
A BILL FOR AN ACT

RELATING TO EMERGENCY RULES BY AGENCIES.

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

1 SECTION 1. The legislature finds that periodically,
2 changes to controlling law may require immediate alterations to
3 long-standing statutes, administrative rules, or agency
4 practices. The issuance of federal decisions may affect any
5 regulated area, at any time, including when the legislature is
6 not in session, and requires specialized skill in interpretation
7 of Hawaii law, and rapidity of response on an emergency basis to
8 prevent impairment of important rights.

9 The purpose of this Act is to allow agencies to adopt
10 emergency rules for immediate adaptation of Hawaii law to meet
11 the requirements of federal law, or other overarching Hawaii
12 law, while preserving the values and goals of Hawaii law. This
13 Act is intended to be broad enough to allow agencies to react
14 rapidly to any changes in federal case law or statute that
15 affects any aspect of the agency's jurisdiction or statutes.
16 The legislature finds that the enactment of emergency rules may
17 stabilize the situation sufficiently for the agency or the



1 legislature to pursue more enduring solutions with appropriate
2 deliberation.

3 SECTION 2. Section 91-3, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "§91-3 Procedure for adoption, amendment, or repeal of
6 rules. (a) Except as otherwise provided in [~~subsection (f),~~]
7 this section, prior to the adoption of any rule authorized by
8 law, or the amendment or repeal thereof, the adopting agency
9 shall:

10 (1) Give at least thirty days' notice for a public
11 hearing. The notice shall include:

12 (A) A statement of the topic of the proposed rule
13 adoption, amendment, or repeal or a general
14 description of the subjects involved; and

15 (B) A statement that a copy of the proposed rule to
16 be adopted, the proposed rule amendment, or the
17 rule proposed to be repealed will be mailed to
18 any interested person who requests a copy, pays
19 the required fees for the copy and the postage,
20 if any, together with a description of where and
21 how the requests may be made;



1 (C) A statement of when, where, and during what times
2 the proposed rule to be adopted, the proposed
3 rule amendment, or the rule proposed to be
4 repealed may be reviewed in person; and

5 (D) The date, time, and place where the public
6 hearing will be held and where interested persons
7 may be heard on the proposed rule adoption,
8 amendment, or repeal.

9 The notice shall be mailed to all persons who
10 have made a timely written request of the agency for
11 advance notice of its rulemaking proceedings, given at
12 least once statewide for state agencies and in the
13 county for county agencies. Proposed state agency
14 rules shall also be posted on the Internet as provided
15 in section 91-2.6; and

16 (2) Afford all interested persons opportunity to submit
17 data, views, or arguments, orally or in writing. The
18 agency shall fully consider all written and oral
19 submissions respecting the proposed rule. The agency
20 may make its decision at the public hearing or
21 announce then the date when it intends to make its



1 decision. Upon adoption, amendment, or repeal of a
2 rule, the agency, if requested to do so by an
3 interested person, shall issue a concise statement of
4 the principal reasons for and against its
5 determination.

6 (b) Notwithstanding [~~the foregoing,~~] the requirements of
7 subsection (a), if an agency finds that an imminent peril to the
8 public health, safety, or morals, to livestock and poultry
9 health, or to natural resources requires adoption, amendment, or
10 repeal of a rule upon less than thirty days' notice of hearing,
11 and states in writing its reasons for such finding, it may
12 proceed without prior notice or hearing or upon such abbreviated
13 notice and hearing, including posting the abbreviated notice and
14 hearing on the Internet as provided in section 91-2.6, as it
15 finds practicable to adopt an emergency rule to be effective for
16 a period of not longer than one hundred twenty days without
17 renewal.

18 (c) In addition to emergency rules adopted pursuant to
19 subsection (b), an agency may, in a similar manner, adopt
20 emergency rules where new federal legislation or federal and
21 state court decisions disrupt prior practice under any statute



1 administered by the agency and adoption of an emergency rule is
2 urgently needed to:

- 3 (1) Conform existing rules to new requirements;
- 4 (2) Implement newly-established rights;
- 5 (3) Clarify existing rules and prevent confusion among
6 those covered by existing statutes;
- 7 (4) Stabilize a regulated industry or endeavor;
- 8 (5) Avoid disruption of governmental or industrial
9 operations;
- 10 (6) Facilitate orderly agency or legislative study of the
11 consequences of the new federal legislation or a
12 federal or state court decision;
- 13 (7) Reinforce or preserve the unmodified goals of a
14 statute administered by the agency; or
- 15 (8) Temporarily resolve any practical problems created by
16 the new federal legislation or federal and state court
17 decisions;

18 provided that an agency shall not adopt any emergency rule
19 pursuant to this subsection without conducting a public hearing;
20 provided further that an agency shall give no less than thirty
21 days' notice of the hearing; provided further that any emergency



1 rule adopted pursuant to this subsection shall be effective
2 until no later than adjournment sine die of the next regular
3 legislative session following adoption of the emergency rule.

