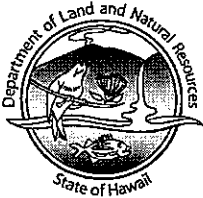


SB 2557

LINDA LINGLE
GOVERNOR OF HAWAII



Laura H. Thielen
Chairperson
Board of Land and Natural Resources
Commission on Water Resource Management

Russell Y. Tsuji
First Deputy

Ken C. Kawahara
Deputy Director - Water

Aquatic Resources
Boating and Ocean Recreation
Bureau of Conveyances
Commission on Water Resource Management
Conservation and Coastal Lands
Conservation and Resources Enforcement
Engineering
Forestry and Wildlife
Historic Preservation
Kahoowale Island Reserve Commission
Land
State Parks

**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

STATE HISTORIC PRESERVATION DIVISION
601 KAMOKILA BOULEVARD, ROOM 555
KAPOLEI, HAWAII 96707

**TESTIMONY OF THE CHAIRPERSON
OF THE BOARD OF LAND AND NATURAL RESOURCES**

on Senate Bill 2557 – Relating To Burial Sites

**BEFORE THE SENATE COMMITTEES ON
AGRICULTURE AND HAWAIIAN AFFAIRS
and
ECONOMIC DEVELOPMENT AND TAXATION**

February 19, 2008

Senate Bill 2557 transfers the jurisdiction of inadvertently discovered native Hawaiian burials from the Department of Land and Natural Resources (Department) to the appropriate Island Burial Council (Council). The Department opposes Senate Bill 2557, as it would significantly increase the timeframe for making determinations for the treatment of inadvertently discovered native Hawaiian remains.

Currently, Chapter 6E, Hawaii Revised Statutes (HRS) requires that the Department make a determination of preservation in-place or relocation for inadvertently discovered burial(s). Senate Bill 2557 amends the Council's timeframe for making a determination from 45 days to 60 days on previously identified and inadvertently discovered native Hawaiian burials.

Senate Bill 2557 also extends the timeframe for making determinations from two to five working days on Oahu and from five to seven working days on the neighbor islands when multiple sets of human remains are involved. This conflicts with other parts of Senate Bill 2557 which extend the Council's determination process to sixty days.

Although state law authorizes each Council to hold meetings, as they deem necessary, the Councils have traditionally met on a monthly basis. In order to make such a determination, additional Council meetings would need to be set. The Department is concerned that this would place an undue burden on volunteer Council members, many of whom are also employed full time. The Department's State Historic Preservation Divisions' (SHPD) limited budget cannot accommodate the expense of holding these additional meetings.

Additionally, existing laws and administrative rules already require the Department to consult with members of the appropriate Council in reaching its determination for Native Hawaiian burials. SHPD staff have routinely notified Council members of these discoveries and sought their recommendations before rendering a decision for burial treatment. SHPD also routinely reports on all inadvertent discoveries, regardless of ethnicity, to the Councils on a monthly basis.

The Department also opposes amendments to Section 6E-2 and 6E-43 HRS, which would extend the timeline for approving burial treatment of inadvertently discovered native Hawaiian burials from two to five days to 60 days. These amendments would conflict with existing administrative rules.



SB 2557, RELATING TO BURIAL SITES
Senate Committees on Agriculture and Hawaiian Affairs,
and Economic Development and Taxation

February 19, 2008

2:00 p.m.

Room: 224

The Office of Hawaiian Affairs (OHA) **SUPPORTS** S.B. 2557, which would move jurisdiction over inadvertently discovered Native Hawaiian burial sites to the appropriate island burial council.

OHA has substantive obligations to protect the cultural and natural resources of Hawai'i for its beneficiaries, the people of this land. Part of this mission is to identify and protect traditional cultural landscapes, which serve as the last vestiges of meaningful connections with the ancestors of Hawai'i and the unique and fragile natural, cultural, and historical resources these connections rely upon. The most important cultural resource, according to Hawaiian scholar Mary Kawena Pukui, is iwi, the bones of our ancestors.

Unmarked burial sites exist all throughout the State of Hawai'i from the highest mountaintops, through the plains and down to the beaches and even in the tidal zone. As development continues and the shorelines continue to erode due to climatic changes, more and more inadvertently discovered burial sites will surely be encountered.

The current time frames for the Department of Land and Natural Resources (department) to assess a situation involving human remains, gather information on the context, consult and notify proper affected parties, and determine ultimate disposition, are far too compressed and short in the existing law.

Given issues with the current and existing island burial councils concerning quorum, sunshine law notifications, and once-a-month meetings, there may have to be additional meetings to address the needs of the daily

and weekly discoveries. There may also need to be more frequent site visits by council members or representatives as well.

