

JAN 21 2010

S.B. NO. 2302

A BILL FOR AN ACT

RELATING TO THE OFFICE OF HAWAIIAN AFFAIRS.

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

1 SECTION 1. In Hawaiian culture, ancestral bones, or iwi,
2 possess a person's mana, or spiritual essence, and were, thus,
3 considered sacred. For Hawaiians today, the proper and
4 respectful treatment of ancestral bones remains essential to
5 avoid insulting the person's spirit and bringing trauma and harm
6 to living descendants.

7 While it is the wish of many Hawaiians that ancestral bones
8 be left in place and undisturbed, construction in our Islands
9 has often resulted in the accidental disturbing of ancient
10 burial sites and the disinterring of human remains.

11 In 1990, the legislature provided for the creation of
12 island burial councils (Act 306, Session Laws of Hawaii 1990),
13 and reaffirmed its belief that these burial sites and culturally
14 affiliated human remains are a sacred trust for the benefit of
15 all the people of Hawaii, and are entitled to proper care and
16 protection. And yet, the legislature finds that conflicts and
17 litigation still arise when ancient burial sites are
18 inadvertently unearthed during construction, as has happened



1 with the Hokulia subdivision in South Kona on the island of
2 Hawaii, the Wal-Mart and Ward Village projects in urban
3 Honolulu, and the Brescia house construction in Wainiha, Kauai.

4 The legislature believes that the laws regarding ancient
5 burial sites would best be served by placing control over the
6 use and protection of these sites under the purview of the
7 office of Hawaiian affairs.

8 It is therefore the purpose of this Act to transfer the
9 functions and responsibilities for the preservation and
10 protection of native Hawaiian burial sites, as well as the
11 island burial councils, from the historic preservation division
12 of the department of land and natural resources to the office of
13 Hawaiian affairs. Oversight of historic cemeteries and burial
14 sites of other cultural groups shall remain in the historic
15 preservation division. The Act also transfers oversight over
16 burial sites in the Kaho`olawe island reserve from the
17 Kaho`olawe island reserve commission to the office of Hawaiian
18 affairs. Finally, this Act expands the protections afforded to
19 ancient Hawaiian burial sites to burials found in caves, lava
20 tubes, and the like.



1 SECTION 2. Chapter 10, Hawaii Revised Statutes, is amended
2 by adding a new part to be appropriately designated and to read
3 as follows:

4 "PART

5 BURIAL SITES AND NATIVE HAWAIIAN REMAINS

6 §10-A Definitions. As used in this part:

7 "Burial good" means any item reasonably believed to have
8 been intentionally placed with the human skeletal remains of an
9 individual or individuals at the time of burial.

10 "Burial site" means any specific marked or unmarked
11 location where prehistoric or historic human skeletal remains
12 that may be of native Hawaiian origin and their associated
13 burial goods are interred, and its immediate surrounding
14 archaeological context.

15 "Council" or "burial council" means the island burial
16 councils established pursuant to section 10-D. Where the
17 context relates to a specific burial site, the term "appropriate
18 burial council" means the burial council designated for the
19 particular island or island group where the burial site is
20 located.

21 "Human skeletal remains" or "remains" means the body or any
22 part of the body of a deceased human being.



1 "Mitigation plan" means a plan, approved by the office, for
2 the care and disposition of burial sites or the contents
3 thereof, that may include monitoring, protection, restoration,
4 and interpretation plans.

5 "Person" means any individual, firm, corporation,
6 partnership, or association.

7 **§10-B Functions and responsibilities of the office of**
8 **Hawaiian affairs.** The office of Hawaiian affairs shall be
9 responsible for the preservation and protection of native
10 Hawaiian burial sites as well as human skeletal remains and
11 related burial goods of ancient origin.

12 The office of Hawaiian affairs shall have the power and
13 duty to inspect any site where human skeletal remains or burial
14 goods that may be of Hawaiian origin are discovered or
15 unearthed; to determine and oversee the appropriate disposition
16 of the remains or burial goods; and to take any and all actions
17 necessary to enforce this part.

18 **§10-C Administration and staffing.** There is created a
19 division within the office of Hawaiian affairs, headed by a
20 deputy administrator, to carry out the purposes of this part.

21 The deputy administrator may employ and retain such
22 officers and employees as may be necessary to carry out the



1 functions of this part. The officers and employees may be hired
2 without regard to chapter 76, and shall serve at the pleasure of
3 the administrator.

4 The board of trustees may delegate to the deputy
5 administrator any powers and duties conferred upon the office of
6 Hawaiian affairs under this part, except the power to adopt and
7 amend rules as may be necessary for the proper administration of
8 this part.

9 **§10-D Island burial councils; creation; appointment;**
10 **composition.** (a) There shall be established island burial
11 councils for the islands of Hawaii; Maui, Lanai, and Molokai;
12 Oahu; and Kauai and Niihau, to implement this part. The
13 councils shall be attached to the office for administrative
14 purposes.

15 (b) Appointment of members to the councils shall be made
16 by the governor, in accordance with section 26-34, from a list
17 of nominees submitted by the office of Hawaiian affairs.

