
A BILL FOR AN ACT

RELATING TO ADMINISTRATIVE RULES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the delegation of
2 authority to agencies to implement policies, and the adoption of
3 administrative rules by these agencies, helps ensure that
4 policies are clearly understood, fairly applied, and uniformly
5 enforced. The legislature finds that administrative rules must
6 not impose excessive, unreasonable, or unnecessary obligations,
7 for to do so discredits government, makes enforcement of
8 essential regulations more difficult, and detrimentally affects
9 the State's economy and the well-being of its citizens.

10 The purpose of this Act is to improve the administrative
11 rulemaking process by:

12 (1) Requiring agencies to apply more rigorous analysis of
13 the effects of proposed administrative rules prior to
14 their adoption, amendment, or repeal;

15 (2) Requiring the notice of public hearing to include a
16 statement of the reasonable necessity of the proposed
17 rulemaking action; and



1 (3) Requiring the attorney general to review and approve
 2 administrative rules proposed by state agencies prior
 3 to their adoption, amendment, or repeal.

4 SECTION 2. Section 91-2.5, Hawaii Revised Statutes, is
 5 amended by amending subsection (a) to read as follows:

6 "(a) Notwithstanding any law to the contrary, each agency
 7 may charge up to a maximum fee of ten cents per page, plus the
 8 actual costs of mailing, for the reproduction of paper copies of
 9 the following:

- 10 (1) Proposed and final rules, whether new rules, amended
 11 rules, or repealed rules, in any format; and
- 12 (2) Notices of proposed rulemaking actions pursuant to
 13 section [~~91-3(a)(1)~~] 91-3(a)(2).

14 This section shall not apply to the reproduction by the office
 15 of the lieutenant governor of other agencies' rules, kept in the
 16 general collection of the office of the lieutenant governor.
 17 Charges for the reproduction of paper copies of rules in the
 18 general collection of the office of the lieutenant governor
 19 shall be as stated in section 92-21."

20 SECTION 3. Section 91-3, Hawaii Revised Statutes, is
 21 amended to read as follows:



1 "§91-3 Procedure for adoption, amendment, or repeal of
2 rules. (a) Except as provided in subsection (f), prior to the
3 adoption of any rule authorized by law, or the amendment or
4 repeal thereof, the adopting agency shall:

5 (1) Prior to a public hearing pursuant to this subsection:

6 (A) Analyze alternatives to rulemaking and the
7 consequences of not adopting, amending, or
8 repealing the rule;

9 (B) Determine that the proposed action is needed to
10 achieve the general goals and specific objectives
11 of the provision of law that the rule implements;

12 (C) Determine that the probable benefits of the
13 proposed action are greater than its probable
14 costs, taking into account both the qualitative
15 and quantitative benefits and costs and the
16 specific directives of the provision of law being
17 implemented;

18 (D) Determine that the proposed action is the least
19 burdensome alternative for those required to
20 comply with it that will achieve the general



H.B. NO. 93

- 1 goals and specific objectives of the provision of
2 law being implemented;
- 3 (E) Determine that the proposed action would not
4 require those to whom it would apply to take an
5 action that would violate requirements of a
6 federal or state law; and
- 7 (F) Determine that the proposed action would not
8 impose more stringent performance requirements on
9 private entities than on public entities unless
10 required to do so by federal or state law.
- 11 ~~(1)~~ (2) Give at least thirty days' notice for a public
12 hearing. The notice shall include:
- 13 (A) A statement of the topic of the proposed rule
14 adoption, amendment, or repeal or a general
15 description of the subjects involved; ~~and~~
- 16 (B) A statement, written in plain and easily
17 understood language, of the reasonable necessity
18 for the proposed action;
- 19 (C) Citation to all specific provisions of law
20 intended to be implemented by the proposed
21 adoption, amendment, or repeal of the rule;



1 ~~[-(B)-]~~ (D) A statement that a copy of the proposed rule
2 to be adopted, the proposed rule amendment, or
3 the rule proposed to be repealed will be mailed
4 to any interested person who requests a copy,
5 pays the required fees for the copy and the
6 postage, if any, together with a description of
7 where and how the requests may be made;

8 ~~[-(C)-]~~ (E) A statement of when, where, and during what
9 times the proposed rule to be adopted, the
10 proposed rule amendment, or the rule proposed to
11 be repealed may be reviewed in person; and

12 ~~[-(D)-]~~ (F) The date, time, and place where the public
13 hearing will be held and where interested persons
14 may be heard on the proposed rule adoption,
15 amendment, or repeal.

16 The notice shall be mailed to all persons who
17 have made a timely written request of the agency for
18 advance notice of its rulemaking proceedings, given at
19 least once statewide for state agencies and in the
20 county for county agencies. Proposed state agency



1 rules shall also be posted on the Internet as provided
2 in section 91-2.6; and

3 [~~2~~] (3) Afford all interested persons opportunity to
4 submit data, views, or arguments, orally or in
5 writing. The agency shall fully consider all written
6 and oral submissions respecting the proposed rule.
7 The agency may make its decision at the public hearing
8 or announce then the date when it intends to make its
9 decision. Upon adoption, amendment, or repeal of a
10 rule, the agency, if requested to do so by an
11 interested person, shall issue a concise statement of
12 the principal reasons for and against its
13 determination.