Currently, under Chapter 13-300, Hawaii Administrative Rules, the department has the ability to recover remains in danger of imminent harm, pending a formal decision on ultimate disposition. This provision will need to be reworked to the benefit of the council decisions as well. Due to the instability of many inadvertent discoveries, the kúpuna can not be left safely in place for extended periods of time without either recovery or stabilization for preservation in place.

Despite our concerns, these proposed amendments to Chapter 6E, HRS would ensure that the beloved kúpuna of the people of Hawai'i are given the due and proper consideration for their long term care, management and protection by a council which is established for that sole purpose.

OHA urges the Committees to PASS S.B. 2557, taking the above concerns into account. Thank you for the opportunity to testify.

testimony

From: kawaihapai@hawaii.rr.com
Sent: Saturday, February 16, 2008 9:11 AM
To: testimony
Subject: Testimony Supporting SB 2557 (Relating to Burial Sites)

SENATE COMMITTEE ON AGRICULTURE & HAWAIIAN AFFAIRS (AHW) Senator Jill Tokuda, Chair /
Senator J Kalani English, Vice Chair

SENATE COMMITTEE ON ECONOMIC DEVELOPMENT & TAXATION (EDT) Senator Carol Fukunaga, Chair /
Senator Will Espero, Vice Chair

Date: Tuesday, February 19, 2008
Time: 2:00PM
Place: Conference Room 224 / State Capitol

TESTIMONY SUPPORTING SB 2557 (RELATING TO BURIAL SITES)

Aloha Chair's Tokuda, Fukunaga & Committee Members,

I am currently serving on the Office of Hawaiian Affairs's (OHA) Native Hawaiian Historic Preservation Council (NHHPC), past member of the Oahu Island Burial Council (OIBC) as Waialua Moku and recognized multiple lineal descendant and cultural descendant by the State Preservation Division (SHPD) within Waialua Moku. However I'm here providing testimony SUPPORTING SB 2557 as an individual.

The primary reason for supporting SB 2557 is the preservation afforded to a RECOGNIZED LINEAL DESCENDANT, amending criteria for burial councilmember representing a specific geographical region and increasing participation regarding this sacred KULEANA and not a single entity.

I have some amendments that are applicable to SB 2557 regarding what I previously mention above. Keep in mind that a RECOGNIZED LINEAL DESCENDANT SUPERCEDES AN ENTITY:

1. Section 2 should be amending to reflect that the wishes of a RECOGNIZED LINEAL DESCENDANT who has gone thru SHPD's process for a specific situation should have the determination of either to have the Iwi Kupuna remain in place or removed.
2. Section 3 regarding criteria for serving on a Island Burial Council amended that the representative of a specific geographical be consistent with the same requirements for State Legislators representing those areas. Foremost requirement is that the person must be s physically CURRENT RESIDENT of that specific geographical region. Also applicable is that the geographical region is consistent with State Legislators representing those areas. ISLAND BURIAL COUNCILS ARE A STATE COMMISSION /BOARD.
3. Section 4-2 should be amended that if there are no lineal descendants for a specific geographical region is unavailable or known THEN A RECOGNIZED CULTURAL DESCENDANT of that specific geographical region and lastly a relevent ethnic group OF THAT SPECIFIC GEOGRAPHICAL REGION be consulted.

In conclusion, I'm ensuring that A RECOGNIZED LINEAL DESCENDANT's afforded rights for both HRS Chapter 6E and NAGPRA Chapter 106 is PRESERVED and instilling rightful and correct specific geographical regional representation are preserved.

Thank you for your time and opportunity to provide testimony supporting SB 2557.
Malama Iwi Kupuna.

Thomas T Shirai Jr
Direct Lineal Descendant of Kawaihapai Ahupua'a - Kawaihapai Ohana OHA-Native Hawaiian Historic Preservation Council (NHHPC) - Councilmember at Large P O Box 601 Waialua, HI 96791
email: Kawaihapai@hawaii.rr.com

From: Thomas Dye [<mailto:sha@tsdye2.com>]
Sent: Monday, February 18, 2008 12:59 PM
To: testimony
Cc: Society for Hawaiian Archaeology; Sen. Jill Tokuda
Subject: Testimony in Support of SB 2557, Relating to Burial Sites

TO: Senator Jill Tokuda, Chair
Senate Committee on Agriculture and Hawaiian Affairs

Senator Carol Fukunaga, Chair
Senate Committee on Economic Development and Taxation and

FROM: Thomas S. Dye, Ph.D., President
Society for Hawaiian Archaeology
Telephone: 808-529-0866, FAX: 808-529-0884
Email: sha@TSDYE2.com