18 The membership of each council shall include at least one
19 representative from each geographic region of the island as well
20 as representatives of development and large property owner
21 interests. Regional representatives shall be selected from the
22 Hawaiian community on the basis of their understanding of the



1 culture, history, burial beliefs, customs, and practices of
2 native Hawaiians.

3 The councils shall have a minimum of nine and a maximum of
4 fifteen members, and have a ratio of not more than three to one
5 and no less than two to one in favor of regional
6 representatives.

7 (c) Council members shall serve without compensation, but
8 shall be reimbursed for necessary expenses incurred during the
9 performance of their duties.

10 **§10-E Island burial councils; meetings; records;**

11 **confidentiality.** (a) Island burial councils shall hold
12 meetings and acquire information as they deem necessary and
13 shall communicate their findings and recommendations to the
14 office.

15 Notwithstanding section 92-3, whenever the location and
16 description of burial sites are under consideration, the
17 councils may hold closed meetings.

18 Concurrence of a majority of the members present at a
19 meeting shall be necessary to make any action of a council
20 valid.

21 (b) Records of the councils or the office of Hawaiian
22 affairs relating to the location and description of historic



1 sites, including burial sites, if deemed sensitive by a council
2 or the Hawaii historic places review board, shall be
3 confidential.

4 **§10-F Powers and duties of island burial councils.** Island
5 burial councils shall:

- 6 (1) Determine the preservation or relocation of previously
7 identified native Hawaiian burial sites;
- 8 (2) With the assistance of the historic preservation
9 division of the department of land and natural
10 resources, inventory and identify native Hawaiian
11 burial sites;
- 12 (3) Make recommendations regarding appropriate management,
13 treatment, and protection of native Hawaiian burial
14 sites, and on any other matters relating to native
15 Hawaiian burial sites; and
- 16 (4) Maintain a list of appropriate Hawaiian organizations,
17 agencies, and offices to be notified regarding the
18 discovery of human skeletal remains.

19 **§10-G Prehistoric and historic burial sites.** (a) At any
20 site, other than a known, maintained, and actively used
21 cemetery, where human skeletal remains are discovered or are
22 known to be buried and appear to be over fifty years old, the



1 remains and their associated burial goods shall not be moved
2 without the approval of the office.

3 (b) All burial sites are significant and shall be
4 preserved in place until compliance with this part is met.

5 (c) Should the burial site appear or be proved to be other
6 than of native Hawaiian origin, the office or the appropriate
7 island burial council shall relinquish control over the site to
8 the department of land and natural resources, which shall
9 proceed pursuant to chapter 6E.

10 **§10-H Inadvertent discovery of burial sites.** (a) In the
11 event human skeletal remains are inadvertently discovered, any
12 activity in the immediate area that could damage the remains or
13 the potential historic site shall cease until the requirements
14 of this part have been met.

15 (b) The discovery shall be immediately reported to the
16 office, the appropriate medical examiner or coroner, and the
17 appropriate police department.

18 (c) After notification of the discovery of multiple
19 skeletons, the following shall be done within two working days,
20 if on Oahu, and three working days, if in other council
21 jurisdictions:



1 (1) A representative of the medical examiner or coroner's
2 office and a qualified archaeologist shall examine the
3 remains to determine jurisdiction. If the remains are
4 the responsibility of the medical examiner or coroner,
5 the office's involvement shall end. If the remains
6 are historic or prehistoric burials, then this part
7 shall apply;

8 (2) The office shall gather sufficient information,
9 including oral tradition, to document the nature of
10 the burial context and determine appropriate treatment
11 of the remains. Members of the appropriate burial
12 council shall be allowed to oversee the on-site
13 examination and, if warranted, removal; and

14 (3) If removal of the remains is warranted, based on
15 criteria developed by the office, the removal shall be
16 overseen by a qualified archaeologist and a mitigation
17 plan shall be prepared.

18 (d) In cases involving the discovery of a single skeleton,
19 the requirements of subsection (c) shall be fulfilled in one
20 working day if on Oahu, and two working days if in other burial
21 council jurisdictions.



1 §10-I **Preservation in place or removal of remains;**

2 **criteria.** (a) The appropriate island burial council shall
3 determine whether preservation in place or relocation of native
4 Hawaiian remains or burial sites are warranted based upon
5 criteria developed by the office through rules adopted pursuant
6 to chapter 91.

7 (b) The criteria shall recognize that:

8 (1) Burial sites of high preservation value, such as areas
9 with a concentration of skeletal remains;

10 (2) Prehistoric or historic burials associated with
11 important individuals and events;

12 (3) Areas that are within a context of historic
13 properties; and

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

16 (c) A burial council's determination shall be rendered
17 within forty-five days of referral unless otherwise extended by
18 agreement between the landowner and the office.

19 (d) Burial council determinations may be administratively
20 appealed to a panel composed of three council chairpersons and
21 three members appointed by the office of Hawaiian affairs as a
22 contested case pursuant to chapter 91.



