



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

Date: 03/29/2018
Time: 09:30 AM
Location: 016
Committee: Senate Judiciary

Department: Education

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

Title of Bill: HB 1932, HD1, SD1 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 legislation or federal and state court decisions. Requires a public hearing prior to the adoption of an emergency rule; provided that no less than thirty days' notice shall be given. Limits the effective period of an emergency rule to no longer than the first day of the next occurring regular session of the legislature after adoption of the emergency rule. Takes effect on 1/1/2050. (SD1)

Department's Position:

The Department of Education (Department) supports H.B. No. 1932, H.D. 1, S.D. 1.

H.B. 1932, H.D. 1, S.D. 1 provides a limited exception to the hearing and notice requirements of administrative rule adoption under the Administrative Procedures Law where federal law or court decisions disrupt prior practice and urgent clarification is necessary for certain, specified reasons.

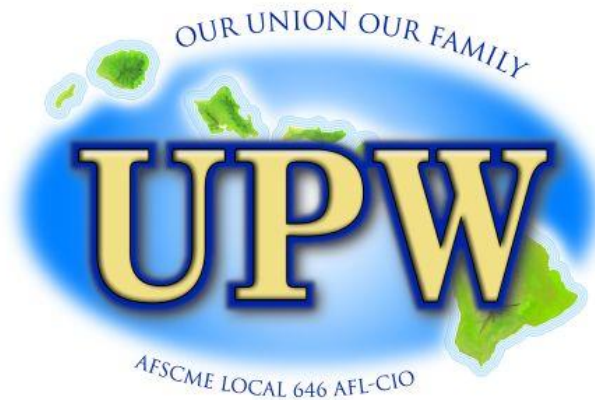
Section 91-3, HRS, delineates the procedures by which state and county agencies adopt administrative rules, including requirements for public hearings and advanced notice of such hearings. Agencies are also required to adhere to specified procedures in Chapter 91, HRS, regarding filing, format, Governor 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.

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.



THE HAWAII STATE SENATE
The Twenty-Ninth Legislature
Regular Session of 2018

COMMITTEE ON FINANCE

Senator Brian T. Taniguchi, Chair
Senator Karl Rhoads, Vice Chair

DATE OF HEARING: Thursday, March 29, 2018
TIME OF HEARING: 9:30 a.m.
PLACE OF HEARING: State Capitol
415 South Beretania Street
Conference Room 016

**TESTIMONY IN SUPPORT OF HB 1932 HD1, SD1 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, SD1 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.



The Senate Committee on Judiciary
Thursday, March 29, 2018
9:30 AM, Conference Room 016

RE: **HB 1932, HD1, SD1, Relating to Emergency Rules by Agencies**

Attention: Chair Brian Taniguchi, Vice Chair Karl Rhoads and members of the Committee

The University of Hawaii Professional Assembly (UHPA) **urges the committees support for HB 1932, HD1, SD1 with recommended amendments.** HB 1932, HD1, SD1 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 notes the amendments on page 3, starting at line 17 through line 20 regarding effective date of adopted rule as it would be difficult for the legislature to take action the first day of session. This would be harmful to the unions involved and it undermines the reason for the rule as originally promulgated. UHPA respectfully request any rules adopted be operational either until the legislature has taken an action during session and signed by the governor or legislation is accepted / rejected by the end of session signed by the governor's signature and is put into statute.

We support public hearings on these issues however we believe that the need for emergency rules does not end on the convening of a legislative session. We encourage the committee to amend the timeline for emergency rules to be in place. This change can be found on page 4, starting on line 20 through page 5, line 2.

UHPA recognizes that on occasion a federal decision such as a Supreme Court decision needs to be addressed by an administrative agency. Administrative agencies by their nature are policy making agencies and need to render decision determining how best to apply an existing law to a changing circumstance.

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

UHPA urges the committees support for HB 1932, HD1 including recommended amendments.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Kristeen Hanselman'. The signature is fluid and cursive, with the first name being more prominent.

Kristeen Hanselman
Executive Director



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SENATE COMMITTEE ON JUDICIARY

Thursday, March 29, 2018 9:30AM Conference Room 016

OPPOSITION to HB1932 Relating to Emergency Rules

Aloha Chair Taniguchi and Vice Chair Rhoads, and members of the Judiciary Committee,

On behalf of our 20,000 members and supporters, the Sierra Club of Hawai'i, a member of the Common Good Coalition, **strongly OPPOSES HB 1932** to authorize agencies to override court rulings and statutes using emergency rulemaking procedures.

The Sierra Club exists to ensure we establish and enforce protections for the natural environment, ensuring our water is clean, our air is pure, and our soil is healthy. To this end, we use litigation to enforce strong laws that protect the public's interest.

It is our position that this bill should not be advanced because it would undermine the basic rule of law that Hawai'i has long operated under. In our three branches of government, the legislature creates laws, the executive branch implements laws, and the judiciary interprets laws. If HB1932 were passed, then the Governor's Administration could overturn any court ruling and any statute using emergency rulemaking procedures.

It is our understanding that the intent of this bill is to address the concerns of unionized labor if they receive an unfavorable ruling from the Supreme Court in Janus v. American Federation of State, County, and Municipal Employees. While we recognize and support the legitimate concerns of unionized labor in this case, this bill does not accomplish its intended goal. This is, for the most part, because the Supreme Court is deciding an issue of First Amendment free speech rights, not an issue labor law *per se*. The U.S. Constitution would trump any rule adopted by an agency even if HB1932 were passed into law.

While this bill has been amended in an attempt to address some of our concerns, the result is unfortunately even more confusing. For now as it is written agencies cannot engage in legitimate emergency rulemaking procedures for actual emergencies.

The best course of action is for the legislature to abandon HB 1932 and use another vehicle, perhaps HB 1929, to help minimize the harm that may be caused by an adverse ruling in the Janus case.

Passing this bill not only undermines the legislature's authority to create laws, it also undermines the ability of advocates to protect the public's interest through litigation.

Thank you for the opportunity to submit testimony on this important issue.

HB-1932-SD-1

Submitted on: 3/27/2018 11:25:56 PM

Testimony for JDC on 3/29/2018 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	Testifying for Oahu County Committee on Legislative Priorities of the Democratic Party of Hawai'i	Support	No

Comments: