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# A BILL FOR AN ACT

RELATING TO ADMINISTRATIVE RULEMAKING.

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

1       SECTION 1. The legislature finds that according to a 2023  
2       report published by the George Mason University Mercatus Center,  
3       Hawaii ranks as the twenty-eighth most regulated state in the  
4       nation. As of 2023, the Hawaii Code of Rules contains 108,741  
5       restrictions. The top three policy areas targeted by these  
6       state regulations include: health services; social assistance  
7       and; industry, commerce, and development. The report went on to  
8       share that growth in regulations is correlated with increased  
9       poverty rates, lost jobs, and higher inflation.

10       On the federal level, the U.S. Code of Federal Regulations  
11       contains 1,097,563 regulatory restrictions as of 2023, creating  
12       challenges for businesses and individuals striving for legal  
13       compliance. According to a Mercatus Center report, "the growth  
14       in federal regulations between 1997 and 2015 is associated with  
15       the following effects on the Hawaii economy: seventeen thousand  
16       and twenty-eight additional people living in poverty, four  
17       hundred ninety-one lost jobs annually, and a 7.35 per cent



1 increase in overall pricing." Congress has introduced a  
2 Regulations from the Executive in Need of Scrutiny (REINS) Act  
3 every year since 2009. This legislative proposal increases  
4 congressional oversight and requires legislative approval for  
5 major agency rules which carry a financial impact of one hundred  
6 million dollars or more. The REINS Act seeks to hold the  
7 executive branch of administrative rulemaking accountable with  
8 legislative preemptive authority to halt agency rules and  
9 regulations before they are enacted. Kentucky, Florida, Utah,  
10 Oklahoma, Kansas, Indiana, Wisconsin, Louisiana, and North  
11 Carolina have successfully instituted REINS-style laws  
12 increasing oversight on administrative rules that carry the  
13 potential of large economic impacts to their states.  
14 Furthermore, this legislation ensures that taxpayers and even  
15 small businesses are not left bearing the brunt of a regulation  
16 with a hefty price tag. Hawaii should follow suit and take  
17 tangible steps to counteract the burden of accumulated  
18 regulations with a measure that balances power and increases  
19 accountability.

20 The purpose of this Act is to establish a cost-benefit  
21 analysis requirement that defines a specific financial impact



1 threshold and establishes proactive legislative action through  
2 concurrent resolution on an agency's major rule change above the  
3 threshold of one million dollars before that rule can be  
4 adopted.

5 SECTION 2. Hawaii Revised Statutes Chapter 91, is amended  
6 by adding a new definition to be appropriately inserted and to  
7 read as follows:

8 "Major rule" means any administrative rule, whether  
9 emergency or permanent in nature, that will result in or is  
10 likely to result in one million dollars or more over the initial  
11 five-year period in implementation and compliance costs that are  
12 reasonably expected to be incurred by or passed along to  
13 businesses, local government units, and individuals as a result  
14 of the proposed rule and regulation following the adoption of  
15 such rule.

16 "Implementation and compliance costs" means direct costs  
17 that are readily ascertainable based upon standard business  
18 practices, including but not limited to, fees, the cost to  
19 obtain a license or registration, the cost of equipment required  
20 to be installed or used, additional operating costs incurred,  
21 the cost of monitoring and reporting, and any other costs to



1 comply with the requirements of the proposed rule and  
2 regulation."