1 §10-J Removal of remains; mitigation plans. (a) After a
2 final determination that human skeletal remains and related
3 burial goods shall be removed and relocated, a mitigation plan
4 shall be developed and shall be carried out in accordance with
5 the following:

6 (1) In discoveries related to development where land
7 alteration project activities exist, the landowner,
8 permittee, or developer shall be responsible for the
9 execution of the mitigation plan including relocation
10 of the remains. Justifiable delays resulting from the
11 discovery of burials shall not count against any
12 contractor's completion date agreement;

13 (2) Project activities may resume once necessary
14 archaeological excavations provided in the mitigation
15 plan have been completed;

16 (3) In the context of a discovery other than through
17 construction or other project activities, the office
18 of Hawaiian affairs shall be responsible for the
19 execution of the mitigation plan and the relocation of
20 the remains; and

21 (4) The office shall verify the successful execution of
22 the mitigation plan.



1 (b) In cases where human skeletal remains and related
2 burial goods are archaeologically removed, the office of
3 Hawaiian affairs shall determine the place of relocation, after
4 consultation with the appropriate burial council, affected
5 property owners, representatives of the interested groups, and
6 any identified lineal descendants, as appropriate. Relocation
7 shall conform with requirements imposed by the department of
8 health, and may be accompanied by traditional ceremonies, as
9 determined by the lineal descendants, or, if no lineal
10 descendants are identified, the appropriate burial council or
11 representatives of the relevant interest group that the office
12 deems appropriate. Specific or special re-interment requests
13 from lineal or cultural descendants may be accommodated provided
14 that any additional expenses incurred are paid by the requesting
15 party.

16 **§10-K Burial discovered in cave, lava tube, and the like.**
17 Any person traversing a cave, lava tube, or the like, and who
18 discovers a burial site, shall immediately cease any activity
19 and leave the area. The discovery shall be reported immediately
20 to the office or to a law enforcement officer who shall transmit
21 the information to the office.



1 The office shall investigate the report and, if it appears
2 that the burial site is of native Hawaiian origin, shall proceed
3 pursuant to this part. If the burial appears to be of other
4 than native Hawaiian origin, the office shall inform the
5 department of land and natural resources who shall proceed with
6 the site pursuant to chapter 6E.

7 **§10-L Kaho`olawe island reserve.** Within the Kaho`olawe
8 island reserve as defined in section 6K-2, the office of
9 Hawaiian affairs and the island burial council for the islands
10 of Maui, Lanai, and Molokai, shall carry out the powers and
11 duties conferred by this part with regard to proper treatment of
12 burial sites and human skeletal remains found in the island
13 reserve.

14 **§10-M Civil and administrative violations.** (a) It shall
15 be a civil and administrative violation for any person to
16 knowingly take, appropriate, excavate, injure, destroy, or alter
17 any burial site, or the contents thereof, located on private
18 lands or lands owned or controlled by the State or any of its
19 political subdivisions, except as permitted by the office, to
20 knowingly fail to re-inter human remains discovered on the lands
21 in a reasonable period of time as determined by the office, or



1 to knowingly violate the conditions set forth in an approved
2 mitigation plan that includes monitoring and preservation plans.

3 (d) It shall be a civil and administrative violation for
4 any person who inadvertently discovers a burial site to fail to
5 stop work in the immediate area and report the discovery, as
6 required by this part.

7 (e) It shall be a civil and administrative violation for
8 any person to knowingly glue together any human skeletal
9 remains, label any human skeletal remains with any type of
10 marking pen, or conduct any tests that destroy human skeletal
11 remains, except as permitted by the office.

12 (f) Any person who violates this section shall be fined
13 not more than \$10,000 for each separate violation. If the
14 violator directly or indirectly has caused the loss of, or
15 damage to, any burial site, the violator shall be fined an
16 additional amount to be equivalent to the value of the lost or
17 damaged burial site. Each day of continued violation of this
18 section shall constitute a distinct and separate violation for
19 which the violator may be punished.

20 (g) Equipment used by a violator for the taking,
21 appropriation, excavation, injury, destruction, or alteration of
22 any burial site, or for the transportation of the violator to or



1 from the burial site, shall be subject to seizure and
2 disposition by the State without compensation to its owner or
3 owners.

4 **§10-N Reproductions, forgeries, and illegal sales.** (a)

5 It shall be unlawful to reproduce, retouch, rework, or forge any
6 human remains or burial goods associated with the native
7 Hawaiian people or purported to be of native Hawaiian origin.

8 (b) It shall be unlawful for any person to offer for sale
9 or exchange, or to purchase or acquire, any exhumed prehistoric
10 or historic human remains or associated burial goods with the
11 knowledge that it has been collected or excavated in violation
12 of any of the terms of this part.

13 (c) It shall be unlawful for any person to remove those
14 goods or remains, except those remains fabricated into artifacts
15 prehistorically, from the jurisdiction of the State without
16 obtaining a permit from the office.

17 (d) Any person violating this section shall be fined no
18 more than \$10,000. Each object or part of a prehistoric or
19 historic human skeleton or associated burial good offered for
20 sale or trade or removed from the jurisdiction in violation of
21 this section shall constitute a distinct and separate offense.



1 **§10-O Taking, appropriation, excavation, injury,**
2 **destruction, or alteration of a burial site; penalty.** (a) A
3 person commits the offense of taking, appropriation, excavation,
4 injury, destruction, or alteration of a burial site if the
5 person knowingly takes, appropriates, excavates, injures,
6 destroys, or alters any burial site or the contents thereof,
7 located on private land or land owned or controlled by the State
8 or any of its political subdivisions, except as permitted by the
9 office.

