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# A BILL FOR AN ACT

RELATING TO BURIALS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. In 1990, the legislature found that recognition  
2 and protection of Hawaii's unique cultural values of its multi-  
3 ethnic residents are affected by state historic preservation  
4 decisions. Burial sites, in particular, were found to require  
5 sensitive treatment and be protected by law from unnecessary  
6 disturbance.

7           Therefore, in 1990, legislature established island burial  
8 councils in Act 306. The purpose of the burial councils is to  
9 advise the department of land and natural resources on all  
10 matters pertaining to unmarked burial sites more than fifty  
11 years old located on private, state, and county properties.

12           During the 2004 regular session, the legislature expressed  
13 concerns about the process of filling vacancies on island burial  
14 councils, as well as concerns relating to the effectiveness of  
15 and commitment to the island burial councils and burial sites  
16 program. In response to House Concurrent Resolution No. 165,  
17 S.D. 1, adopted by the legislature in 2004, the auditor  
18 investigated the department of land and natural resources's



1 practices with respect to appointments and issued a report of  
2 its findings and recommendations in December 2004. The report  
3 is entitled "Investigation of the Department of Land and Natural  
4 Resources' Process for Developing Recommended Candidate Lists  
5 for Appointment to the Island Burial Council".

6 The purpose of this Act is to implement many of the  
7 auditor's recommendations to improve the administration and  
8 operation of the island burial councils and the burial sites  
9 program of the department of land and natural resources.

10 SECTION 2. Chapter 6E, Hawaii Revised Statutes, is amended  
11 by adding a new section to be appropriately designated and to  
12 read as follows:

13 **"§6E- Policies and procedures; guidelines;**  
14 **establishment; candidates.** (a) Not later than three months  
15 after the effective date of this section, the department shall  
16 encourage collaboration by conducting statewide meetings to  
17 consult with representatives of the native Hawaiian community,  
18 including Hawaiian organizations, agencies, and offices to  
19 describe and establish protocols that reflect Hawaiian oral  
20 traditions relating to burial beliefs, customs, and practices.  
21 After the initial statewide meetings, similar statewide meetings



1 shall be conducted on a biennial basis to review and update the  
2 protocols.

3 (b) The protocols developed from the initial statewide  
4 meetings shall provide the criteria to qualify candidates for  
5 membership on an island burial council as a regional  
6 representative. The protocols adopted shall reflect the  
7 involvement and agreement of the Hawaiian community relating to  
8 native Hawaiian burial beliefs, customs, and practices dealing  
9 with the disposition of native Hawaiian human skeletal remains.

10 (c) No later than one month after the conclusion of the  
11 initial statewide meetings required pursuant to this section,  
12 the department shall adopt policies, procedures, and guidelines  
13 that reflect information gathered during the initial statewide  
14 meetings to ensure that any list of candidates for island burial  
15 councils is developed and submitted to the governor in a  
16 methodical, comprehensive, consistent, and timely manner.

17 (d) The department shall compile and maintain a catalog of  
18 Hawaiian organizations, agencies, and offices with which the  
19 department develops mutual working relationships. The  
20 department shall consult with these Hawaiian groups to ensure  
21 compilation of comprehensive lists of nominees who shall be  
22 appointed to island burial councils."



1 SECTION 3. Section 6E-43, Hawaii Revised Statutes, is  
2 amended by amending subsection (b) to read as follows:

3 "(b) All burial sites are significant and shall be  
4 preserved in place until compliance with this section is met,  
5 except as provided in section 6E-43.6. The appropriate island  
6 burial council shall determine whether preservation in place or  
7 relocation of previously identified native Hawaiian burial sites  
8 is warranted, following criteria which shall include recognition  
9 that burial sites of high preservation value, such as areas with  
10 a concentration of skeletal remains, or prehistoric or historic  
11 burials associated with important individuals and events, or  
12 areas that are within a context of historic properties, or have  
13 known lineal descendants, shall receive greater consideration  
14 for preservation in place. The criteria shall be developed by  
15 the department in consultation with the councils, office of  
16 Hawaiian affairs, representatives of development and large  
17 property owner interests, and appropriate Hawaiian  
18 organizations [~~such as Hui Malama I Na Kupuna O Hawai'i Nei,~~]  
19 through rules adopted pursuant to chapter 91. A council's  
20 determination shall be rendered within forty-five days of  
21 referral by the department unless otherwise extended by  
22 agreement between the landowner and the department."



