



The House Committee on Finance  
Wednesday, February 28, 2018  
11:00 AM, Conference Room 308

RE: **HB 1932, HD1, Relating to Emergency Rules by Agencies**

Attention: Chair Sylvia Luke, Vice Chair Ty Cullen and members of the Committee

The University of Hawaii Professional Assembly (UHPA) **urges the committees support for HB 1932, HD1**. HB 1932, HD1 is designed to ensure that when unexpected events arise that the appropriate state agencies are authorized to adopt emergency rules that temporarily address the circumstances. UHPA notes that Hawai'i public sector unions are anticipating a 2018 US Supreme Court decision in *Janus v American Federation of State, County and Municipal Council 31*, US Supreme Court Docket No. 16-1466 that could undermine the financial ability of unions to effectively fulfil their statutory obligations of negotiations and representation. This type of circumstance speaks to the need to have emergency rulemaking authority recognized more broadly in statute through amendments to Sections 91-3 and 91-4 of Hawai'i Revised Statutes.

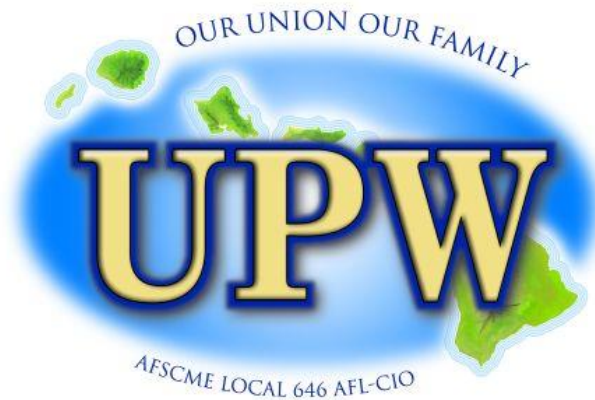
UHPA has spoken on HB 1929, HD1 which amends Chapter 89 and would grant emergency rulemaking authority to the Hawai'i Labor Relations Board due to the potential threats that currently exist for Hawai'i public employee unions.

UHPA believes that it is in the interest of good state policy that both a specific authority and a broader authority be entertained by the legislature. While UHPA can identify the problems created in a *Janus* circumstance there are other situations that require a response to a variety of factors. It makes sense for the legislature to recognize two paths for emergency rulemaking that supports addressing a variety of potential events and uncertain conditions now and in the future.

**UHPA urges the committees support for HB 1932, HD1.**

Respectfully submitted,

Kristeen Hanselman  
Executive Director



THE HAWAII STATE HOUSE OF REPRESENTATIVES  
The Twenty-Ninth Legislature  
Regular Session of 2018

COMMITTEE ON FINANCE

The Honorable Sylvia J. Luke, Chair  
The Honorable Ty J.K. Cullen, Vice Chair

DATE OF HEARING: Wednesday, February 28, 2018  
TIME OF HEARING: 11:00 a.m.  
PLACE OF HEARING: State Capitol  
415 South Beretania Street  
Conference Room 308

**TESTIMONY IN SUPPORT OF HB 1932 HD1 RELATING TO  
EMERGENCY RULES BY AGENCIES**

By DAYTON M. NAKANELUA,  
State Director of the United Public Workers (UPW),  
AFSCME Local 646, AFL-CIO

My name is Dayton M. Nakanelua, State Director of the United Public Workers, AFSCME, Local 646, AFL-CIO. The UPW is the exclusive bargaining representative for approximately 12,000 public employees, which include blue collar, non-supervisory employees in Bargaining Unit 01 and institutional, health and correctional employees in Bargaining Unit 10, in the State of Hawaii and various counties. The UPW also represents about 1,500 members of the private sector.

HB1932 HD1 authorizes agencies to adopt specified emergency rules to lessen disruptions to prior practices caused from changes to federal or Hawaii legislation or court decisions especially when the Hawaii State Legislature is not in session. The uncertainty of ruling by the U.S. Supreme Court makes this bill necessary.

The UPW **strongly supports** this bill.

We appreciate the opportunity to submit this testimony.

**HB-1932-HD-1**

Submitted on: 2/27/2018 10:32:24 AM

Testimony for FIN on 2/28/2018 11:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Melodie Aduja	OCC Legislative Priorities Committee, Democratic Party of Hawai'i	Support	No

Comments:

**HB-1932-HD-1**

Submitted on: 2/26/2018 11:00:52 PM

Testimony for FIN on 2/28/2018 11:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Rachel L. Kailianu	Individual	Oppose	Yes

Comments:

It takes away our public power to challenge any/all agency rules.



STATE OF HAWAII  
DEPARTMENT OF EDUCATION  
P.O. BOX 2360  
HONOLULU, HAWAII 96804

**LATE**

**Date:** 02/28/2018  
**Time:** 11:00 AM  
**Location:** 308  
**Committee:** House Finance

**Department:** Education

**Person Testifying:** Dr. Christina M. Kishimoto, Superintendent of Education

**Title of Bill:** HB 1932, HD1 RELATING TO EMERGENCY RULES BY AGENCIES.

**Purpose of Bill:** Authorizes agencies to adopt specified emergency rules to lessen disruptions to prior practices caused from changes to federal or Hawaii legislation or court decisions. (HB1932 HD1)

**Department's Position:**

Chair Luke, Vice Chair Cullen, and Members of the House Committee on Finance:

The Department of Education (Department) supports H.B. No. 1932, H.D. 1, with a suggested amendment for clarification purposes. H.B. 1932, H.D. 1 provides a limited exception to the hearing and notice requirements of administrative rule adoption under the Administrative Procedures Law where federal or state legislation or court decisions disrupt prior practice and urgent clarification is necessary for certain, specified reasons.

Section 91-3, HRS, delineates the procedures by which state and county agencies adopt administrative rules, including requirements for public hearings and advanced notice of such hearings. Agencies are also required to adhere to specified procedures in Chapter 91, HRS, regarding filing, format, Governor approval, and publication. While effectively addressing the need for public input and transparency in rule-making, the process can be lengthy, which can inhibit the Department's ability to conform its administrative rules to changes in state and federal law, and thereby provide critical clarification and guidance, in a timely manner.

Exceptions to the notice and public hearing requirements currently exist in statute in section 91-3(b), HRS, for specified situations and under section 91-3(d), HRS, the Governor may waive such requirements in certain instances related to the receipt of federal funds; however, this measure provides a necessary broader base of exception, which the Department supports, for those instances in which existing practice no longer conforms to changed state or federal law and Department staff require clarification of such changes.

The Department would like to respectfully request, however, that the Committee on Finance

consider clarifying paragraph (1) on line 20 of page 2 of the measure where the proposed language states that an agency may adopt an emergency rule to “conform existing statutes...to new requirements”. This language appears to suggest the possibility of an administrative rule superseding statute. While the intention of this language may be to provide a means by which to conform statute through rulemaking for a limited time and limited, specified purpose, the Department believes that clarification is important in order to avoid making the relationship between statute and administrative rules ambiguous.

Thank you for the opportunity to provide testimony in support of this measure.

The Hawaii State Department of Education seeks to advance the goals of the Strategic Plan which is focused on student success, staff success, and successful systems of support. This is achieved through targeted work around three impact strategies: school design, student voice, and teacher collaboration. Detailed information is available at [www.hawaiipublicschools.org](http://www.hawaiipublicschools.org).