10 (b) Taking, appropriation, excavation, injury,
11 destruction, or alteration of a burial site is a misdemeanor for
12 which a fine not to exceed \$25,000 may be imposed, in addition
13 to any other penalty authorized by chapter 706 for a
14 misdemeanor.

15 (c) Each day of a continued violation of this section
16 shall constitute a distinct and separate offense.

17 **§10-P Failure to stop work upon discovery of a burial**
18 **site; penalty.** (a) A person commits the offense of failure to
19 stop work upon discovery of a burial site if the person
20 discovers a burial site and knowingly fails to stop work in the
21 immediate area and report the discovery as required by this
22 part.



1 (b) It is not a defense to the prosecution for a violation
2 of this section that the discovery of the burial site was
3 inadvertent.

4 (c) Failure to stop work upon discovery of a burial site
5 is a misdemeanor for which a fine not to exceed \$25,000 may be
6 imposed in addition to any other penalty authorized by chapter
7 706 for a misdemeanor.

8 (d) Each day of a continued violation of this section
9 shall constitute a distinct and separate offense.

10 **§10-Q Criminal penalties not in lieu of civil or**
11 **administrative penalties.** The criminal penalties imposed by
12 this part are in addition to, and not in lieu of, any civil or
13 administrative penalties provided by law.

14 **§10-R Part not applicable to family burial plots.** Nothing
15 in this part shall apply to land altering activities related to
16 family burial plots under section 441-5.5.

17 **§10-S Burial sites special fund.** (a) There is
18 established the burial sites special fund, into which shall be
19 deposited:

20 (1) Revenues from the conveyance tax as provided in
21 section 247-7;



- 1 (2) Fees and penalties relating to burial sites as
2 provided in this part;
- 3 (3) Appropriations by the legislature to the special fund;
- 4 (4) Gifts, grants, and other funds accepted by the office
5 for the purposes of this part; and
- 6 (5) All interest and other revenues or receipts derived by
7 the office pursuant to this part.

8 (b) Moneys in the burial sites special fund may be:

- 9 (1) Placed in interest-bearing accounts; provided that the
10 depository in which the money is deposited furnishes
11 security as provided in section 38-3; or
- 12 (2) Otherwise invested by the office until such time as
13 the moneys may be needed; provided that the office
14 shall limit its investments to those listed in section
15 36-21.

16 (c) Moneys in the burial sites special fund shall be used
17 by the office for the purposes of this part.

18 **§10-T Rules.** The office of Hawaiian affairs may adopt
19 rules pursuant to chapter 91 to effectuate the purposes of this
20 part, and to carry out its duties to protect and preserve native
21 Hawaiian burials, burial sites, and burial goods."



1 SECTION 3. Section 6D-8, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "[~~f~~]§6D-8[~~f~~] **Burial discovery.** Anyone traversing a cave
4 who discovers a burial site shall immediately cease their
5 activity and leave the cave. The discovery shall be reported as
6 soon as possible to the [~~department. The department shall~~
7 ~~follow the procedures described in section 6E-43.6.~~] office of
8 Hawaiian affairs."

9 SECTION 4. Section 6E-2, Hawaii Revised Statutes, is
10 amended by amending the definitions of "burial site" and
11 "historic property" to read as follows:

12 ""Burial site" means any specific unmarked location where
13 [~~prehistoric or historic~~] human skeletal remains and their
14 associated burial goods are interred, and its immediate
15 surrounding archaeological context, deemed a unique class of
16 historic property and not otherwise included in section 6E-41.
17 The term "burial site" as used in this chapter shall not include
18 prehistoric or historical burial sites associated with the
19 native Hawaiian people.

20 "Historic property" means any building, structure, object,
21 district, area, or site, including heiau and underwater site,
22 which is over fifty years old[~~-~~]; provided that "historic



1 property" shall not include a prehistoric or historic burial
2 site associated with the native Hawaiian people for the purposes
3 of this chapter."

4 SECTION 5. Section 6E-7, Hawaii Revised Statutes, is
5 amended as follows:

6 1. By amending subsection (a) to read as follows:

7 "(a) All historic property located on lands or under
8 waters owned or controlled by the State shall be the property of
9 the State. ~~[The]~~ Except for prehistoric and historic burial
10 sites associated with the native Hawaiian people, control and
11 management of the historic property shall be vested in the
12 department."

13 2. By amending subsection (d) to read as follows:

14 "(d) The State shall not transfer any historic property or
15 aviation artifact under its jurisdiction without the concurrence
16 of the department [~~, and shall not transfer any burial site under~~
17 ~~its jurisdiction without consulting the appropriate island~~
18 ~~burial council]~~."

19 SECTION 6. Section 6E-8, Hawaii Revised Statutes, is
20 amended to read as follows:

21 "**§6E-8 Review of effect of proposed state projects.** (a)

22 Before any agency or officer of the State or its political



1 subdivisions commences any project which may affect historic
2 property, aviation artifact, or a burial site, the agency or
3 officer shall advise the department and allow the department an
4 opportunity for review of the effect of the proposed project on
5 historic properties, aviation artifacts, or burial sites,
6 consistent with section 6E-43, especially those listed on the
7 Hawaii register of historic places. The proposed project shall
8 not be commenced, or in the event it has already begun,
9 continued, until the department shall have given its written
10 concurrence.

