

S.B. NO. 2855

JAN 25 2012

A BILL FOR AN ACT

RELATING TO EMERGENCY RULES FOR THREATS TO NATURAL RESOURCES OR
THE HEALTH OF THE ENVIRONMENT.

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

1 SECTION 1. The legislature finds that the unique
2 environment and natural resources of Hawaii face threats from
3 invasive species, changing climates, increased resource demands,
4 and other sources. In some cases, these threats constitute
5 imminent peril to natural resources or the health of the
6 environment that require rapid response. The legislature has
7 provided a means to adopt emergency rules in instances of
8 imminent peril to public health, safety, or morals, or to
9 livestock and poultry health, but not to natural resources or
10 the environment.

11 The purpose of this bill is to provide a means for agencies
12 to adopt emergency rules related to imminent peril to natural
13 resources or the health of the environment. This will allow
14 departments to respond rapidly to environmental threats.

15 SECTION 2. Section 91-3, Hawaii Revised Statutes, is
16 amended by amending subsection (b) to read as follows:

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

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

15 "(b) Each rule hereafter adopted, amended, or repealed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

19 (1) If a later effective date is required by statute or
20 specified in the rule, the later date shall be the
21 effective date; provided that no rule shall specify an
22 effective date in excess of thirty days after the
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1 filing of the rule as provided herein.

2 (2) An emergency rule shall become effective upon filing

3 with the lieutenant governor in the case of the State,

4 or with the respective county clerks in the case of

5 the counties, for a period of not longer than one

6 hundred twenty days without renewal unless extended in

7 compliance with the provisions of [~~subdivisions~~]

8 paragraphs (1) and (2) of section 91-3(a), if the

9 agency finds that immediate adoption of the rule is

10 necessary because of imminent peril to the public

11 health, safety, or morals~~[-]~~, or to natural resources

12 or the health of the environment. The agency's

13 finding and brief statement of the reasons therefor

14 shall be incorporated in the rule as filed. The

15 agency shall make an emergency rule known to persons

16 who will be affected by it by publication at least

17 once in a newspaper of general circulation in the

18 State for state agencies and in the county for county

19 agencies within five days from the date of filing of

20 the rule."

21 SECTION 4. Statutory material to be repealed is bracketed

22 and stricken. New statutory material is underscored.


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

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INTRODUCED BY: 

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BY REQUEST

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Report Title:

Administrative Procedure; Emergency Rules

Description:

Broadens the conditions under which emergency rules may be adopted to include instances of imminent threat to natural resources or the health of the environment.

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

JUSTIFICATION SHEET

DEPARTMENT: Land and Natural Resources

TITLE: A BILL FOR AN ACT RELATING TO EMERGENCY RULES FOR THREATS TO NATURAL RESOURCES OR THE HEALTH OF THE ENVIRONMENT.

PURPOSE: To broaden the conditions under which emergency rules may be adopted to include instances of imminent peril to natural resources or the health of the environment.

MEANS: Amend sections 91-3(b) and 91-4(b), Hawaii Revised Statutes (HRS).

JUSTIFICATION: Chapter 91, HRS, describes the conditions under which emergency rules may be adopted as instances when "imminent peril to the public health, safety, or morals, or to livestock and poultry health" requires the adoption of such rules. At present, there are no conditions for emergency rule adoption in instances of imminent peril to Hawaii's natural resources or environmental health.

The recent discovery of axis deer (*Axis axis*) on Hawaii Island has highlighted the need for the ability to adopt emergency rules associated with significant environmental threats. Axis deer represent an imminent peril to native forest ecosystems on Hawaii Island as the introduction of feral ungulate species destroys understory vegetation and removes critical habitat for native species. At the time of discovery, chapters 183D, 195D, and 197, HRS, did not effectively prohibit interisland transport of introduced wildlife, nor did chapter 124, Hawaii Administrative Rules. In this instance, the ability to adopt an emergency rule related to natural resources and environmental health could have prevented the continued

transportation of axis deer to Hawaii Island.

Axis deer is one of many nonnative species that threaten Hawaii's environment and natural resources. In Act 85, Session Laws of Hawaii 2003, the Legislature found that "the silent invasion of Hawaii by alien invasive species is the single greatest threat to Hawaii's economy, natural environment, and the health and lifestyle of Hawaii's people and visitors." In instances where threats to the environment constitute imminent peril and are not effectively regulated by existing statutes or rules, the ability to adopt emergency rules could protect Hawaii's natural resources while saving the state future restoration or control costs.

Impact on the public: Would aid in the protection of natural resources and environmental services that benefit the public.

Impact on the department and other agencies: Would allow the department and other agencies to adopt emergency rules in instances of imminent threat to natural resources or the health of the environment.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: LNR 402.

OTHER AFFECTED
AGENCIES: Department of the Attorney General.

EFFECTIVE DATE: Upon approval.