



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SIXTH LEGISLATURE, 2011**

ON THE FOLLOWING MEASURE:

H.B. NO. 979, RELATING TO ADMINISTRATIVE PROCEDURES.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

LATE TESTIMONY

DATE: Friday, February 25, 2011 TIME: 2:00 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): David M. Louie, Attorney General, or
Charleen M. Aina, Deputy Attorney General

Chair Keith-Agaran and Members of the Committee:

The Department of the Attorney General recommends that the Committee hold this bill. With one exception, this bill proposes to repeal every administrative rule authorized or adopted to implement a statute or ordinance, 180 days after that statute or ordinance is repealed.

As a matter of law, an administrative rule is invalid and ineffective if it lacks or exceeds statutory authority. See section 91-7(b), Hawaii Revised Statutes, ("[t]he court shall declare the rule invalid if it finds that it violates ... statutory provisions, or exceeds the statutory authority of the agency.") Thus, as long as the repeal of a statute is not qualified, its repeal eliminates all authority for any administrative rule adopted pursuant to that statute, and necessarily results in the repeal of every rule promulgated pursuant to that statute. A statute that prescribes such a result is not needed.

Further, this bill should not be enacted because its categorical repeal of administrative rules is done without regard to whether a rule is needed to effectuate a savings

clause, or other qualification attached to repeal of its authorizing statute.

It is not unusual for legislation that repeals a statute to limit the extent of that repeal, by a specific provision or savings clause. Under those specific provisions or Hawaii's general savings clauses, i.e., sections 1-10 and 1-11, Hawaii Revised Statutes, rights and benefits, and duties and obligations that accrue or attach prior to a statute's repeal, are not extinguished when the statute is literally repealed.

In addition, under the common law principle of contemporaneous repeal and re-enactment, see Singer & Singer, 1A Statutes and Statutory Construction § 22:33 (7th ed. 2009), the provisions of a statute that is literally repealed but simultaneously re-enacted "in all material aspects" by the same legislation or legislation enacted in the same legislative session, remain the law.

Under either circumstance, the statute's repeal does not extinguish its force or authority. The statute, and administrative rules adopted to effectuate that law, are equally effective, at least until rules promulgated to implement the re-enacted law are adopted. Van Allen v. State, 467 N.E.2d 1210, 1214 (Ind. Ct. App. 1984); cf. Kramer v. Ellett, 108 Hawai'i 426, 431-32. 121 P.3d 406, 411-12 (2005). Continuing the effect of administrative rules is particularly critical in the case of a statute that has been repealed, but which requires detailed administrative rules to continue making "the rights and liabilities created by the repealed statute . . . enforceable." Van Allen, 467 N.E.2d at 1214.

For all these reasons, we urge you to hold this measure. In our view, the more prudent course would be to continue formally repealing administrative rules that are no longer

authorized or needed pursuant to section 91-3(f), Hawaii Revised Statutes, rather than the categorical method of repeal proposed here.

Thank you for the opportunity to testify.