11 The department is to provide written concurrence or non-
12 concurrence within ninety days after the filing of a request
13 with the department. The agency or officer seeking to proceed
14 with the project, or any person, may appeal the department's
15 concurrence or non-concurrence to the Hawaii historic places
16 review board. An agency, officer, or other person who is
17 dissatisfied with the decision of the review board may apply to
18 the governor, who may request the Hawaii advisory council on
19 historic preservation to report or who may take action as the
20 governor deems best in overruling or sustaining the department.

21 (b) The department of Hawaiian home lands, prior to any
22 proposed project relating to lands under its jurisdiction, shall



1 consult with the department regarding the effect of the project
2 upon historic property or a burial site.

3 (c) The State, its political subdivisions, agencies, and
4 officers shall report to the department the finding of any
5 historic property during any project and shall cooperate with
6 the department in the investigation, recording, preservation,
7 and salvage of the property.

8 (d) Where the project may affect or impact a prehistoric
9 or historic burial site that may be associated with the native
10 Hawaiian people, or where a burial site is discovered during any
11 phase of the development, the State, political subdivision,
12 agency, or officer shall report promptly to the office of
13 Hawaiian affairs the finding of the burial site, and shall
14 proceed with the development only pursuant to the procedures of
15 part _____ of chapter 10."

16 SECTION 7. Section 6E-11, Hawaii Revised Statutes, is
17 amended by amending subsection (d) to read as follows:

18 "(d) It shall be a civil and administrative violation for
19 any person who inadvertently discovers a burial site to fail to
20 stop work in the immediate area and report the discovery [~~as~~
21 ~~required by section 6E-43.6.~~] to the department and to the
22 office of Hawaiian affairs."



1 SECTION 8. Section 6E-12, Hawaii Revised Statutes, is
2 amended as follows:

3 1. By amending subsection (b) to read:

4 "(b) It shall be unlawful for any person to:

5 (1) Offer for sale or exchange any exhumed [~~prehistoric or~~
6 ~~historic~~] human skeletal remains or associated burial
7 goods; or

8 (2) Remove those goods or remains [~~, except those remains~~
9 ~~fabricated into artifacts prehistorically,~~] from the
10 jurisdiction of the State without obtaining a permit
11 from the department."

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

13 "(d) Any person violating this section shall be fined no
14 more than \$10,000. Each object or part of a [~~prehistoric or~~
15 ~~historic~~] human skeleton or associated burial good offered for
16 sale or trade or removed from the jurisdiction in violation of
17 this section shall constitute a distinct and separate offense
18 for which the offender may be punished."

19 SECTION 9. Section 6E-41, Hawaii Revised Statutes, is
20 amended by amending subsection (a) to read as follows:

21 "(a) [Any] Except for a prehistoric or historic burial
22 site that may be associated with the native Hawaiian people, any



1 person removing or redesignating any cemetery shall comply with
2 the following requirements:

- 3 (1) Publish a notice in a newspaper of general circulation
4 in the State, requesting persons having information
5 concerning the cemetery or persons buried in it to
6 report that information to the department;
- 7 (2) Photograph the cemetery generally, and take separate
8 photographs of all headstones located in the cemetery;
- 9 (3) Turn over to the department all photographs and any
10 other relevant historical records;
- 11 (4) Move all headstones to the place of reinterment; and
- 12 (5) Obtain the written concurrence of the department prior
13 to any removal or redesignation if the cemetery has
14 existed for more than fifty years."

15 SECTION 10. Section 6E-43, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "~~§6E-43 [Prehistoric and historic burial]~~ Burial sites.

- 18 (a) At any site, other than a known, maintained, actively used
19 cemetery where human skeletal remains are discovered or are
20 known to be buried and appear to be over fifty years old, the
21 remains and their associated burial goods shall not be moved
22 without the department's approval.



1 (b) All burial sites are significant and shall be
2 preserved in place until compliance with this section is met[7
3 ~~except as provided in section 6E-43.6. The appropriate island~~
4 ~~burial council shall determine whether preservation in place or~~
5 ~~relocation of previously identified native Hawaiian burial sites~~
6 ~~is warranted, following criteria which shall include recognition~~
7 ~~that burial sites of high preservation value, such as areas with~~
8 ~~a concentration of skeletal remains, or prehistoric or historic~~
9 ~~burials associated with important individuals and events, or~~
10 ~~areas that are within a context of historic properties, or have~~
11 ~~known lineal descendants, shall receive greater consideration~~
12 ~~for preservation in place. The criteria shall be developed by~~
13 ~~the department in consultation with the councils, office of~~
14 ~~Hawaiian affairs, representatives of development and large~~
15 ~~property owner interests, and appropriate Hawaiian~~
16 ~~organizations, such as Hui Malama I Na Kupuna O Hawai'i Nei,~~
17 ~~through rules adopted pursuant to chapter 91. A council's~~
18 ~~determination shall be rendered within forty-five days of~~
19 ~~referral by the department unless otherwise extended by~~
20 ~~agreement between the landowner and the department.~~

