

JAN 19 2018

# 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. Periodically, changes to controlling law may  
2       require immediate alterations to long-standing statutes,  
3       regulations, or agency practices. For example, *Janus v.*  
4       *American Fed'n of State, County, and Mun. Employees*, Council 31,  
5       851 F.3d 746 (7<sup>th</sup> Cir. 2017), cert. granted, 138 S.Ct. (Mem), 198  
6       L.Ed. 2d 780 (2017) may, in the first half of 2018, after forty  
7       years of stability, suddenly require restructuring of public  
8       employees' unions' financing, as set forth in section 89-4,  
9       Hawaii Revised Statutes, or have other similar foundational  
10      impacts. The issuance of such decisions may affect any  
11      regulated area, at any time, including when the legislature is  
12      not in session, and require both specialized skill in  
13      interpretation of Hawaii law, and rapidity of response on an  
14      emergency basis to prevent impairment of important rights.

15      The purpose of this Act is to allow agencies to adopt  
16      emergency rules for immediate adaptation of Hawaii law to  
17      federal law, or other overarching Hawaii law, while preserving



1 unmodified values and goals of Hawaii law. The language is  
2 intended to be broad enough to allow agencies to react rapidly  
3 to any federal or Hawaii case or statute affecting any aspect of  
4 the agency's jurisdiction or administered statutes. The  
5 enactment of emergency regulations may stabilize the situation  
6 sufficiently for the agency or the legislature to pursue more  
7 enduring solutions with appropriate deliberation.

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

10 "(b) Notwithstanding the foregoing, if an agency finds  
11 that an imminent peril to the public health, safety, or morals,  
12 to livestock and poultry health, or to natural resources  
13 requires adoption, amendment, or repeal of a rule upon less than  
14 thirty days' notice of hearing, and states in writing its  
15 reasons for such finding, it may proceed without prior notice or  
16 hearing or upon such abbreviated notice and hearing, including  
17 posting the abbreviated notice and hearing on the Internet as  
18 provided in section 91-2.6, as it finds practicable to adopt an  
19 emergency rule to be effective for a period of not longer than  
20 one hundred twenty days without renewal. An agency also may, in  
21 a similar manner, adopt emergency rules, where new federal or



1 state legislation or court decisions disrupt prior practice  
2 under the administered statute, and adoption of an emergency  
3 rule is urgently needed to:

4     (1) Conform existing statutes and rules to new  
5         requirements;

6     (2) Implement newly-established rights;

7     (3) Clarify existing statutes and prevent confusion among  
8         those regulated;

9     (4) Stabilize the regulated industry or endeavor;

10    (5) Avoid disruption of governmental or industrial  
11         operations;

12    (6) Facilitate orderly agency or legislative study of the  
13         consequences;

14    (7) Reinforce or preserve the unmodified goals of the  
15         administered statute; or

16    (8) At least temporarily resolve some practical problem  
17         created by the new federal or state legislation or  
18         court decisions."

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



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

5       (1) If a later effective date is required by statute or  
6 specified in the rule, the later date shall be the  
7 effective date; provided further that no rule shall  
8 specify an effective date in excess of thirty days  
9 after the filing of the rule as provided herein; and

10       (2) An emergency rule shall become effective upon filing  
11 with the lieutenant governor in the case of the State,  
12 or with the respective county clerks in the case of  
13 the counties, for a period of not longer than one  
14 hundred twenty days without renewal unless extended in  
15 compliance with section 91-3(b) if the agency finds  
16 that immediate adoption of the rule is necessary  
17 ~~[because of imminent peril to the public health,~~  
18 ~~safety, or morals, or to natural resources]~~. The  
19 agency's finding and brief statement of the reasons  
20 therefor shall be incorporated in the rule as filed.

21       The agency shall make an emergency rule known to



1 persons who will be affected by it by publication at  
2 least once in a newspaper of general circulation in  
3 the State for state agencies and in the county for  
4 county agencies within five days from the date of  
5 filing of the rule."

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

8 SECTION 5. This Act shall take effect upon its approval.  
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INTRODUCED BY: \_\_\_\_\_

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# S.B. NO. 2371

**Report Title:**

Emergency Rules; Public Proceedings and Records

**Description:**

Authorizes agencies to adopt specified emergency rules to lessen disruptions to prior practices caused from changes to federal law, Hawaii legislation, or court decisions.

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

