

## Rep. Maile Shimabukuro

---

**From:** Sara Collins [sara.l.collins.sha@gmail.com]  
**Sent:** Tuesday, March 24, 2009 9:23 AM  
**To:** HAWtestimony  
**Subject:** Comments on HCR 226 and HR 194, Requesting the Office of Hawaiian Affairs to Convene a Working Group to Review the System and Procedures for the Review of Native Hawaiian Burial Sites

**TO:** Representative Mele Carroll, Chair, and Members of the  
House Committee on Hawaiian Affairs  
[HAWtestimony@Capitol.hawaii.gov](mailto:HAWtestimony@Capitol.hawaii.gov)

**FROM:** Sara Collins, Ph.D., Legislative Committee Chair  
Society for Hawaiian Archaeology  
Email: [sara.l.collins.sha@gmail.com](mailto:sara.l.collins.sha@gmail.com)  
Phone: 808-348-2937

**HEARING:** March 25, 2009, 9:30 AM, House Conference Room 329

**SUBJECT:** Comments on HCR 226 and HR 194, Requesting the Office of Hawaiian Affairs to Convene a Working Group to Review the System and Procedures for the Review of Native Hawaiian Burial Sites

I am Dr. Sara Collins, Legislative Committee Chair of the Society for Hawaiian Archaeology (SHA). We have over 200 members that include professional archaeologists and advocates of historic preservation in general. We support the general intent of HCR 226 and HR 194 but have some comments and recommendations to make. The subject resolutions direct the Office of Hawaiian Affairs (OHA) to convene a working group to review the system and procedures for the review and treatment of Native Hawaiian burial sites.

The resolutions call for the working group convened by OHA to focus on two issues:

- Procedures relating to the recovery, reburial, preservation, and protecting of ancestral Hawaiian remains, including known native Hawaiian burial sites and inadvertent discovered sites, particular during construction; and

- Consideration and discussion of the definition of the term "burial cave" proposed in House Bill No. 1662 (2009), that states that a ""burial cave" means a cave or lava tube, or a portion of a cave or lava tube, where sufficient physical or cultural evidence suggests that the cave or lava tube, or a portion of the cave or lava tube, was used for or viewed as a burial site"

The statutes governing the treatment and disposition of Native Hawaiian burials include Chapters 6E-43, 6E-43.5, and 6E-43.6, Hawaii Revised Statutes, first passed in 1990 and amended subsequently. In addition, the Hawaii Administrative Rules Chapter 13-300, in place since 1996, contain many of the specific procedures documenting, evaluating, and receiving treatment determinations. We concur that a thorough review by relevant stakeholders of current law, rules, and practice is long overdue.

Depending on whether a burial is deemed to be "previously identified" or and "inadvertent discovery," the preceding steps are carried out under the oversight of the burial councils or the Department of Land and Natural Resources (DLNR), State Historic Preservation Division (SHPD). Qualified archaeologists, including many members of SHA, have played an important role in all of these procedural steps. Our members have worked with all of the island burial councils on burial treatment matters since the councils' inception. Many of SHA's members have also assisted SHPD or other entities in at least hundreds of cases of inadvertently discovered burials. SHA members have documented or recovered hundreds of burials in a variety of situations and contexts, resulting in a wealth of experience that we believe would be a beneficial addition to the working group proposed in the subject resolutions.

Given this history, we would respectfully suggest that the subject resolutions be amended so as to include in OHA's working group a representative from SHA who is a qualified archaeologist with demonstrated experience in working with the Chapter 6E and HAR 13-300 procedures. Our recommended amendments are as follows, with new language underlined:

BE IT FURTHER RESOLVED that it is requested that the working group include a representative of the Kamakakuokalani Center for Hawaiian Studies at the University of Hawaii, Kanaka Council, Historic Preservation Division of the Department of Land and Natural Resources, the island burial councils, Hui Malama I Na Kupuna O Hawaii Nei, and a representative of the Society for Hawaiian Archaeology, chosen on the basis of his or her demonstrated qualifications and experience with state burials laws and regulations;

Thank you for the opportunity to testify and for considering our comments. We look forward to working with committee and other stakeholders on the subject resolutions. Should you have any questions, please feel free to contact me at the above telephone number and email address.

Sincerely,

Sara L. Collins, Ph.D.  
Chair, Legislative Committee  
Society for Hawaiian Archaeology

## TESTIMONY OF

KAHU CHARLES KAULUWEHI MAXWELL SR.  
CHAIR – MAUI/LANAI ISLANDS BURIAL COUNCIL

Mr. Chairman, members of this committee, mahalo for given me the opportunity to testify on the below listed items.

SB 1083, SDI                      RELATING TO BURIAL SITES

It is my strong belief that the Burial Council on each island should be the entity that makes the final determination on whether a burial should be relocated or left in place, unless direct descendants are involved, and then they should be consulted. A list should be developed for candidates to the burial councils.

HCR 226                              REQUESTING THE OFFICE OF HAWAIIAN AFFAIRS  
TO CONVENE A WORKING GROUP TO REVIEW THE  
SYSTEM AND PROCEDURES FOR THE REVIEW OF  
NATIVE HAWAIIAN BURIALS.

As the chair of the Maui/Lanai Islands Burial Council, HCR 226 covers a lot of the problems that is occurring with SHPD and the administration of the burial laws. Since the present administration took office, we have suffered in trying to implement 6E in making the law work. Numerous meetings occurred with Bob Awana and his staff with the promise that things would change but it has not. Like this Resolution contends a complete review of the systems and procedures has to occur if the proper respect will be afforded to the Iwi Kūpuna.

On Maui, we have several hundred remains which are cur rated at the State Historic Perseveration Office on Mahalani St., in Wailuku that have been there for 14 plus years. The staff is trying to inventory the Iwi but they are still kept in boxes on shelves and that is an insult to us all, but more so to the spirits of our Kūpuna

HOUSE BILL NO. 1662(2009)

Because of the past uses of caves for Buriāls, if there is any indication that the cave was used for burials, it should be treated as such. Here on Maui there are numerous cave burials and it's a battle to keep people out.

## TOPICS FOR FOCUS

Being involved with burials since the late 60's and the Honokahua Burials, I would strongly recommend that Burial Councils on each island makes the determination on inadvertent discoveries along with determination on known burials.

\* Restricting the SHPD from overruling any determination of an island burial council on previously identified burial sites.

- Clashes over whether multiple burials constitute one burial site.
- Allowing for independent legal counsel to advise the council when conflicts in interpretation occur.
- Making a review of archaeological inventory surveying more rigorous and objective.
- Requiring greater rigor in implementing the review and comment power of the SHPD.
- Training island burial council members on the powers of the council and rules governing burial sites as they applied to prior instances of conflict.