21 (c) ~~Council determinations may be administratively~~
22 ~~appealed to a panel composed of three council chairpersons and~~



1 ~~three members from the board of land and natural resources as a~~
2 ~~contested case pursuant to chapter 91. In addition to the six~~
3 ~~members, the chairperson of the board of land and natural~~
4 ~~resources shall preside over the contested case and vote only in~~
5 ~~the event of a tie.~~

6 ~~(d) Within ninety days following the final determination,~~
7 ~~a preservation or mitigation plan shall be approved by the~~
8 ~~department in consultation with any lineal descendants, the~~
9 ~~respective council, other appropriate Hawaiian organizations,~~
10 ~~and any affected property owner]. Burial sites that may be of~~
11 ~~native Hawaiian origin shall immediately be reported to the~~
12 ~~office of Hawaiian affairs.~~

13 ~~[(e)] (c) Should the burial site prove to be other than~~
14 ~~Hawaiian, the department, within thirty days shall determine~~
15 ~~whether preservation in place or relocation is warranted, and~~
16 ~~within an additional ninety days a preservation or mitigation~~
17 ~~plan shall be approved by the department in consultation with~~
18 ~~any lineal descendants, appropriate ethnic organizations, and~~
19 ~~any affected property owner."~~

20 SECTION 11. Section 6E-73, Hawaii Revised Statutes, is
21 amended by amending subsection (a) to read as follows:



1 "(a) A person commits the offense of failure to stop work
2 upon discovery of a burial site if the person discovers a burial
3 site and knowingly fails to stop work in the immediate area and
4 report the discovery as required by [~~section 6E-43.6.~~] this
5 chapter and part of chapter 10."

6 SECTION 12. Section 6K-6, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "**§6K-6 Responsibilities and duties of the commission.** The
9 general administration of the island reserve shall rest with the
10 commission. In carrying out its duties and responsibilities,
11 the commission:

- 12 (1) Shall establish criteria, policies, and controls for
13 permissible uses within the island reserve;
- 14 (2) Shall approve all contracts for services and rules
15 pertaining to the island reserve;
- 16 (3) Shall provide advice to the governor, the department,
17 and other departments and agencies on any matter
18 relating to the island reserve;
- 19 (4) Shall provide advice to the office of planning and the
20 department of the attorney general on any matter
21 relating to the federal conveyance of Kaho'olawe;



- 1 (5) May enter into curator or stewardship agreements with
2 appropriate Hawaiian cultural and spiritual community
3 organizations for the perpetuation of native Hawaiian
4 cultural, religious, and subsistence customs, beliefs,
5 and practices for the purposes stated in section 6K-3;
- 6 (6) Shall carry out those powers and duties otherwise
7 conferred upon the board of land and natural resources
8 and the land use commission with regard to
9 dispositions and approvals pertaining to the island
10 reserve. All powers and duties of the board of land
11 and natural resources and the land use commission
12 concerning dispositions and approvals pertaining to
13 the island reserve are transferred to the commission;
- 14 (7) Shall carry out those powers and duties concerning the
15 island reserve otherwise conferred upon the county of
16 Maui by chapter 205A. The powers and duties of the
17 county of Maui and its agencies concerning coastal
18 zone dispositions and approvals pertaining to the
19 island reserve are transferred to the commission;
- 20 ~~[(8) Shall carry out those powers and duties concerning the~~
21 ~~island reserve otherwise conferred upon the island~~
22 ~~burial councils and the department with regard to~~



~~proper treatment of burial sites and human skeletal remains found in the island reserve;~~

~~(9)]~~ (8) Shall adopt rules in accordance with chapter 91 that are necessary for the purposes of this chapter and shall maintain a record of its proceedings and actions;

~~(10)]~~ (9) May delegate to the executive director or employees of the commission, by formal commission action, such power and authority vested in the commission by this chapter as the commission deems reasonable and proper for the effective administration of this chapter; and

~~(11)]~~ (10) May solicit and accept grants, donations, and contributions for deposit into the Kaho'olawe rehabilitation trust fund to support the purposes of this chapter."

SECTION 13. Section 10-5, Hawaii Revised Statutes, is amended to read as follows:

"§10-5 Board of trustees; powers and duties. The board shall have the power in accordance with law to:

- (1) Manage, invest, and administer the proceeds from the sale or other disposition of lands, natural resources,



1 minerals, and income derived from whatever sources for
2 native Hawaiians and Hawaiians, including all income
3 and proceeds from that pro rata portion of the trust
4 referred to in section 10-3;

5 (2) Exercise control over real and personal property set
6 aside to the office by the State of Hawaii, the United
7 States of America, or any private sources, and
8 transferred to the office for native Hawaiians and
9 Hawaiians;

10 (3) Collect, receive, deposit, withdraw, and invest money
11 and property on behalf of the office;

12 (4) Formulate policy relating to the affairs of native
13 Hawaiians and Hawaiians, provided that such policy
14 shall not diminish or limit the benefits of native
15 Hawaiians under article XII, section 4, of the state
16 [~~Constitution;~~] constitution;

17 (5) Otherwise act as a trustee as provided by law;