3 SECTION 3. 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 this section, prior  
7 to the adoption of any rule authorized by law, or the amendment  
8 or repeal thereof, the adopting agency shall:

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

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

14 (B) A statement that a copy of the proposed rule to  
15 be adopted, the proposed rule amendment, or the  
16 rule proposed to be repealed will be mailed to  
17 any interested person who requests a copy, pays  
18 the required fees for the copy and the postage,  
19 if any, together with a description of where and  
20 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 requirements of subsection (a), if  
7 an agency finds that an imminent peril to the public health,  
8 safety, or morals, to livestock and poultry health, or to  
9 natural resources requires adoption, amendment, or repeal of a  
10 rule upon less than thirty days' notice of hearing, and states  
11 in writing its reasons for such finding, it may proceed without  
12 prior notice or hearing or upon such abbreviated notice and  
13 hearing, including posting the abbreviated notice and hearing on  
14 the Internet as provided in section 91-2.6, as it finds  
15 practicable to adopt an emergency rule to be effective for a  
16 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 (d) The adoption, amendment, or repeal of any rule by any  
5 state agency shall be subject to the approval of the governor.  
6 The adoption, amendment, or repeal of any rule by any county  
7 agency shall be subject to the approval of the mayor of the  
8 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 (e) The requirements of subsection (a) may be waived by  
12 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





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

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

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

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

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

Any challenge to the validity of the adoption, amendment, or repeal of an administrative rule on the ground of noncompliance with statutory procedural requirements shall be forever barred unless the challenge is made in a proceeding or action, 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 (g) Whenever an agency seeks only to repeal one or more  
4 sections, chapters, or subchapters of the agency's rules because  
5 the rules are either null and void or unnecessary, and not  
6 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        (h) In addition to the procedural requirements outlined in  
6 this section, a major rule shall be subject to the following  
7 requirements:

8        (1) Each adopting state agency promulgating a major rule  
9 shall provide:

10        (A) Whether the proposed rule is mandated by federal  
11 law as a requirement for participating in or  
12 implementing a federally subsidized or assisted  
13 program and whether the proposed rule exceeds the  
14 requirements of the applicable federal law;

15        (B) An analysis specifically addressing the following  
16 components:

17        (i) A comprehensive analysis of the rule's  
18 economic impact, including a detailed  
19 quantification of implementation and  
20 compliance costs, on the specific  
21 businesses, business sectors, public utility



1 ratepayers, individuals, and local  
2 government units that will be affected by  
3 the proposed rule, on the state economy as a  
4 whole;

5 (ii) A detailed explanation of the methodology  
6 and assumptions used to determine the  
7 economic impact, including the dollar  
8 amounts calculated;

9 (iii) An estimate of the total annual  
10 implementation and compliance costs that are  
11 reasonably expected to be incurred by or  
12 passed along to business, local government  
13 units, or individuals and a determination of  
14 whether those costs will exceed one million  
15 dollars over the initial five-year period  
16 following the adoption of the proposed rule;

17 (iv) A statement of the need for the rule and the  
18 legal basis supporting it;

19 (v) Any measures taken by the agency to minimize  
20 the cost and impact of the proposed rule on  
21 business and economic development within the



1                   State, local government, and individuals;

2                   and

3                   (vi) A classification of the rule as a major rule

4                   with a justification for the classification;

5       (2) No agency shall submit a major rule to the lieutenant

6                   governor for filing without completing an economic

7                   impact analysis for the proposed rule and providing

8                   the analysis to the legislature;

9       (3) The agency shall consult with counties and state

10                  departments, as appropriate, when preparing the

11                  economic impact statement of a proposed rule which

12                  increases or decreases revenue of the state or

13                  counties or imposes functions or responsibilities on

14                  the state or counties which may increase their

15                  expenditure or fiscal responsibility. The agency

16                  shall consult and solicit information from businesses,

17                  business associations, local government units, state

18                  agencies, or members of the public that may be

19                  affected by the proposed rule, or that may provide

20                  relevant information; and



1       (4) A major rule shall not take effect unless specifically  
2       approved by the legislature through a concurrent  
3       resolution receiving a majority in each chamber."

