



**WRITTEN TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY-FIRST LEGISLATURE, 2021**

ON THE FOLLOWING MEASURE:

H.B. NO. 434, RELATING TO AIRCRAFT.

BEFORE THE:

HOUSE COMMITTEE ON TRANSPORTATION

DATE: Friday, February 12, 2021 **TIME:** 10:00 a.m.

LOCATION: State Capitol, Room 423, Via Videoconference

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**
(For more information, contact Reuel S. Toyama,
Deputy Attorney General, at 587-2997)

Chair Aquino and Members of the Committee:

The Department of the Attorney General provides the following comments regarding this bill.

This bill imposes non-commercial aircraft landing fees and non-commercial storage fees, and deposits these proceeds into the general fund.

This raises a potential issue with federal law, 49 U.S.C. § 47107(b)(1), which provides that “revenues generated by a public airport will be expended for the capital or operating costs of -- (A) the airport; (B) the local airport system; or (C) other local facilities which are owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property.” Depositing these funds into the general fund appears to constitute a diversion of airport revenue to nonaeronautical uses. The Federal Aviation Administration (FAA) is statutorily mandated to ensure that airport owners and operators comply with federal grants and violation of grant assurances may result in consequences including and not limited to FAA action to withhold grants, assess civil penalties, and seek judicial enforcement of grant assurances. Airport moneys can only be used for airport purposes.

There is a related provision in state law. Section 261-5(a), Hawaii Revised Statutes (HRS), provides in relevant part:

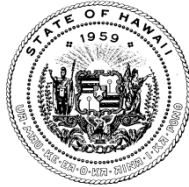
[A]ll moneys received by the department from rents, fees, and other charges collected pursuant to this chapter, as well as all aviation fuel taxes paid pursuant to section 243-4(a)(2), shall be paid into the airport revenue fund created by section 248-8.

All moneys paid into the airport revenue fund shall be appropriated, applied, or expended by the department for any purpose within the jurisdiction, powers, duties, and functions of the department related to the statewide system of airports, including, without limitation, the costs of operation, maintenance, and repair of the statewide system of airports and reserves therefor.

To avoid violation of federal law and inconsistency with section 261-5(a), we recommend that subsection (d) of the new HRS section relating to the non-commercial aircraft landing fee in section 2 on page 3, lines 9-10, of the bill be amended to have the fees deposited into the "airport revenue" fund instead of the "general" fund. Similarly for subsection (d) of the new HRS section relating to the non-commercial aircraft storage fee in section 2 on page 4, lines 7-8, of the bill, we recommend the reference to "landing" fees be corrected to "storage" fees and that the "storage" fees be deposited into the "airport revenue" fund instead of the "general" fund.

We respectfully ask the Committee to make the recommended amendments before passing this bill.

DAVID Y. IGE
GOVERNOR



TESTIMONY BY:

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VIA VIDEOCONFERENCE

H.B. 434
RELATING TO AIRCRAFT

House Committee on Transportation

The Department of Transportation (DOT) – Airports Division **opposes** H.B.434 to establish a non-commercial aircraft landing fee and non-commercial aircraft storage fee and directs proceeds from these fees into the general fund.

Non-commercial entities already pay a landing fee at DOT-Airports. Any fees collected are considered airport revenues and must be used for airport purposes. Under the FAA Grant Assurances, the money cannot be used for general fund purposes.

Thank you for the opportunity to provide testimony.



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February 11, 2021

The Honorable Henry Aquino
Chair, House Committee on Transportation
Hawai'i State Capitol, Room # 419
415 S. Beretania Street
Honolulu, HI 96813

Dear Representative Aquino 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) is the world's largest aviation organization and represents the general aviation interests of over 1,000 members in Hawai'i. AOPA strongly opposes HB 434, legislation that would establish a non-commercial aircraft landing fee and non-commercial aircraft storage fee and use those moneys to off-set the current budget deficit.

Violation of 49 U.S. Code and FAA Policy on Use of Airport Revenue

Notwithstanding the State's budget deficit concerns, the provisions of HB 434 are in direct conflict with 49 U.S. Code § 47107(b) which governs authorized use of airport revenue. Generally speaking, the revenue-use requirement directs public airport owners and operators to "use all revenues generated by the airport for the capital or operating costs of the airport, the local airport system, or other local facilities directly related to the actual transportation of passengers or property". Imposing fees on non-commercial aircraft and depositing those fees into the general fund as stated in HB 434 would constitute revenue diversion and would be deemed by the FAA to be a violation of the grant assurances the State agreed to prior to accepting federal Airport Improvement Program funds.

Federal Funding at Risk

The State of Hawai'i, through the Department of Transportation, manages all airports in the state and bears responsibility to comply with FAA policy and obligations to be in good standing and receive FAA 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 as discussed above, the state would likely be found in non-compliance of the grant assurances, putting the entire airport system at risk of losing millions of dollars in annual federal funding from the FAA.

AOPA urges the State to find more appropriate avenues to address their budget that do not violate FAA policy or put all the state's airports at risk of losing FAA funds. If you have questions or require additional information, please contact me directly at 301-695-2228 or Melissa.McCaffrey@aopa.org

Respectfully,

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