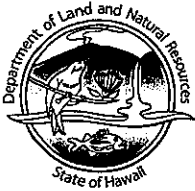


TESTIMONY
SB1083
LATE

LINDA LINGLE
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
LAURA H. THIELEN
Chairperson**

**Before the Senate Committee on
WATER, LAND, AGRICULTURE AND HAWAIIAN AFFAIRS**

**Wednesday, February 18, 2009
3:30 PM
State Capitol, Conference Room 229**

**In consideration of
SENATE BILL 1083
RELATING TO BURIAL SITES**

Senate Bill 1083 proposes to include Alu Like, Inc., the Association of Hawaiian Civic Clubs, the Council for Native Hawaiian Advancement, and representatives of the Hawaiian Benevolent Societies and the Hawaiian Royal Orders, that the Department of Land and Natural Resources (Department) shall consult with to develop rules and criteria to guide whether a burial site should be preserved in place or relocated, and to develop a list of candidates for the Island Burial Councils (Burial Councils). The Department supports this measure with amendments.

The intent of this bill is to ensure that Hawaiian organizations have more involvement in developing criteria for:

1. Burials with high preservation value, such as areas with a concentration of skeletal remains or prehistoric or historic burials associated with important individuals or events.
2. Developing lists of nominees to the Burials Councils
3. Adopting rules under which the burial councils should operate
4. Developing criteria for the removal of inadvertently discovered remains.

The bill also adds language to ensure that Burial Council members are reimbursed for their travel expenses.

The Department supports working with a broad spectrum of groups to develop lists of nominees for the Burial Councils. Furthermore, the Department already routinely consults with members of the groups listed. Based on community input, the Department also intends to review burial criteria within the next two years so in that respect, this bill is timely.

The Department however, is concerned that adding the language "including travel expenses" puts the Department at financial risk if the Department does not have clear authority over

LATE TESTIMONY

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
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

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neighbor island or mainland travel approvals for the Burial Councils. For example, the Department currently pays mileage for Burial Council members who turn in travel reimbursements to attend meetings or go on site visits at the Department's request. This is especially important for members of the Hawaii Island Burial Council. However, should Burial Council members decide to attend an off-island conference or meeting as part of "the performance of their duties" does the Department have the authority to deny travel?

The Department suggests the following language to section 6E-43.5, Hawaii Revised Statutes:

(c) The department, in consultation with the councils, office of Hawaiian affairs, representatives of development and large property owner interests, and appropriate Hawaiian organizations, such as Hui Malama I Na Kupuna O Hawai'i Nei, Alu Like, Inc., the Association of Hawaiian Civic Clubs, the Council for Native Hawaiian Advancement, and representatives of the Hawaiian Benevolent Societies and the Hawaiian Royal Orders, shall adopt rules pursuant to chapter 91 necessary to carry out the purposes of this section. The council members shall serve without compensation, but shall be reimbursed for necessary expenses, including mileage to and from meetings, incurred during the performance of their duties. The councils shall be a part of the department for administrative purposes."



OFFICE OF HAWAIIAN AFFAIRS
Legislative Testimony

SB 1083 RELATING TO BURIAL SITES

Senate Committee on Water, Land, Agriculture and Hawaiian
Affairs

February 18, 2009

3:30 pm

Room: 229

LATE TESTIMONY

The Office of Hawaiian Affairs (OHA) **SUPPORTS** SB 1083, which would amend Chapter 6E-43, Hawaii Revised Statutes (HRS), to include additional Native Hawaiian Organizations for consultation when rendering determinations of preservation in place or relocation of Hawaiian burial sites and in the development of candidate lists for appointment to serve on Island Burial Councils.

OHA recognizes that determining an appropriate treatment for Hawaiian burials requires specific expertise and consideration of all applicable information. We see the intent of this bill as being as inclusive as possible in seeking a broad range of expertise and viewpoints for consideration as the Department of Land and Natural Resources (DLNR) moves forward with its decision-making process.

Furthermore, OHA sees this bill as providing a list of the most qualified candidates possible for appointment to Island Burial Councils, which play a critical role not only in making statutory determinations pursuant to Chapter 6E, HRS, but also as an advisory body to the DLNR on appropriate mitigation and preservation measures for Hawaiian burial sites.

Therefore, OHA urges the Committee to PASS SB 1083. Thank you for the opportunity to testify.

LATE TESTIMONY

SHERRY P. BRODER
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February 18, 2009

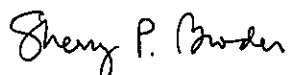
Chairman Senator Clayton H.W. Hee and
Committee Members
Water, Land Agriculture and Hawaiian Affairs Committee
Hawaii State Senate
Capitol Building
Honolulu, Hawaii

SB 1083, Relating to Burial Sites

Dear Chairman Hee and Committee Members,

This testimony is submitted in support of Senate Bill 1083. This bill clarifies that there are many Native Hawaiian organizations with expertise in and a commitment to the proper and respectful treatment of remains. This bill recognizes that the Native Hawaiian community is very concerned about the handling of burials.

Sincerely,



Sherry P. Broder, Esq.

February 16, 2009

LATE TESTIMONY

Senate Committee of Water, Land,
Agriculture and Hawaiian Affairs
Hawai'i State Capitol, Senate Chambers
415 South Beretania Street
Honolulu, HI 96813

Subject: Senate Bill No. 1083 -- Introduced January 26, 2009, Relating to Burial Sites

This letter as submitted and the testimony to be given are opposed to the proposed amendments in Senate Bill No. 1083 as written. The context of the Bill does not meet the intent of Ihi Kapu (Sacred Law) of honoring our Iwi. Based on the language as written, we are not leaving our Iwi in the hands of people who know our culture, but in the hands of folks that do not know our culture, traditions, practices and spirituality. This violates the Ihi Kapu once held sacred by our Ancestors.

