony regarding SB1403 regarding the Federal Grant Assurances,

"The Department of Transportation (DOT) appreciates the intent of this bill which is aimed to improve helicopter safety by requiring helicopter operators to report flight operation data.

"While flight data may assist in helicopter safety, DOT cannot single out helicopter operations and force this single entity to provide flight information. This is a violation of Federal Grant Assurances No. 22."

One thing that is very puzzling about HB434 SD1 is the January 1, 2050 effective date. Can someone explain why this date is so far out in the future? This makes no sense.

We urge this committee and the rest of the Hawaii State Legislature to defer action on this bill. It was poorly conceived and would be costly to the State of Hawaii if it were to become law.

Respectfully Submitted,

Christopher Riemer
Calvin Dorn
Doug Froning
Paul Morris



April 1, 2021

The Honorable Donovan M. Dela Cruz
Chair, Senate Committee on Ways and Means
Hawai'i State Capitol, Room # 211
415 S. Beretania Street Honolulu, HI 96813

Dear Senator Cruz and members of the committee:

Thank you for the opportunity to comment regarding HB 434, relating to aircraft. The Aircraft Owners and Pilots Association (AOPA) and Helicopter Association International (HAI) jointly oppose HB 434. Our combined organizations represent over 350,000 general aviation pilots and vertical flight professionals, including over 1,000 members in Hawai'i. We oppose HB 434, legislation that would require tour operators to have commercial general liability insurance coverage of at least \$10,000,000 and to report details of flights taken by tour aircraft operators in order to renew the state's tour aircraft operation permit.

Legislative Process Concerns

HB 434 was originally introduced to establish a non-commercial aircraft landing and storage fee and use those moneys to off-set the current budget deficit. Both the House Committee on Transportation and Finance heard and passed HB 434. On March 23, the Senate Transportation Committee amended the bill with a complete rewrite changing the intent and purpose of the bill. The new language has not been given proper consideration by relevant committees nor has there been adequate review and analysis by the public and stakeholders. Having HB 434 SD 1 continue through the final steps in the legislative process when it was completely rewritten in the last few weeks of the session is objectionable.

Unintended Consequences of Flight Path Disclosure

AOPA and HAI are concerned with the bill's language on reporting deviations, which would be unreasonably burdensome and serves no purpose to enhance safety of air tour operations. Section 1 subsection (9) (c) and (d) call for disclosure of the flight path from takeoff through landing and reporting if the aircraft deviated from its intended flight path. Knowing a deviation must be reported and could result in retribution creates a perceived pressure on pilots that most certainly increase safety risks to the aircraft crew and passengers. A pilot in command has the right to deviate at any time to ensure the safety and wellbeing of the passengers of the aircraft without fear of retribution.

Federal Funding at Risk

HB 434 as amended requires tour operators to provide written reports on flight paths and verification of general liability insurance coverage. Requiring insurance that is not readily available at a reasonable cost to operators as well as creating requirements on air tour operators that are not imposed upon other operators would be deemed by the Federal Aviation Administration (FAA) as a violation of the

federal grant assurances the state agreed upon prior to accepting federal Airport Improvement Program funds. It is critical as this bill is being discussed, members of the committee understand that if the state is in conflict and violates federal statutes and the FAA's policy, the state would be found in non-compliance of grant assurances, putting the entire airport system at risk of losing millions of dollars in annual federal funding.

AOPA and HAI seek to serve as a resource to the Hawaii State Legislature on issues pertaining to the aviation industry and strive to find solutions that can address all stakeholders. We urge the state to find more appropriate avenues to address their concerns that do not violate FAA policy or carry unintended safety consequences.

Respectfully,



Melissa McCaffrey
Government Affairs, Western Pacific Region
Aircraft Owners and Pilots Association



Cade Clark
Vice President of Government Affairs
Helicopter Association International



April 1, 2021

The Honorable Donovan M. Dela Cruz
Chair, Senate Committee on Ways and Means
Hawai'i State Capitol, Room # 211
415 S. Beretania Street Honolulu, HI 96813

Dear Senator Cruz and members of the committee:

Thank you for the opportunity to comment regarding HB 434, relating to aircraft. The Aircraft Owners and Pilots Association (AOPA) and Helicopter Association International (HAI) jointly oppose HB 434. Our combined organizations represent over 350,000 general aviation pilots and vertical flight professionals, including over 1,000 members in Hawai'i. We oppose HB 434, legislation that would require tour operators to have commercial general liability insurance coverage of at least \$10,000,000 and to report details of flights taken by tour aircraft operators in order to renew the state's tour aircraft operation permit.

Legislative Process Concerns

HB 434 was originally introduced to establish a non-commercial aircraft landing and storage fee and use those moneys to off-set the current budget deficit. Both the House Committee on Transportation and Finance heard and passed HB 434. On March 23, the Senate Transportation Committee amended the bill with a complete rewrite changing the intent and purpose of the bill. The new language has not been given proper consideration by relevant committees nor has there been adequate review and analysis by the public and stakeholders. Having HB 434 SD 1 continue through the final steps in the legislative process when it was completely rewritten in the last few weeks of the session is objectionable.

Unintended Consequences of Flight Path Disclosure

AOPA and HAI are concerned with the bill's language on reporting deviations, which would be unreasonably burdensome and serves no purpose to enhance safety of air tour operations. Section 1 subsection (9) (c) and (d) call for disclosure of the flight path from takeoff through landing and reporting if the aircraft deviated from its intended flight path. Knowing a deviation must be reported and could result in retribution creates a perceived pressure on pilots that most certainly increase safety risks to the aircraft crew and passengers. A pilot in command has the right to deviate at any time to ensure the safety and wellbeing of the passengers of the aircraft without fear of retribution.

Federal Funding at Risk

HB 434 as amended requires tour operators to provide written reports on flight paths and verification of general liability insurance coverage. Requiring insurance that is not readily available at a reasonable cost to operators as well as creating requirements on air tour operators that are not imposed upon other operators would be deemed by the Federal Aviation Administration (FAA) as a violation of the

federal grant assurances the state agreed upon prior to accepting federal Airport Improvement Program funds. It is critical as this bill is being discussed, members of the committee understand that if the state is in conflict and violates federal statutes and the FAA's policy, the state would be found in non-compliance of grant assurances, putting the entire airport system at risk of losing millions of dollars in annual federal funding.

AOPA and HAI seek to serve as a resource to the Hawaii State Legislature on issues pertaining to the aviation industry and strive to find solutions that can address all stakeholders. We urge the state to find more appropriate avenues to address their concerns that do not violate FAA policy or carry unintended safety consequences.

Respectfully,



Melissa McCaffrey
Government Affairs, Western Pacific Region
Aircraft Owners and Pilots Association



Cade Clark
Vice President of Government Affairs
Helicopter Association International

HB-434-SD-1

Submitted on: 3/29/2021 11:03:25 AM

Testimony for WAM on 4/1/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
John D. Smith	Individual	Support	No

Comments:

I support