HEARING: February 19, 2008, 2:00 PM, Senate Conference Room 224

SUBJECT: Testimony in Support of SB 2557, Relating to Burial Sites

I am Dr. Thomas Dye, President of the Society for Hawaiian Archaeology (SHA). We have over 200 members that include professional archaeologists and advocates of historic preservation in general. I am testifying in support of SB 2557, a bill that proposes to amend Chapter 6E, Hawaii Revised Statutes (HRS) by transferring jurisdiction of inadvertently discovered native Hawaiian burial sites from the Department of Land and Natural Resources (department) to the appropriate island burial council. The bill also provides sixty days for a burial council to make a determination on burial site treatment or removal, and allows the State Historic Preservation Officer to make a determination if council is unable to do so after sixty days.

The amendments proposed by SB 2557 to §§6E-2, 6E-43, 6E-43.5 and 6E-43.6, Hawaii Revised Statutes (HRS), represent a major change in how decisions are made on the treatment of inadvertently discovered native Hawaiian burial sites. If enacted, the island burial councils would determine whether inadvertently discovered native Hawaiian burials sites are preserved in place or relocated. Currently this decision is made by the department. The councils would have 60 days to make this determination. If they are unable to do so, the SHPO must make this determination within 30 day. Other more minor amendments are also proposed.

These amendments are intended to address concerns that the burial councils do not determine the disposition of native Hawaiian burials and human skeletal remains deemed inadvertent discoveries because they are found unexpectedly in non-development contexts, in developments after an archaeological inventory survey is completed, or in a development context where no inventory survey was conducted. Of particular concern are cases in which there is sufficient time for a council to act or project redesign is still feasible such that preservation in place could be accommodated.

Many of our members are routinely involved in the burial site identification and treatment procedures established by §§6E-43 and 6E-43.6, HRS, and regularly appear before the island burial councils to provide information needed for their deliberations. Based on our familiarity with the process, we believe the bill should be amended to address the following issues:

State Historic Preservation Officer: Under section 6E-42(b)(4), the proposed amendment has the "state historic preservation officer" making the determination if a burial council is unable to render a determination within sixty days. We believe it is inappropriate to use of the title "state historic preservation officer" in this context and the term "department" should be substituted to be consistent with the rest of chapter 6E, HRS. The title "State Historic Preservation Officer" is primarily used when the State Historic Preservation Office and Officer are

functioning or acting within their federal role under the National Historic Preservation Act. The term is not used in the state law or regulations except in §§6E-2 and 6E-5, HRS, which establish the State Historic Preservation Officer for the purposes of conducting relations with federal agencies and carrying out the comprehensive statewide program. These are primarily federal responsibilities.

Imminent Harm: Language should be added to authorize the department to remove immediately an inadvertently discovered native or non- native Hawaiian burial site or human remains that are in imminent harm, without requiring a council determination. This situation is most frequently encountered when natural processes, such as high waves or rapid erosion, pose an immediate threat to a site and failure to remove those remains quickly would result in their destruction or loss. On rare occasions, remains discovered in construction sites can be in precarious and vulnerable positions. In these cases, there would not be time for a council determination.

Human Skeletal Remains: The existing language and proposed amendments to §6E-43(b) clearly address determinations related to “native Hawaiian burial sites.” Less clear are determinations related to the discovery of human skeletal remains that have been disturbed and are no longer part of a “burial site.” Note that current language in the inadvertent discovery section of the statute, §6E-43.6, HRS, addresses the discovery of “remains,” not “sites,” to avoid potential problems arising from this distinction. Many instances of inadvertently discovered burials actually consist of partial sets or isolated fragments of human remains. If council determinations are to be extended to disturbed remains, the amendments should reflect this.

Burial Council Workloads. Members of the burial councils are very dedicated volunteers who already spend many hours a month fulfilling their duties despite long, frequently contentious and emotional meetings. The proposed amendments will most likely result in an increased workload for council members, even if a 60-day period for deliberations is adopted. We would, however, defer judgment on this issue to former and current council members.

60-Day Determination Period: The amendment proposes that a council’s determination shall be rendered within 60 days of referral by the department. We note that the practical effect of this change would be that the time required for a council to render a decision would exceed 60 days. This is because referrals could only be made through duly noticed meeting agendas, usually published one to two weeks in advance of a burial council meeting. To avoid this delay, we suggest the following language: “...shall be rendered within 60 days of the department being notified of the discovery.” (See page 3, lines 1-3)

Thank you for the opportunity to testify. Should you have any questions, please feel free to contact me at the above telephone number and email address.

Thomas S. Dye, Ph.D
President, Society for Hawaiian Archaeology