1 SECTION 4. Section 6E-43.5, Hawaii Revised Statutes, is  
2 amended by amending subsections (b) and (c) to read as follows:  
3 "(b) Appointment of members to the island burial councils  
4 shall be made by the governor, in accordance with section 26-34,  
5 from a list of candidates provided to the governor no later than  
6 thirty days before the expiration of a member's term by the  
7 department, provided that a minimum of twenty per cent of the  
8 regional representatives shall be appointed from a list of at  
9 least nine candidates whose names are provided to the department  
10 by the office of Hawaiian affairs. The department shall develop  
11 the list of candidates in consultation with appropriate Hawaiian  
12 organizations [~~such as Hui Malama I Na Kupuna O Hawai'i Nei.~~]  
13 and shall include on the list the names of the nine candidates  
14 provided by the office of Hawaiian affairs. The membership of  
15 each burial council shall include at least one representative  
16 from each geographic region of the island as well as  
17 representatives of development and large property owner  
18 interests. Regional representatives shall be selected from the  
19 Hawaiian community [~~on the basis of their~~] based upon criteria  
20 and protocols adopted by the department, after extensive  
21 consultation through statewide meetings with the Hawaiian  
22 community, that demonstrates the representative's understanding



1 of the culture, history, burial beliefs, customs, and practices  
2 of native Hawaiians. A regional representative shall reside in  
3 or have resided in the geographic region to which the regional  
4 representative is appointed. The burial councils shall have a  
5 minimum of nine and a maximum of fifteen members[7] and have a  
6 ratio of not more than three to one and no less than two to one  
7 in favor of regional representatives.

8 (c) The department, in consultation with the burial  
9 councils, office of Hawaiian affairs, representatives of  
10 development and large property owner interests, and appropriate  
11 Hawaiian organizations[~~such as Hui Malama I Na Kupuna O~~  
12 ~~Hawai'i Nei,~~] shall adopt rules pursuant to chapter 91 necessary  
13 to carry out the purposes of this section. The burial council  
14 members shall serve without compensation, but shall be  
15 reimbursed for necessary expenses incurred during the  
16 performance of their duties. The councils shall be a part of  
17 the department for administrative purposes."

18 SECTION 5. Section 6E-43.6, Hawaii Revised Statutes, is  
19 amended by amending subsection (c) to read as follows:

20 "(c) After notification of the discovery of multiple  
21 skeletons, the following shall be done within two working days,



1 if on Oahu, and three working days, if in other council

2 jurisdictions:

- 3 (1) A representative of the medical examiner or coroner's  
4 office and a qualified archaeologist shall examine the  
5 remains to determine jurisdiction. If the remains are  
6 the responsibility of the medical examiner or coroner,  
7 the department's involvement shall end. If the  
8 remains are historic or prehistoric burials, then the  
9 remainder of this section shall apply;
- 10 (2) The department shall gather sufficient information,  
11 including oral tradition, to document the nature of  
12 the burial context and determine appropriate treatment  
13 of the remains. Members of the appropriate council  
14 shall be allowed to oversee the on-site examination  
15 and, if warranted, removal; and
- 16 (3) If removal of the remains is warranted, based on  
17 criteria developed by the department, in consultation  
18 with the councils, office of Hawaiian affairs,  
19 representatives of development and large property  
20 owner interests, and appropriate Hawaiian  
21 organizations [~~, such as Hui Malama I Na Kupuna O~~  
22 ~~Hawai'i Nei,~~] through rules adopted pursuant to



1 chapter 91, the removal of the remains shall be  
2 overseen by a qualified archaeologist and a mitigation  
3 plan shall be prepared by the department or with the  
4 concurrence of the department."

5 SECTION 6. The department of land and natural shall  
6 implement the recommendations made by the auditor in the  
7 auditor's December 2004 report and shall:

- 8 (1) Review the historic preservation law and its  
9 administrative rules and propose appropriate  
10 amendments;
- 11 (2) Develop a strategic plan for the burial sites program  
12 and move to formally implement the program by  
13 developing program functional statements and amending  
14 the organizational charts to reflect both the island  
15 burial councils and the burial sites program;
- 16 (3) Seek expeditious authorization of additional personnel  
17 for the burial sites program and budgetary allocation  
18 for personnel, office, and other costs required to  
19 operate the burial sites program;
- 20 (4) Eliminate the backlog of island burial council meeting  
21 minutes by disposing of the excessive requirement that  
22 minutes be transcribed verbatim;





- 1           (5) Develop a statewide inventory, reinstate the case  
2           number system, and adopt a standard form and format  
3           for its recording human skeletal remains as  
4           discovered;
- 5           (6) Relocate the historical and cultural branch chief and  
6           burial sites program staff to the state historic  
7           preservation division's Kapolei office to effect  
8           fiscal savings and facilitate better supervision and  
9           management; and
- 10          (7) Conduct periodic review and assessment of position  
11          descriptions and responsibilities in the historical  
12          and cultural branch.

13          Not less than twenty days before the convening of the  
14 Regular Session of 2007, the department of land and natural  
15 resources shall submit a report to the legislature and governor,  
16 which shall include a status report on the activities required  
17 by this Act, including section 6, and any legislation necessary  
18 to implement recommendations of the auditor or of the  
19 department.

20          SECTION 7. Statutory material to be repealed is bracketed  
21 and stricken. New statutory material is underscored.



# H.B. NO. 1937

1 SECTION 8. This Act shall take effect upon its approval.

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INTRODUCED BY:

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JAN 19 2006



**Report Title:**

Burial Councils; Policies & Procedures; Candidate Nominations

**Description:**

Implements suggestions from Auditor's December 2004 report to improve procedures and policies of island burial councils and burial sites programs of the Department of Land and Natural Resources.

