

JAN 24 2007

A BILL FOR AN ACT

RELATING TO BURIAL SITES.

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

1 SECTION 1. Section 6E-43, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§6E-43 Prehistoric and historic burial sites.** (a) At
4 any site, other than a known, maintained, actively used cemetery
5 where human skeletal remains are discovered or are known to be
6 buried and appear to be over fifty years old, the remains and
7 their associated burial goods shall not be moved without the
8 department's approval.

9 (b) All burial sites are significant and shall be
10 preserved in place until compliance with this section is
11 [~~except as provided in section 6E-43.6~~]met. The appropriate
12 island burial council shall determine whether preservation in
13 place or relocation of previously identified and inadvertently
14 discovered native Hawaiian burial sites is warranted, following
15 criteria which shall include recognition that burial sites of
16 high preservation value, such as areas with a concentration of
17 skeletal remains, or prehistoric or historic burials associated



1 with important individuals and events, or areas that are within
2 a context of historic properties, or have known lineal
3 descendants, shall receive greater consideration for
4 preservation in place. The criteria shall be developed by the
5 department in consultation with the councils, office of Hawaiian
6 affairs, representatives of development and large property owner
7 interests, and appropriate Hawaiian organizations [~~, such as Hui~~
8 ~~Malama I Na Kupuna O Hawai'i Nei,~~] through rules adopted
9 pursuant to chapter 91. A council's determination on previously
10 identified native Hawaiian burial sites shall be rendered within
11 forty-five days of referral by the department [~~unless otherwise~~]
12 and on inadvertently discovered native Hawaiian burial sites
13 shall be rendered within ten days. These times may be extended
14 by agreement between the landowner and the department.

15 (c) Council determinations may be administratively
16 appealed to a panel composed of three council chairpersons and
17 three members from the board of land and natural resources as a
18 contested case pursuant to chapter 91. In addition to the six
19 members, the chairperson of the board of land and natural
20 resources shall preside over the contested case and vote only in
21 the event of a tie.



1 (d) Within ninety days following the final determination
2 for previously identified and within thirty days following the
3 final determination for inadvertently discovered, a preservation
4 or mitigation plan shall be approved by the department in
5 consultation with any lineal descendants, the respective
6 council, other appropriate Hawaiian organizations, and any
7 affected property owner.

8 (e) Should the burial site prove to be other than
9 Hawaiian, the department, within thirty days shall determine
10 whether preservation in place or relocation is warranted, and
11 within an additional ninety days a preservation or mitigation
12 plan shall be approved by the department in consultation with
13 any lineal descendants, appropriate ethnic organizations, and
14 any affected property owner."

15 SECTION 2. Section 6E-43.5, Hawaii Revised Statutes, is
16 amended to read as follows:

17 **"§6E-43.5 Island burial councils; creation; appointment;**
18 **composition; duties.** (a) The department shall establish island
19 burial councils for Hawaii, Maui/Lanai, Molokai, Oahu, and
20 Kauai/Niihau, to implement section 6E-43.

21 (b) Appointment of members to the councils shall be made
22 by the governor, in accordance with section 26-34, from a list



1 provided by the department, provided that a minimum of twenty
2 per cent of the regional representatives shall be appointed from
3 a list of at least nine candidates provided by the office of
4 Hawaiian affairs. The department shall develop the list in
5 consultation with appropriate Hawaiian organizations [~~such as~~
6 ~~Hui Malama I Na Kupuna O Hawai'i Nei~~]. The membership of each
7 council shall include at least one representative from each
8 geographic region of the island as well as representatives of
9 development and large property owner interests. Regional
10 representatives shall be selected from the Hawaiian community on
11 the basis of their understanding of the culture, history, burial
12 beliefs, customs, and practices of native Hawaiians. The
13 councils shall have a minimum of nine and a maximum of fifteen
14 members, and have a ratio of not more than three to one and no
15 less than two to one in favor of regional representatives.

16 (c) The department, in consultation with the councils,
17 office of Hawaiian affairs, representatives of development and
18 large property owner interests, and appropriate Hawaiian
19 organizations [~~such as Hui Malama I Na Kupuna O Hawai'i Nei,~~
20 shall adopt rules pursuant to chapter 91 necessary to carry out
21 the purposes of this section. The council members shall serve
22 without compensation, but shall be reimbursed for necessary



1 expenses incurred during the performance of their duties. The
2 councils shall be a part of the department for administrative
3 purposes.

4 (d) The councils shall hold meetings and acquire
5 information as they deem necessary and shall communicate their
6 decisions, findings and recommendations to the department.

7 Notwithstanding section 92-3, whenever the location and
8 description of burial sites are under consideration, the
9 councils may hold closed meetings. Concurrence of a majority of
10 the members present at a meeting shall be necessary to make any
11 action of a council valid.

12 (e) Department records relating to the location and
13 description of historic sites, including burial sites, if deemed
14 sensitive by a council or the Hawaii historic places review
15 board, shall be confidential.

