

ACT 56

H.B. NO. 1932

A Bill for an Act Relating to Emergency Rules by Agencies.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that periodically, changes to controlling law may require immediate alterations to long-standing statutes, administrative rules, or agency practices. The issuance of federal decisions may affect

any regulated area, at any time, including when the legislature is not in session, and requires specialized skill in interpretation of Hawaii law, and rapidity of response on an emergency basis to prevent impairment of important rights.

The purpose of this Act is to allow agencies to adopt emergency rules for immediate adaptation of Hawaii law to meet the requirements of federal law, or other overarching Hawaii law, while preserving the values and goals of Hawaii law. This Act is intended to be broad enough to allow agencies to react rapidly to any changes in federal case law or statute that affects any aspect of the agency's jurisdiction or statutes. The legislature finds that the enactment of emergency rules may stabilize the situation sufficiently for the agency or the legislature to pursue more enduring solutions with appropriate deliberation.

SECTION 2. Section 91-3, Hawaii Revised Statutes, is amended to read as follows:

**“§91-3 Procedure for adoption, amendment, or repeal of rules.** (a) Except as otherwise provided in [~~subsection (f),~~] this section, prior to the adoption of any rule authorized by law, or the amendment or repeal thereof, the adopting agency shall:

- (1) Give at least thirty days' notice for a public hearing. The notice shall include:
  - (A) A statement of the topic of the proposed rule adoption, amendment, or repeal or a general description of the subjects involved; and
  - (B) A statement that a copy of the proposed rule to be adopted, the proposed rule amendment, or the rule proposed to be repealed will be mailed to any interested person who requests a copy, pays the required fees for the copy and the postage, if any, together with a description of where and how the requests may be made;
  - (C) A statement of when, where, and during what times the proposed rule to be adopted, the proposed rule amendment, or the rule proposed to be repealed may be reviewed in person; and
  - (D) The date, time, and place where the public hearing will be held and where interested persons may be heard on the proposed rule adoption, amendment, or repeal.

The notice shall be mailed to all persons who have made a timely written request of the agency for advance notice of its rule-making proceedings, given at least once statewide for state agencies and in the county for county agencies. Proposed state agency rules shall also be posted on the Internet as provided in section 91-2.6; and

- (2) Afford all interested persons opportunity to submit data, views, or arguments, orally or in writing. The agency shall fully consider all written and oral submissions respecting the proposed rule. The agency may make its decision at the public hearing or announce then the date when it intends to make its decision. Upon adoption, amendment, or repeal of a rule, the agency, if requested to do so by an interested person, shall issue a concise statement of the principal reasons for and against its determination.
- (b) Notwithstanding [~~the foregoing,~~] the requirements of subsection (a), if an agency finds that an imminent peril to the public health, safety, or morals, to livestock and poultry health, or to natural resources requires adoption, amendment, or repeal of a rule upon less than thirty days' notice of hearing, and

states in writing its reasons for such finding, it may proceed without prior notice or hearing or upon such abbreviated notice and hearing, including posting the abbreviated notice and hearing on the Internet as provided in section 91-2.6, as it finds practicable to adopt an emergency rule to be effective for a period of not longer than one hundred twenty days without renewal.

(c) In addition to emergency rules adopted pursuant to subsection (b), an agency may, in a similar manner, adopt emergency rules where new federal legislation or federal and state court decisions disrupt prior practice under any statute administered by the agency and adoption of an emergency rule is urgently needed to:

- (1) Conform existing rules to new requirements;
- (2) Implement newly-established rights;
- (3) Clarify existing rules and prevent confusion among those covered by existing statutes;
- (4) Stabilize a regulated industry or endeavor;
- (5) Avoid disruption of governmental or industrial operations;
- (6) Facilitate orderly agency or legislative study of the consequences of the new federal legislation or a federal or state court decision;
- (7) Reinforce or preserve the unmodified goals of a statute administered by the agency; or
- (8) Temporarily resolve any practical problems created by the new federal legislation or federal and state court decisions;

provided that an agency shall not adopt any emergency rule pursuant to this subsection without conducting a public hearing; provided further that an agency shall give no less than thirty days' notice of the hearing; provided further that any emergency rule adopted pursuant to this subsection shall be effective until no later than adjournment sine die of the next regular legislative session following adoption of the emergency rule.

