



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2024**

ON THE FOLLOWING MEASURE:

S.C.R. NO. 106 AND S.R. NO. 88, URGING THE DEPARTMENT OF HEALTH, DEPARTMENT OF TRANSPORTATION, AND DEPARTMENT OF LAND AND NATURAL RESOURCES TO TAKE ACTION TO REDUCE THE CARBON EMISSIONS ARISING FROM AIRPLANE TRANSPORTATION TO AND FROM THE STATE.

BEFORE THE:

SENATE COMMITTEES ON TRANSPORTATION AND CULTURE AND THE ARTS AND ON AGRICULTURE AND ENVIRONMENT

DATE: Thursday, March 28, 2024 **TIME:** 3:00 p.m.

LOCATION: State Capitol, Room 224 and Videoconference

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Lyle T. Leonard, Deputy Attorney General

Chairs Lee and Gabbard and Members of the Committees:

The Department of the Attorney General provides the following comments.

The purpose of these resolutions is to urge the Department of Health, Department of Transportation, and the Department of Land and Natural Resources (the Departments) to: (1) take action to reduce the carbon emissions arising from airplane transportation to and from the State (SCR page 2, lines 16-20; SR page 2, lines 12-15); and (2) develop proposals to submit to the Legislature and the Governor forty days or more prior to the beginning of the Regular Session of 2025 (SCR page 2, lines 22-28; SR page 2, lines 17-23).

Under the Supremacy Clause, article VI, paragraph 2, of the U.S. Constitution, state law is subordinate to federal law. Some of the actions requested of the Departments in the proposed resolutions may conflict with the federal Clean Air Act (CAA) if they became law. The CAA provides that:

No State or political subdivision thereof may adopt or attempt to enforce any standard respecting emissions of any air pollutant from any aircraft or engine thereof unless such standard is identical to a standard applicable to such aircraft under this part.

42 U.S.C. § 7573.

In addition, the resolutions suggest that the Departments could take actions that may conflict with the federal Airline Deregulation Act (ADA). The ADA provides that:

Except as provided in this subsection, a State, political subdivision of a State, or political authority of at least 2 States may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of an air carrier that may provide air transportation under this subpart.

49 U.S.C. § 41713(b)(1).

The resolutions provide that the State may take action by “requiring airlines operating in the State to use technology which has a lower carbon output” (SCR page 2, lines 5-6; SR page 2, lines 1-2) or by “adjusting the number of visitors coming to the State” (SCR page 2, line 4-5; SR page 1, line 34, to page 2, line 1). Such requirements on airlines or attempts to limit the numbers of visitors by the Departments may be preempted as they apply either to emissions of the aircraft directly and/or price, route, or service of the air carrier.

Thank you for the opportunity to provide comments.