The recent court case regarding the Iwi at Naue on Kaua'i demonstrated the ineffectiveness of the Burial Council, because most of the members of the council were not knowledgeable of our burial practices and culture. The most important issue was that the Spiritual practices of how we handle our Iwi were missing. The State Archeologist, Kaua'i Planning Commission and Kaua'i Burial Council were ineffective in the handling of the issues dealing with the Iwi. We need to rectify these issues and we are submitting proposed language to replace or augment the proposed language to make the bill more functional in the traditional way or how we honor and revere the handling our Iwi by employing the practices of our time-honored Hawaiian culture.

Comments to rectify the proposed language - Subsection (b)

1. All Hawaiian burial sites shall be considered high preservation value regardless of the importance of the individual or event. These sites represent the mo'olelo of our ancestors.
2. Criteria for burial shall only be developed by Native Hawaiian Practitioners, who are knowledgeable of how to honor and handle our Iwi in a traditional Hawaiian sacred way. The handling and any re-interment shall only be accomplished by Native Hawaiian Practitioners.
3. Definition of a Native Hawaiian Practitioner -- The term "Native Hawaiian Practitioner" means—
 - (A) any Native Hawaiian, who practices the traditional Hawaiian Spirituality (Religion), or

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(B) any Native Hawaiian with an obligation to protect a Native Hawaiian religious site or any Native Hawaiian who practices Native Hawaiian religion or engages in a Native Hawaiian ceremonies, rituals or practices, e.g. Lawelawe iwi, Kumu Hula, Kukei'i wana'ao, Lomi lomi, La'au lapa'au, Kaukukulolo, Haku Mele ula, etc.

4. The organizations as recommended in the amended language should have individuals that meet the criteria of a Native Practitioner or have Native Hawaiians who are knowledgeable in our traditional culture, traditions and practices.

5. Each Moku shall develop their own processes and treatments of handling their Iwi as each moku have their own traditional way on how they handled their Iwi.

6. We must exclude Representatives of development and large property owner interests, because there is a conflict of interest regarding the cultural practices of handling the "Iwi". This was the basis for the court case on Kaua'i regarding the Iwi discovered in Naue during the construction of a very large house. There was complete disregard for the sacredness of the Iwi as demonstrated by they constructed the foundation supports over gravesites. We were there to see it in August 2008.

7. The Burial Council amendments and language shall meet the intent of Article 12, Section 7 of the Hawai'i State constitution

In summary, the Kanaka Council Moku O Keawe opposes Senate Bill No. 1083 as submitted.

Me ka 'oia'i'o,

Alaka'i O Kanaka Council Moku O Keawe

Please consider
↓

____. B. NO. **LATE TESTIMONY**

J. Malama & Jim Medeiros Sr.
A BILL FOR AN ACT
RELATING TO HISTORIC PRESERVATION

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII

SECTION 1. Section 6E-43.5, Hawai'i Revised Statutes, is amended to read as follows:

"§6E-43.5 Island burial Councils; creation; appointment; composition; duties. (a) The department shall establish island burial councils for Hawai'i, Maui/Lana'i, Moloka'i, O'ahu and Kaua'i/Ni'i'hau, to implement section 6E-43.

(b) Appointment of members to the councils shall be made by the governor, in accordance with section 26-34, from a list provided by the department, provided that a minimum twenty percent of the regional representatives shall be appointed from a list of at least nine representatives provided by the office of Hawaiian affairs. The department shall develop the list in consultation with appropriate Hawaiian organizations, such Hui Malama I Na

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Kupuna O Hawai'i Nei, Kanaka Council, . The membership of each council shall include at one representative from each geographic region (traditional district) of the island (~~as well as representatives of development and large property owner interests~~). Regional representatives shall be selected from the Hawaiian community on the basis of their understanding of the culture, history, burial beliefs, customs, and practices of native Hawaiians. Regional representatives shall be a member or descendant of the indigenous Polynesian people who lived in the Hawaiian Islands prior to 1778. The councils shall have a minimum of nine and maximum of fifteen members [~~and have a ratio of not more than three to one and no less than two to one in favor of regional representatives~~].

(c) The department, in consultation with the councils, office of Hawaiian affairs [~~representatives of development and large property owner interests,~~] and appropriate Hawaiian organizations, such as Hui Malama I Na Kupuna O Hawai'i Nei, shall adopt rules pursuant to chapter 91 necessary to carry out the purpose of this section. The council members shall serve without compensation,

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but shall be reimbursed for necessary expenses incurred during the performance of their duties. The councils shall be a part of the department for administrative purposes.

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

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

(f) The councils shall:

(1) Determine the preservation or relocation of previously identified native

Hawaiian burial sites;

(2) Assist the department in the inventory and identification of native Hawaiian burial sites;

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(3) Make recommendations regarding appropriate management, treatment, and protection of native Hawaiian burial sites, and on any other matters relating to native Hawaiian burial sites;

(4) Elect a chairperson for a four-year term who shall serve for not more than two consecutive terms; and

(5) Maintain a list of appropriate Hawaiian organizations, agencies, and offices to notify regarding the discovery of remains.”

SECTION 2. Statutory material to be repealed is bracketed and stricken.

New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

INTRODUCED BY: _____

By Request

TESTIMONY

SB1083

LATE

(END)