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

6       **"§91-4 Filing and taking effect of rules.** (a) Each  
7       agency adopting, amending, or repealing a rule, upon approval  
8       thereof by the governor or the mayor of the county, shall file  
9       forthwith certified copies thereof with the lieutenant governor  
10      in the case of the State, or with the clerk of the county in the  
11      case of a county. In addition, the clerks of all of the  
12      counties shall file forthwith certified copies thereof with the  
13      lieutenant governor. A permanent register of the rules, open to  
14      public inspection, shall be kept by the lieutenant governor and  
15      the clerks of the counties.

16      (b) Each rule hereafter adopted, amended, or repealed  
17      shall become effective ten days after filing with the lieutenant  
18      governor in the case of the State, or with the respective county  
19      clerks in the case of the counties; provided that:

20      (1) If a later effective date is required by statute or  
21      specified in the rule, the later date shall be the



1 effective date; provided further that no rule shall  
2 specify an effective date in excess of thirty days  
3 after the filing of the rule as provided herein;

- 4 (2) An emergency rule adopted pursuant to section 91-3(b)  
5 shall become effective upon filing with the lieutenant  
6 governor in the case of the State, or with the  
7 respective county clerks in the case of the counties,  
8 for a period of not longer than one hundred twenty  
9 days without renewal unless extended in compliance  
10 with section 91-3(b) if the agency finds that  
11 immediate adoption of the rule is necessary because of  
12 imminent peril to the public health, safety, or  
13 morals, or to natural resources. The agency's finding  
14 and brief statement of the reasons therefor shall be  
15 incorporated in the rule as filed. The agency shall  
16 make an emergency rule adopted pursuant to section 91-  
17 3(b) known to persons who will be affected by it by  
18 publication at least once in a newspaper of general  
19 circulation in the State for state agencies and in the  
20 county for county agencies within five days from the  
21 date of filing of the rule; [and]



(3) An emergency rule adopted pursuant to section 91-3(c) shall become effective upon filing with the lieutenant governor in the case of the State, or with the respective county clerks in the case of the counties, and shall be effective until no later than adjournment sine die of the next regular legislative session following adoption of the emergency rule. The agency's finding and brief statement of the reasons therefor shall be incorporated in the rule as filed. The agency shall make an emergency rule adopted pursuant to section 91-3(c) known to persons who will be affected by it by publication at least once in a newspaper of general circulation in the State for state agencies and in the county for county agencies within five days from the date of filing of the rule~~[-]~~; and

(4) A major rule adopted pursuant to section 91-3(h) shall become effective upon the adoption of the concurrent resolution in both houses of the legislature."

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


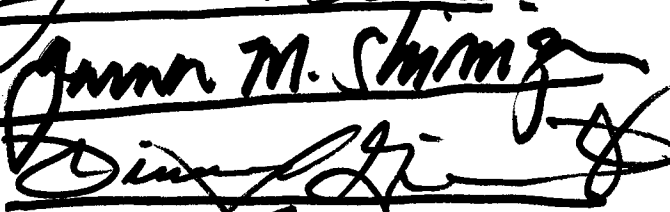


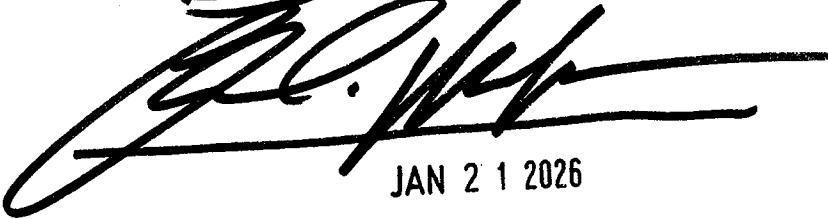




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SECTION 6. This Act shall take effect upon its approval.

INTRODUCED BY:

  
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# H.B. NO. 1762

**Report Title:**

Administrative Rulemaking Process; Economic Impact Analysis;  
Legislative Approval; Minority Caucus Package

**Description:**

Establishes a cost-benefit analysis requirement that defines a specific financial impact threshold for administrative rules. Requires legislative action through concurrent resolution to approve an agency's major rule change above the threshold of one million dollars.

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

