

**HB 1932**

**RELATING TO  
EMERGENCY RULES  
BY AGENCIES**

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# 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.

9

INTRODUCED BY:   
JAN 19 2018



# H.B. NO. 1932

**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.*



**HB 1932**

**TESTIMONY**





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

**Date:** 02/08/2018

**Time:** 10:30 AM

**Location:** 309

**Committee:** House Labor & Public  
Employment

**Department:** Education

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

**Title of Bill:** HB 1932 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 law, Hawaii legislation, or court decisions.

**Department's Position:**

Chair Johanson, Vice Chair Holt, and Members of the House Committee on Labor and Public Employment:

The Department of Education (Department) supports H.B. No. 1932, which 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 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 consider clarifying paragraph (1) on line 4 of page 3 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 rule-making 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).



The House Committee on Labor & Public Employment  
Thursday, February 8, 2018  
10:30 AM, Conference Room 409

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

Attention: Chair Aaron Johanson, Vice Chair Daniel Holt and members of the Committee

The University of Hawaii Professional Assembly (UHPA) **urges the committees support for HB 1932**. HB 1932 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 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.

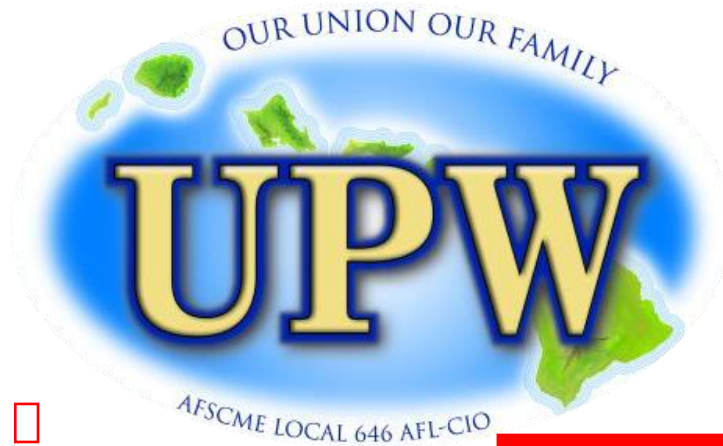
**UHPA urges the committees support for HB 1932.**

Respectfully submitted,

Kristeen Hanselman  
Executive Director

**HB 1932**

**LATE  
TESTIMONY**



The Hawaii State House of Representatives  
The Twenty-Ninth Legislature  
Regular Session of 2018

Committee on Labor & Public Employment  
Representative Aaron Ling Johanson, Chair  
Representative Daniel Holt, Vice Chair  
Members of the Committee

Date of Hearing: Thursday, February 8, 2018  
Time of Hearing: 10:30 a.m.  
Place of Hearing: Conference room 309, State Capitol

**LATE**

Testimony In Support of HB1932 Relating to Collective Bargaining

By Dayton M. Nakanelua,  
State Director of the United Public Workers,  
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 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 the four counties.

The UPW strongly supports HB1932 authorizing agencies to adopt specified emergency rules to lessen disruptions to prior practices caused from changes to federal law, Hawaii legislation, or court decisions.

Thank you for the opportunity to submit this testimony.