

Honolulu, Hawaii

MAR 02 2007

RE: S.B. No. 1639

S.D. 1

Honorable Colleen Hanabusa
President of the Senate
Twenty-Fourth State Legislature
Regular Session of 2007
State of Hawaii

Madam:

Your Committee on Water, Land, Agriculture, and Hawaiian Affairs, to which was referred S.B. No. 1639 entitled:

"A BILL FOR AN ACT RELATING TO BURIAL SITES,"

begs leave to report as follows:

The purpose of this measure is to preserve cultural and historic property and ensure the proper handling and treatment of historic burial sites by conforming the provisions relating to the treatment of inadvertently discovered Native Hawaiian burial sites to the treatment of previously discovered Native Hawaiian burial sites under chapter 6E, Hawaii Revised Statutes.

Specifically, this measure:

- (1) Amends sections 6E-43 and 6E-43.5, Hawaii Revised Statutes, to:
 - (A) Add inadvertently discovered Native Hawaiian burial sites for the appropriate Island Burial Council to determine whether preservation is warranted;
 - (B) Establish that the appropriate Island Burial Council will have ten days after referral by the Department of Land and Natural Resources to determine whether preservation is warranted of inadvertently discovered remains; and



- (C) Delete references made to the Hawaiian organization, Hui Malama I Na Kupuna O Hawai'i Nei; and
- (2) Amends section 6E-43.6, Hawaii Revised Statutes, to:
 - (A) Extend the amount of time the Department of Land and Natural Resources and the appropriate medical examiner or coroner have to investigate and determine the proper treatment of multiple inadvertently discovered remains or the inadvertent discovery of a single skeleton; and
 - (B) Delete the provisions relating to the procedures and criteria established for the removal of inadvertently discovered remains.

Testimony in support of this measure was submitted by the Office of Hawaiian Affairs, the Society for Hawaiian Archeology, the Ko'olauloa Hawaiian Civic Club, and two individuals. Testimony in opposition to this measure was submitted by the Department of Land and Natural Resources.

The provisions under chapter 6E, Hawaii Revised Statutes, relating to burial sites, provide equity in respect, reverence, and treatment for unmarked burial sites found outside the boundaries of demarcated, dedicated, or identifiable cemetery boundaries. Recent inadvertent discoveries of burial sites during construction projects on Oahu include, the Keeaumoku Street Walmart, the Ko'olani luxury condominium, and the Ward Villages project. Timely and appropriate treatment of the inadvertent discovery of unmarked burial sites is necessary to avoid delays for landowners and developers, and provide relief for descendants who express concerns over having their ancestors' remains exposed and their identities unresolved for weeks. Currently, the jurisdiction over inadvertently discovered Native Hawaiian burial sites is under the Department of Land and Natural Resources. Your Committee finds that transferring the jurisdiction of these burial sites to the appropriate Island Burial Councils will more efficiently facilitate the process for the identification and treatment of inadvertently discovered Native Hawaiian burial sites.

The Society for Hawaiian Archeology indicated its concern over the jurisdiction of inadvertently discovered burial sites



that were determined to be non-Hawaiian burial sites. Furthermore, the Society was concerned about deleting the requirement that the removal of remains be overseen by a qualified archaeologist. Your Committee notes that a qualified archaeologist who is trained in the proper identification of skeletal remains, ensures that the removal of burial remains is complete, properly identified and documented, and treated properly.

Furthermore, the Department of Land and Natural Resources indicated its concern with the provision that allows the Island Burial Councils ten days after a referral by the Department to make a determination of whether preservation of an inadvertently discovered burial site is warranted. Your Committee notes that the Island Burial Councils currently meet once-a-month, and a ten-day timeframe may cause undue burden on the Burial Councils, which also consist of volunteer council members who will need to take time off over their fulltime employment to attend Burial Council meetings.

Lastly, your Committee notes that references made to the Hawaiian organization, Hui Malama I Na Kupuna O Hawai'i Nei have been deleted throughout this measure. In the State Auditor's Report titled, *Investigation of the Department of Land and Natural Resources' Process for Developing Recommended Candidate Lists for Appointment to the Island Burial Councils* that was submitted to the Governor and Legislature on December 2004, the Auditor indicated that the naming of Hui Malama I Na Kupuna O Hawai'i Nei was the only Hawaiian organization named in law under the burial site provisions under chapter 6E, Hawaii Revised Statutes. The Auditor raised a concern that naming a single Hawaiian organization in statute infers authority and places an official imprimatur on the organization's behavior and practices. Thus, your Committee further finds that a single organization should not be named in statute.

Accordingly, your Committee has amended this measure by:

- (1) Extending the amount of time the appropriate Island Burial Council has to make a determination of whether preservation of an inadvertently discovered burial site is warranted from ten days to fifteen days;
- (2) Adding language to section 6E-43(b), Hawaii Revised Statutes, that indicates that the Department of Land and



Natural Resources will be responsible for determining the treatment of the previously identified or inadvertently discovered burial site, if the appropriate Island Burial Council determines that the burial site is a non-Hawaiian burial site;

- (3) Adding clarifying language that the previously identified or inadvertently discovered burial sites referred to under section 6E-43, Hawaii Revised Statutes, are Native Hawaiian burial sites;
- (4) Reinstating the provision relating to the procedures and criteria established for the removal of inadvertently discovered remains under section 6E-43.6, Hawaii Revised Statutes, and deleting within that provision the reference made to the Hawaiian organization, Hui Malama I Na Kupuna O Hawai'i Nei, in accordance with the December 2004 Auditor's Report; and
- (5) Making technical, nonsubstantive amendments for the purposes of consistency and style.

Your Committee believes that this measure, as amended, fulfills its intent, which is to preserve cultural and historic property and ensure the proper handling and treatment of historic burial sites.

As affirmed by the record of votes of the members of your Committee on Water, Land, Agriculture, and Hawaiian Affairs that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 1639, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 1639, S.D. 1, and be placed on the calendar for Third Reading.

Respectfully submitted on
behalf of the members of the
Committee on Water, Land,
Agriculture, and Hawaiian
Affairs,



RUSSELL S. KOKUBUN, Chair



The Senate
Twenty-Fourth Legislature
State of Hawaii

Record of Votes
Committee on Water, Land, Agriculture and Hawaiian Affairs
WAH

Bill / Resolution No.:* <i>SB 1639</i>	Committee Referral: <i>WAH</i>	Date: <i>2/21/07</i>		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
KOKUBUN, Russell S. (C)	<i>X</i>			
TOKUDA, Jill N. (VC)	<i>X</i>			
FUKUNAGA, Carol				<i>X</i>
HEE, Clayton	<i>X</i>			
SLOM, Sam	<i>X</i>			
TOTAL	<i>4</i>	<i>0</i>	<i>0</i>	<i>1</i>
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: <i>Jimm</i>				
Distribution: Original Yellow Pink File with Committee Report Clerk's Office Drafting Agency				

*Only one measure per Record of Votes