~~[(e)]~~ (d) The adoption, amendment, or repeal of any rule by any state agency shall be subject to the approval of the governor. The adoption, amendment, or repeal of any rule by any county agency shall be subject to the approval of the mayor of the county. This subsection shall not apply to the adoption, amendment, and repeal of the rules of the county boards of water supply.

~~[(d)]~~ (e) The requirements of subsection (a) may be waived by the governor in the case of the State, or by the mayor in the case of a county, whenever a state or county agency is required by federal provisions to adopt rules as a condition to receiving federal funds and the agency is allowed no discretion in interpreting the federal provisions as to the rules required to be adopted; provided that the agency shall make the adoption, amendment, or repeal known to the public by:

- (1) Giving public notice of the substance of the proposed rule at least once statewide prior to the waiver of the governor or the mayor; and
- (2) Posting the full text of the proposed rulemaking action on the Internet as provided in section 91-2.6.

~~[(e)]~~ (f) No adoption, amendment, or repeal of any rule shall be invalidated solely because of:

- (1) The inadvertent failure to mail an advance notice of rulemaking proceedings;
- (2) The inadvertent failure to mail or the nonreceipt of requested copies of the proposed rule to be adopted, the proposed rule amendment, or the rule proposed to be repealed; or
- (3) The inadvertent failure on the part of a state agency to post on the website of the office of the lieutenant governor all proposed rule-

making actions of the agency and the full text of the agency's proposed rules as provided in section 91-2.6.

Any challenge to the validity of the adoption, amendment, or repeal of an administrative rule on the ground of noncompliance with statutory procedural requirements shall be forever barred unless the challenge is made in a proceeding or action, including an action pursuant to section 91-7, that is begun within three years after the effective date of the adoption, amendment, or repeal of the rule.

~~[(f)]~~ (g) Whenever an agency seeks only to repeal one or more sections, chapters, or subchapters of the agency's rules because the rules are either null and void or unnecessary, and not adopt, amend, or compile any other rules:

- (1) The agency shall give thirty days' public notice at least once statewide of the proposed date of repeal and of:
  - (A) A list of the sections, chapters, or subchapters, as applicable, being repealed; and
  - (B) A statement of when, where, and during what times the sections, chapters, or subchapters proposed to be repealed may be reviewed in person;
- (2) The agency shall post the full text of the proposed sections, chapters, or subchapters to be repealed on the Internet as provided in section 91-2.6; and
- (3) Any interested person may petition the agency regarding the sections, chapters, or subchapters proposed to be repealed, pursuant to section 91-6.

This subsection does not apply to the repeal of one or more subsections, paragraphs, subparagraphs, clauses, words, phrases, or other material within a section that does not constitute the entire section to be repealed."

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

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

- (1) If a later effective date is required by statute or specified in the rule, the later date shall be the effective date; provided further that no rule shall specify an effective date in excess of thirty days after the filing of the rule as provided herein; ~~and~~
- (2) An emergency rule adopted pursuant to section 91-3(b) shall become effective upon filing with the lieutenant governor in the case of the State, or with the respective county clerks in the case of the counties, for a period of not longer than one hundred twenty days without renewal unless extended in compliance with section 91-3(b) if the agency finds that immediate adoption of the rule is necessary because of imminent peril to the public health, safety, or morals, or to natural resources. The agency's finding and brief statement of the reasons therefor shall be incorporated in the rule as filed. The agency shall make an emergency rule adopted pursuant to section 91-3(b) known to persons who will be affected by it by publication at least once in a newspaper of general circulation in the State for state agencies and in the county for county agencies within five days from the date of filing of the rule~~[-]; and~~
- (3) An emergency rule adopted pursuant to section 91-3(c) shall become effective upon filing with the lieutenant governor in the case of the State, or with the respective county clerks in the case of the counties, and shall be effective until no later than adjournment sine

die of the next regular legislative session following adoption of the emergency rule. The agency's finding and brief statement of the reasons therefor shall be incorporated in the rule as filed. The agency shall make an emergency rule adopted pursuant to section 91-3(c) known to persons who will be affected by it by publication at least once in a newspaper of general circulation in the State for state agencies and in the county for county agencies within five days from the date of filing of the rule."

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

SECTION 5. This Act shall take effect upon its approval.

(Approved June 27, 2018.)