14 (b) Notwithstanding the foregoing, if an agency finds that
15 an imminent peril to the public health, safety, or morals, to
16 livestock and poultry health, or to natural resources requires
17 adoption, amendment, or repeal of a rule upon less than thirty
18 days' notice of hearing, and states in writing its reasons for
19 such finding, it may proceed without prior notice or hearing or
20 upon such abbreviated notice and hearing, including posting the
21 abbreviated notice and hearing on the Internet as provided in



H.B. NO. 93

1 section 91-2.6, as it finds practicable to adopt an emergency
2 rule to be effective for a period of not longer than one hundred
3 twenty days without renewal.

4 (c) The adoption, amendment, or repeal of any rule by any
5 state agency shall be subject to the approval of the governor[-]
6 after first being reviewed and approved as to form and
7 compliance with this section by the department of the attorney
8 general. The adoption, amendment, or repeal of any rule by any
9 county agency shall be subject to the approval of the mayor of
10 the county[-] after first being reviewed and approved as to form
11 and compliance with this section by the department of the
12 corporation counsel, office of the corporation counsel, or
13 office of the county attorney. This subsection shall not apply
14 to the adoption, amendment, and repeal of the rules of the
15 county boards of water supply.

16 (d) The requirements of subsection (a) may be waived by
17 the governor in the case of the State, or by the mayor in the
18 case of a county, whenever a state or county agency is required
19 by federal provisions to adopt rules as a condition to receiving
20 federal funds and the agency is allowed no discretion in
21 interpreting the federal provisions as to the rules required to



H.B. NO. 93

1 be adopted; provided that the agency shall make the adoption,
2 amendment, or repeal known to the public by:

3 (1) Giving public notice of the substance of the proposed
4 rule at least once statewide prior to the waiver of
5 the governor or the mayor; and

6 (2) Posting the full text of the proposed rulemaking
7 action on the Internet as provided in section 91-2.6.

8 (e) No adoption, amendment, or repeal of any rule shall be
9 invalidated solely because of:

10 (1) The inadvertent failure to mail an advance notice of
11 rulemaking proceedings;

12 (2) The inadvertent failure to mail or the nonreceipt of
13 requested copies of the proposed rule to be adopted,
14 the proposed rule amendment, or the rule proposed to
15 be repealed; or

16 (3) The inadvertent failure on the part of a state agency
17 to post on the website of the office of the lieutenant
18 governor all proposed rulemaking actions of the agency
19 and the full text of the agency's proposed rules as
20 provided in section 91-2.6.



1 Any challenge to the validity of the adoption, amendment, or
2 repeal of an administrative rule on the ground of noncompliance
3 with statutory procedural requirements shall be forever barred
4 unless the challenge is made in a proceeding or action,
5 including an action pursuant to section 91-7, that is begun
6 within three years after the effective date of the adoption,
7 amendment, or repeal of the rule.

8 (f) Whenever an agency seeks only to repeal one or more
9 sections, chapters, or subchapters of the agency's rules because
10 the rules are either null and void or unnecessary, and not
11 adopt, amend, or compile any other rules:

12 (1) The agency shall give thirty days' public notice at
13 least once statewide of the proposed date of repeal
14 and of:

15 (A) A list of the sections, chapters, or subchapters,
16 as applicable, being repealed; and

17 (B) A statement of when, where, and during what times
18 the sections, chapters, or subchapters proposed
19 to be repealed may be reviewed in person;



H.B. NO. 93

1 (2) The agency shall post the full text of the proposed
2 sections, chapters, or subchapters to be repealed on
3 the Internet as provided in section 91-2.6; and

4 (3) Any interested person may petition the agency
5 regarding the sections, chapters, or subchapters
6 proposed to be repealed, pursuant to section 91-6.

7 This subsection does not apply to the repeal of one or more
8 subsections, paragraphs, subparagraphs, clauses, words, phrases,
9 or other material within a section that does not constitute the
10 entire section to be repealed."

11 SECTION 4. This Act does not affect the adoption of any
12 rule authorized by law, or the amendment or repeal thereof, by
13 any state agency when the agency's action has been completed and
14 approval by the governor is pending as of the effective date of
15 this Act.

16 SECTION 5. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18 SECTION 6. This Act shall take effect upon its approval.

19

INTRODUCED BY: _____

Cindy Evans
JAN 21 2015



H.B. NO. 93

Report Title:

Administrative Rules; Procedure for Adoption, Amendment, or Repeal

Description:

Requires agencies, before a public hearing to adopt, amend, or repeal rules, to analyze alternatives and determine that the probable benefits of proposed action outweigh probable costs of proposed action and that the proposed action would not require violations of federal or state law, is the least-burdensome alternative, and would not impose more stringent requirements on private entities than public entities. Requires the Department of the Attorney General to review rulemaking action by state agencies, and Corporation Counsel or County Attorney to review rulemaking action by county agencies, and approve as to form and compliance with requirements prior to final approval by the Governor or Mayor.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