4 ~~[(e)]~~ (d) The adoption, amendment, or repeal of any rule
5 by any state agency shall be subject to the approval of the
6 governor. The adoption, amendment, or repeal of any rule by any
7 county agency shall be subject to the approval of the mayor of
8 the county. This subsection shall not apply to the adoption,
9 amendment, and repeal of the rules of the county boards of water
10 supply.

11 ~~[(d)]~~ (e) The requirements of subsection (a) may be waived
12 by the governor in the case of the State, or by the mayor in the
13 case of a county, whenever a state or county agency is required
14 by federal provisions to adopt rules as a condition to receiving
15 federal funds and the agency is allowed no discretion in
16 interpreting the federal provisions as to the rules required to
17 be adopted; provided that the agency shall make the adoption,
18 amendment, or repeal known to the public by:

19 (1) Giving public notice of the substance of the proposed
20 rule at least once statewide prior to the waiver of
21 the governor or the mayor; and



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

3 [~~e~~] f No adoption, amendment, or repeal of any rule
4 shall be invalidated solely because of:

5 (1) The inadvertent failure to mail an advance notice of
6 rulemaking proceedings;

7 (2) The inadvertent failure to mail or the nonreceipt of
8 requested copies of the proposed rule to be adopted,
9 the proposed rule amendment, or the rule proposed to
10 be repealed; or

11 (3) The inadvertent failure on the part of a state agency
12 to post on the website of the office of the lieutenant
13 governor all proposed rulemaking actions of the agency
14 and the full text of the agency's proposed rules as
15 provided in section 91-2.6.

16 Any challenge to the validity of the adoption, amendment, or
17 repeal of an administrative rule on the ground of noncompliance
18 with statutory procedural requirements shall be forever barred
19 unless the challenge is made in a proceeding or action,
20 including an action pursuant to section 91-7, that is begun



1 within three years after the effective date of the adoption,
2 amendment, or repeal of the rule.

3 ~~[(f)]~~ (g) Whenever an agency seeks only to repeal one or
4 more sections, chapters, or subchapters of the agency's rules
5 because the rules are either null and void or unnecessary, and
6 not adopt, amend, or compile any other rules:

7 (1) The agency shall give thirty days' public notice at
8 least once statewide of the proposed date of repeal
9 and of:

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

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

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

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



1 This subsection does not apply to the repeal of one or more
2 subsections, paragraphs, subparagraphs, clauses, words, phrases,
3 or other material within a section that does not constitute the
4 entire section to be repealed."

5 SECTION 3. Section 91-4, Hawaii Revised Statutes, is
6 amended by amending subsection (b) to read as follows:

7 "(b) Each rule hereafter adopted, amended, or repealed
8 shall become effective ten days after filing with the lieutenant
9 governor in the case of the State, or with the respective county
10 clerks in the case of the counties; provided that:

11 (1) If a later effective date is required by statute or
12 specified in the rule, the later date shall be the
13 effective date; provided further that no rule shall
14 specify an effective date in excess of thirty days
15 after the filing of the rule as provided herein; [and]

16 (2) An emergency rule adopted pursuant to section 91-3(b)
17 shall become effective upon filing with the lieutenant
18 governor in the case of the State, or with the
19 respective county clerks in the case of the counties,
20 for a period of not longer than one hundred twenty
21 days without renewal unless extended in compliance



1 with section 91-3(b) if the agency finds that
2 immediate adoption of the rule is necessary because of
3 imminent peril to the public health, safety, or
4 morals, or to natural resources. The agency's finding
5 and brief statement of the reasons therefor shall be
6 incorporated in the rule as filed. The agency shall
7 make an emergency rule adopted pursuant to section 91-
8 3(b) known to persons who will be affected by it by
9 publication at least once in a newspaper of general
10 circulation in the State for state agencies and in the
11 county for county agencies within five days from the
12 date of filing of the rule[-]; and

13 (3) An emergency rule adopted pursuant to section 91-3(c)
14 shall become effective upon filing with the lieutenant
15 governor in the case of the State, or with the
16 respective county clerks in the case of the counties,
17 and shall be effective until no later than adjournment
18 sine die of the next regular legislative session
19 following adoption of the emergency rule. The
20 agency's finding and brief statement of the reasons
21 therefor shall be incorporated in the rule as filed.



1 The agency shall make an emergency rule adopted
2 pursuant to section 91-3(c) known to persons who will
3 be affected by it by publication at least once in a
4 newspaper of general circulation in the State for
5 state agencies and in the county for county agencies
6 within five days from the date of filing of the rule."

7 SECTION 4. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

9 SECTION 5. This Act shall take effect upon its approval.



Report Title:

Emergency Rules; Administrative Procedures Act; Superseding Law

Description:

Authorizes agencies to adopt emergency rules to account for changes in controlling and superseding federal statutes or state or federal case law, subject to public hearing and at least 30 days notice. Provides for expiration no later than adjournment sine die of the next regular legislative session following adoption. (HB1932 CD1)

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