16 (f) The councils shall:

17 (1) Determine the preservation or relocation of previously
18 identified and inadvertently discovered native
19 Hawaiian burial sites;

20 (2) Assist the department in the inventory and
21 identification of native Hawaiian burial sites;



1 (3) Make recommendations regarding appropriate management,
2 treatment, and protection of native Hawaiian burial
3 sites, and on any other matters relating to native
4 Hawaiian burial sites;

5 (4) Elect a chairperson for a four-year term who shall
6 serve for not more than two consecutive terms; and

7 (5) Maintain a list of appropriate Hawaiian organizations,
8 agencies, and offices to notify regarding the discovery of
9 remains."

10 SECTION 3. Section 6E-43.6, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "**6E-43.6 Inadvertent discovery of burial sites.** (a) In
13 the event human skeletal remains are inadvertently discovered,
14 any activity in the immediate area that could damage the remains
15 or the potential historic site shall cease until the
16 requirements of subsections (b) to (d) have been met.

17 (b) The discovery shall be reported as soon as possible to
18 the department, the appropriate medical examiner or coroner, and
19 the appropriate police department. As soon as practicable, the
20 department shall notify the appropriate council and the office
21 of Hawaiian affairs.



1 (c) After notification of the discovery of multiple
2 skeletons, the following shall be done within [~~two~~] three working
3 days, if on Oahu, and [~~three~~] four working days, if in other
4 council jurisdictions:

5 (1) A representative of the medical examiner or coroner's
6 office and a qualified archaeologist shall examine the
7 remains to determine jurisdiction. If the remains are
8 the responsibility of the medical examiner or coroner,
9 the department's involvement shall end. If the
10 remains are historic or prehistoric burials, then the
11 remainder of this section shall apply;

12 (2) The department shall gather sufficient information,
13 including oral tradition, to document the nature of
14 the burial context and [~~determine~~] assist in the
15 determination of appropriate treatment of the remains
16 as set forth in section 6E-43. Members of the
17 appropriate council shall be allowed to oversee the
18 on-site examination and, if warranted, removal; and

19 [~~(3) If removal of the remains is warranted, based on~~
20 ~~criteria developed by the department, in consultation~~
21 ~~with the councils, office of Hawaiian affairs,~~
22 ~~representatives of development and large property~~



1 ~~owner interests, and appropriate Hawaiian~~
2 ~~organizations, such as Hui Malama I Na Kupuna O~~
3 ~~Hawai'i Nei, through rules adopted pursuant to chapter~~
4 ~~91, the removal of the remains shall be overseen by a~~
5 ~~qualified archaeologist and a mitigation plan shall be~~
6 ~~prepared by the department or with the concurrence of~~
7 ~~the department.]~~

8 (d) In cases involving the discovery of a single skeleton,
9 the requirements of subsection (c) shall be fulfilled in
10 ~~[one]~~two working ~~[day]~~ days if on Oahu, and ~~[two]~~three working
11 days if in other council jurisdictions.

12 (e) The mitigation plan ~~[developed by or with the~~
13 ~~concurrence of the department pursuant to subsection (c)(3)]~~
14 shall be carried out in accordance with the following:

- 15 (1) In discoveries related to development where land
16 alteration project activities exist, the landowner,
17 permittee, or developer shall be responsible for the
18 execution of the mitigation plan including relocation
19 of remains. Justifiable delays resulting from the
20 discovery of burials shall not count against any
21 contractor's completion date agreement;



1 (2) Project activities shall resume once necessary
2 archaeological excavations provided in the mitigation
3 plan have been completed;

4 (3) In nonproject contexts, the department shall be
5 responsible for the execution of the mitigation plan
6 and the relocation of remains; and

7 (4) The department shall verify the successful execution
8 of the mitigation plan.

9 (f) In cases where remains are archaeologically removed,
10 the department shall determine the place of relocation, after
11 consultation with the appropriate council, affected property
12 owners, representatives of the relevant ethnic group, and any
13 identified lineal descendants[~~, as appropriate~~]. Relocation
14 shall conform with requirements imposed by the department of
15 health, and may be accompanied by traditional ceremonies, as
16 determined by the lineal descendants, or, if no lineal
17 descendants are identified, the appropriate council or
18 representatives of the relevant ethnic group that the department
19 deems appropriate. Specific or special reinterment requests
20 from lineal or cultural descendants may be accommodated provided
21 that the additional expenses incurred are paid by the affected
22 descendants.



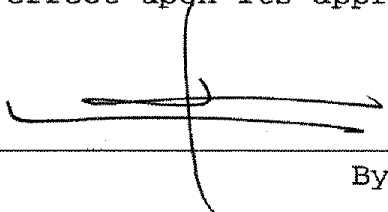
1 (g) If human skeletal remains are discovered in the course
 2 of land development or land alteration activities to which
 3 section 6E-42 applies, and for which the required approval was
 4 not obtained, all activity in the immediate area that could
 5 damage the remains or the potential historic site shall cease,
 6 and treatment of the remains shall be allowed only in compliance
 7 with section 6E-43."

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

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

11

INTRODUCED BY:


 _____ (P/R)
 By Request



Report Title:

BURIAL SITES

Description:

Clarifies Chapter 6E regarding inadvertently discovered native Hawaiian burial sites by amending Sections 6E-43, 6E-43.5, 6E-43.6. Conforms the treatment of inadvertent discovered burial sites with that of previously discovered burial sites with the Burial Councils.

