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# 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-2, Hawaii Revised Statutes, is  
2 amended by adding three new definitions to be appropriately  
3 inserted and to read as follows:

4 "Inadvertent discovery" means the unanticipated finding of  
5 human skeletal remains and any burial goods resulting from  
6 unintentional disturbance, erosion, or other ground disturbing  
7 activity.

8 "Prehistoric" means the period prior to and including the  
9 year 1778.

10 "Previously identified" means burial sites containing human  
11 skeletal remains and any burial goods identified during  
12 archaeological inventory survey and data recovery of possible  
13 burial sites, or known through oral or written testimony."

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

16 "(b) All burial sites are significant and shall be  
17 preserved in place until compliance with this section is met[7



1 ~~except as provided in section 6E 43.6].~~ The appropriate island  
2 burial council shall determine whether preservation in place or  
3 relocation of previously identified or inadvertently discovered  
4 native Hawaiian burial sites or human remains is warranted[~~7~~] by  
5 following established and adopted criteria [~~which~~].

6 The criteria used shall include recognition that burial  
7 sites of high preservation value, such as [~~areas~~]:

8 (1) Areas with a concentration of skeletal remains[~~7~~ ~~or~~  
9 ~~prehistoric~~];

10 (2) Prehistoric or historic burials associated with  
11 important individuals and events[~~7~~ ~~or areas~~];

12 (3) Areas that are within a context of historic  
13 properties[~~7~~]; or

14 (4) Areas that have known lineal descendants,  
15 shall receive greater consideration for preservation in place.

16 The criteria shall be developed by the department in  
17 consultation with the councils, office of Hawaiian affairs,  
18 representatives of development and large property owner  
19 interests, and appropriate Hawaiian organizations [~~7~~ ~~such as Hui~~  
20 ~~Malama I Na Kupuna O Hawai'i Nei,~~] through rules adopted pursuant  
21 to chapter 91.



1 A council's determination shall be rendered within [~~forty-~~  
2 ~~five~~] sixty days of [~~referral by~~] the department being notified  
3 of the discovery unless otherwise extended by agreement between  
4 the landowner and the department. If the appropriate island  
5 burial council is unable to render a determination within sixty  
6 days, the matter shall be referred to the department which shall  
7 have no longer than thirty days to render a determination based  
8 on previous recommendations and preliminary findings by the  
9 department.

10 The department may immediately remove, without the need for  
11 a determination by the appropriate island burial council, an  
12 inadvertently discovered native or non-native Hawaiian burial  
13 site or human remains in the situation where said burial site or  
14 human remains are subject to imminent harm and where failure to  
15 remove said burial site or human remains would result in their  
16 destruction or loss."

17 SECTION 3. Section 6E-43.5, Hawaii Revised Statutes, is  
18 amended as follows:

19 1. By amending subsections (b) and (c) to read:

20 "(b) Appointment of members to the councils shall be made  
21 by the governor, in accordance with section 26-34, from a list  
22 provided by the department, provided that a minimum of twenty



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

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



1 councils shall be a part of the department for administrative  
2 purposes."

3 2. By amending subsection (f) to read:

4 "(f) The councils shall:

- 5 (1) Determine the preservation or relocation of previously  
6 identified and inadvertently discovered native  
7 Hawaiian burial sites;
- 8 (2) Assist the department in the inventory and  
9 identification of native Hawaiian burial sites;
- 10 (3) Make recommendations regarding appropriate management,  
11 treatment, and protection of native Hawaiian burial  
12 sites, and on any other matters relating to native  
13 Hawaiian burial sites;
- 14 (4) Elect a chairperson for a four-year term who shall  
15 serve for not more than two consecutive terms; and
- 16 (5) Maintain a list of appropriate Hawaiian organizations,  
17 agencies, and offices to notify regarding the  
18 discovery of remains."

19 SECTION 4. Section 6E-43.6, Hawaii Revised Statutes, is  
20 amended as follows:

21 1. By amending subsection (c) to read:



1           "(c) After notification of the discovery of multiple  
2 skeletons, the following shall be done within [~~two~~] five working  
3 days, if on Oahu, and [~~three~~] seven 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 appropriate treatment  
15 of the remains. If the site appears to be an  
16 inadvertently discovered native Hawaiian burial site,  
17 then the site shall be referred to the appropriate  
18 island burial council to determine whether  
19 preservation in place or relocation of the remains are  
20 warranted, pursuant to section 6E-43. Members of the  
21 appropriate council shall be allowed to oversee the  
22 on-site examination and, if warranted, removal; and



1 (3) If removal of the non-native Hawaiian remains is  
2 warranted, based on criteria developed by the  
3 department [~~, in consultation with the councils, office~~  
4 ~~of Hawaiian affairs, representatives of development~~  
5 ~~and large property owner interests, and appropriate~~  
6 ~~Hawaiian organizations, such as Hui Malama I Na Kupuna~~  
7 ~~o Hawai'i Nei,~~] through rules adopted pursuant to  
8 chapter 91, the removal of the remains shall be  
9 overseen by a qualified archaeologist and a mitigation  
10 plan shall be prepared by [~~the department~~] or with the  
11 concurrence of the department."

12 2. By amending subsection (f) to read:

13 "(f) In cases where remains are archaeologically removed,  
14 the department shall determine the place of relocation, after  
15 consultation with the [~~appropriate council,~~] affected property  
16 owners, representatives of the relevant ethnic group, and any  
17 identified lineal descendants, as appropriate. Relocation shall  
18 conform with requirements imposed by the department of health,  
19 and may be accompanied by traditional ceremonies, as determined  
20 by the lineal descendants, or, if no lineal descendants are  
21 identified, the [~~appropriate council or~~] representatives of the  
22 relevant ethnic group that the department deems appropriate.



1 Specific or special reinterment requests from lineal or cultural  
2 descendants may be accommodated provided that the additional  
3 expenses incurred are paid by the affected descendants."

4 SECTION 5. This Act does not affect rights and duties that  
5 matured, penalties that were incurred, and proceedings that were  
6 begun, before its effective date.

7 SECTION 6. Statutory material to be repealed is bracketed  
8 and stricken. New statutory material is underscored.

9 SECTION 7. This Act shall take effect upon its approval.





**Report Title:**

Burial Sites; Burial Councils; Inadvertent Discovery

**Description:**

Transfers jurisdiction of inadvertently discovered native Hawaiian burial sites and human remains from the department of land and natural resources (DLNR) to the appropriate island burial council. Provides 60 days for burial council to make a determination on burial site treatment or removal and if the appropriate council cannot make a determination within that time, then DLNR shall make the determination within 30 days. Allows DLNR to immediately remove a burial site or human remains in case of imminent harm. (SD1)