18 (6) Delegate to the administrator, its officers and
19 employees such powers and duties as may be proper for
20 the performance of the powers and duties vested in the
21 board;



1 (7) Provide grants to individuals, and public or private
 2 organizations to better the conditions of native
 3 Hawaiians and Hawaiians consistent with the standards
 4 set forth in section 10-17;

5 (8) Make available technical and financial assistance and
 6 advisory services to any agency or private
 7 organization for native Hawaiian and Hawaiian
 8 programs, and for other functions pertinent to the
 9 purposes of the office of Hawaiian affairs. Financial
 10 assistance may be rendered through contractual
 11 arrangements as may be agreed upon by the board and
 12 any such agency or organization; [~~and~~]

13 (9) Provide for the preservation and protection of native
 14 Hawaiian burial sites as provided in part ; and

15 [~~(9)~~] (10) Adopt and use a common seal by which all official
 16 acts shall be authenticated."

17 SECTION 14. Section 247-7, Hawaii Revised Statutes, is
 18 amended to read as follows:

19 "**§247-7 Disposition of taxes.** All taxes collected under
 20 this chapter shall be paid into the state treasury to the credit
 21 of the general fund of the State, to be used and expended for

1 the purposes for which the general fund was created and exists
2 by law; provided that of the taxes collected each fiscal year:

3 (1) Ten per cent shall be paid into the land conservation
4 fund established pursuant to section 173A-5;

5 (2) Twenty-five per cent from July 1, 2009, until June 30,
6 2012, and thirty per cent in each fiscal year
7 thereafter shall be paid into the rental housing trust
8 fund established by section 201H-202; ~~and~~

9 (3) Twenty per cent from July 1, 2009, until June 30,
10 2012, and twenty-five per cent in each fiscal year
11 thereafter shall be paid into the natural area reserve
12 fund established by section 195-9; provided that the
13 funds paid into the natural area reserve fund shall be
14 annually disbursed by the department of land and
15 natural resources in the following priority:

16 (A) To natural area partnership and forest
17 stewardship programs after joint consultation
18 with the forest stewardship committee and the
19 natural area reserves system commission;

20 (B) Projects undertaken in accordance with watershed
21 management plans pursuant to section 171-58 or
22 watershed management plans negotiated with



1 private landowners, and management of the natural
2 area reserves system pursuant to section 195-3;
3 and

4 (C) The youth conservation corps established under
5 chapter 193[-]; and

6 (4) Ten per cent shall be paid into the burial sites
7 special fund established pursuant to section 10-S."

8 SECTION 15. Section 338-25.5, Hawaii Revised Statutes, is
9 amended by amending subsection (b) to read as follows:

10 "(b) Notwithstanding the provisions of subsection (a), the
11 department of land and natural resources pursuant to [sections]
12 section 6E-43 and [6E-43.6] the office of Hawaiian affairs
13 pursuant to part of chapter 10, may authorize exposure,
14 removal, disinterment, or any other act without obtaining a
15 permit from the department of health."

16 SECTION 16. Section 6E-43.5, Hawaii Revised Statutes, is
17 repealed.

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



1 ~~(b) Appointment of members to the councils shall be made~~
2 ~~by the governor, in accordance with section 26-34, from a list~~
3 ~~provided by the department, provided that a minimum of twenty~~
4 ~~per cent of the regional representatives shall be appointed from~~
5 ~~a list of at least nine candidates provided by the office of~~
6 ~~Hawaiian affairs. The department shall develop the list in~~
7 ~~consultation with appropriate Hawaiian organizations, such as~~
8 ~~Hui Malama I Na Kupuna O Hawai'i Nei. The membership of each~~
9 ~~council shall include at least one representative from each~~
10 ~~geographic region of the island as well as representatives of~~
11 ~~development and large property owner interests. Regional~~
12 ~~representatives shall be selected from the Hawaiian community on~~
13 ~~the basis of their understanding of the culture, history, burial~~
14 ~~beliefs, customs, and practices of native Hawaiians. The~~
15 ~~councils shall have a minimum of nine and a maximum of fifteen~~
16 ~~members, and have a ratio of not more than three to one and no~~
17 ~~less than two to one in favor of regional representatives.~~

18 ~~(c) The department, in consultation with the councils,~~
19 ~~office of Hawaiian affairs, representatives of development and~~
20 ~~large property owner interests, and appropriate Hawaiian~~
21 ~~organizations, such as Hui Malama I Na Kupuna O Hawai'i Nei,~~
22 ~~shall adopt rules pursuant to chapter 91 necessary to carry out~~



1 ~~the purposes of this section. The council members shall serve~~
2 ~~without compensation, but shall be reimbursed for necessary~~
3 ~~expenses incurred during the performance of their duties. The~~
4 ~~councils shall be a part of the department for administrative~~
5 ~~purposes.~~

6 ~~(d) The councils shall hold meetings and acquire~~
7 ~~information as they deem necessary and shall communicate their~~
8 ~~findings and recommendations to the department. Notwithstanding~~
9 ~~section 92-3, whenever the location and description of burial~~
10 ~~sites are under consideration, the councils may hold closed~~
11 ~~meetings. Concurrence of a majority of the members present at a~~
12 ~~meeting shall be necessary to make any action of a council~~
13 ~~valid.~~

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

18 ~~(f) The councils shall:~~

19 ~~(1) Determine the preservation or relocation of previously~~
20 ~~identified native Hawaiian burial sites;~~

21 ~~(2) Assist the department in the inventory and~~
22 ~~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~~
- 9 ~~discovery of remains."]~~

10 SECTION 17. Section 6E-43.6, Hawaii Revised Statutes, is
11 repealed.

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 working days,~~
3 ~~if on Oahu, and three working days, if in other council~~
4 ~~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. Members of the appropriate council~~
16 ~~shall be allowed to oversee the on-site examination~~
17 ~~and, if warranted, removal; and~~

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



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

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

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

14 ~~(1) In discoveries related to development where land~~
15 ~~alteration project activities exist, the landowner,~~
16 ~~permittee, or developer shall be responsible for the~~
17 ~~execution of the mitigation plan including relocation~~
18 ~~of remains. Justifiable delays resulting from the~~
19 ~~discovery of burials shall not count against any~~
20 ~~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 shall~~
14 ~~conform with requirements imposed by the department of health,~~
15 ~~and may be accompanied by traditional ceremonies, as determined~~
16 ~~by the lineal descendants, or, if no lineal descendants are~~
17 ~~identified, the appropriate council or representatives of the~~
18 ~~relevant ethnic group that the department deems appropriate.~~
19 ~~Specific or special reinterment requests from lineal or cultural~~
20 ~~descendants may be accommodated provided that the additional~~
21 ~~expenses incurred are paid by the affected 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 18. All rights, powers, functions, and duties of
9 the department of land and natural resources, the historic
10 preservation division, and the Kaho`olawe island reserve
11 commission relating to native Hawaiian burials are transferred
12 to the office of Hawaiian affairs.

13 All officers and employees whose functions are transferred
14 by this Act shall be transferred with their functions and shall
15 continue to perform their regular duties upon their transfer,
16 subject to the state personnel laws and this Act.

17 No officer or employee of the State having tenure shall
18 suffer any loss of salary, seniority, prior service credit,
19 vacation, sick leave, or other employee benefit or privilege as
20 a consequence of this Act, and such officer or employee may be
21 transferred or appointed to a civil service position without the
22 necessity of examination; provided that the officer or employee



1 possesses the minimum qualifications for the position to which
2 transferred or appointed; and provided that subsequent changes
3 in status may be made pursuant to applicable civil service and
4 compensation laws.

5 An officer or employee of the State who does not have
6 tenure and who may be transferred or appointed to a civil
7 service position as a consequence of this Act shall become a
8 civil service employee without the loss of salary, seniority,
9 prior service credit, vacation, sick leave, or other employee
10 benefits or privileges and without the necessity of examination;
11 provided that such officer or employee possesses the minimum
12 qualifications for the position to which transferred or
13 appointed.

14 If an office or position held by an officer or employee
15 having tenure is abolished, the officer or employee shall not
16 thereby be separated from public employment, but shall remain in
17 the employment of the State with the same pay and classification
18 and shall be transferred to some other office or position for
19 which the officer or employee is eligible under the personnel
20 laws of the State as determined by the head of the department or
21 the governor.



1 SECTION 19. All appropriations, records, equipment,
2 machines, files, supplies, contracts, books, papers, documents,
3 maps, and other personal property heretofore made, used,
4 acquired, or held by the department of land and natural
5 resources, the historic preservation division, and the
6 Kaho`olawe island reserve commission relating to the functions
7 transferred to the office of Hawaiian affairs shall be
8 transferred with the functions to which they relate.

9 SECTION 20. All rules, policies, procedures, guidelines,
10 and other material adopted or developed by the department of
11 land and natural resources, the historic preservation division,
12 and the Kaho`olawe island reserve commission to implement
13 provisions of the Hawaii Revised Statutes which are reenacted or
14 made applicable to the office of Hawaiian affairs by this Act,
15 shall remain in full force and effect until amended or repealed
16 by the office of Hawaiian affairs pursuant to chapter 91, Hawaii
17 Revised Statutes. In the interim, every reference to the
18 department of land and natural resources, the historic
19 preservation division, or the Kaho`olawe island reserve
20 commission in those rules, policies, procedures, guidelines, and
21 other material is amended to refer to the office of Hawaiian
22 affairs or the chair of the board of trustees as appropriate.



S.B. NO. 2302

1 SECTION 21. In codifying the new sections added by section
2 2 of this Act, the revisor of statutes shall substitute
3 appropriate section numbers for the letters used in designating
4 the new sections in this Act.

5 SECTION 22. Statutory material to be repealed is bracketed
6 and stricken. New statutory material is underscored.

7 SECTION 23. This Act shall take effect on July 1, 2010.

8

INTRODUCED BY:

Byron Hee

B

Norman Sakenski

Michelle N. Kudani



Report Title:

Office of Hawaiian Affairs; Burial Sites

Description:

Transfers the functions and duties of the historic preservation division and the Kaho`olawe island reserve commission relating to Hawaiian burial sites to the Office of Hawaiian Affairs. Establishes special fund. Funds operation through conveyance tax revenues. Includes cave burials and burial sites.

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