

JAN 21 2011

A BILL FOR AN ACT

RELATING TO BURIAL SITES.

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

1 SECTION 1. Section 6E-43, Hawaii Revised Statutes, is
2 amended as follows:

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

4 "(b) All burial sites are significant and shall be
5 preserved in place until compliance with this section is met [~~7~~
6 ~~except as provided in section 6E-43.6~~]. The appropriate island
7 burial council shall determine whether preservation in place or
8 relocation of previously identified or inadvertently discovered
9 native Hawaiian burial sites is warranted, following criteria
10 [~~which~~] that shall include recognition that burial sites of high
11 preservation value, such as areas with a concentration of
12 skeletal remains, or prehistoric or historic burials associated
13 with important individuals and events, or areas that are within
14 a context of historic properties, or have known lineal
15 descendants, shall receive greater consideration for
16 preservation in place. The criteria shall be developed by the
17 department in consultation with the councils, office of Hawaiian
18 affairs, representatives of development and large property owner



1 interests, and appropriate Hawaiian organizations [~~such as Hui~~
2 ~~Malama I Na Kupuna O Hawai'i Nei,~~] through rules adopted
3 pursuant to chapter 91. A council's determination on previously
4 identified native Hawaiian burial sites shall be rendered within
5 forty-five days of referral by the department [~~unless~~
6 ~~otherwise~~]. A council's determination on inadvertently
7 discovered native Hawaiian burial sites shall be rendered within
8 fifteen days of referral by the department. These deadlines may
9 be extended by agreement between the landowner and the
10 department.

11 If a council's determination of a previously identified or
12 inadvertently discovered burial site proves to be other than a
13 Hawaiian burial site, the department shall determine the
14 treatment of the non-Hawaiian burial site under subsection (e)."

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

16 "(d) Within ninety days following the final
17 determination[~~7~~] for previously identified native Hawaiian
18 burial sites and within thirty days following the final
19 determination for inadvertently discovered native Hawaiian
20 burial sites, a preservation or mitigation plan shall be
21 approved by the department in consultation with any lineal



1 descendants, the respective council, other appropriate Hawaiian
2 organizations, and any affected property owner."

3 SECTION 2. Section 6E-43.5, Hawaii Revised Statutes, is
4 amended as follows:

5 1. By amending subsections (b) to (d) to read:

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



1 (c) The department, in consultation with the councils,
2 office of Hawaiian affairs, representatives of development and
3 large property owner interests, and appropriate Hawaiian
4 organizations [~~such as Hui Malama I Na Kupuna O Hawai'i Nei,~~]
5 shall adopt rules pursuant to chapter 91 necessary to carry out
6 the purposes of this section. The council members shall serve
7 without compensation, but shall be reimbursed for necessary
8 expenses incurred during the performance of their duties. The
9 councils shall be a part of the department for administrative
10 purposes.

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

19 2. By amending subsection (f) to read:

20 "(f) The councils shall:



- 1 (1) Determine the preservation or relocation of previously
- 2 identified and inadvertently discovered native
- 3 Hawaiian burial sites;
- 4 (2) Assist the department in the inventory and
- 5 identification of native Hawaiian burial sites;
- 6 (3) Make recommendations regarding appropriate management,
- 7 treatment, and protection of native Hawaiian burial
- 8 sites, and on any other matters relating to native
- 9 Hawaiian burial sites;
- 10 (4) Elect a chairperson for a four-year term who shall
- 11 serve for not more than two consecutive terms; and
- 12 (5) Maintain a list of appropriate Hawaiian organizations,
- 13 agencies, and offices to notify regarding the
- 14 discovery of remains."

15 SECTION 3. Section 6E-43.6, Hawaii Revised Statutes, is
 16 amended as follows:

17 1. By amending subsections (c) and (d) to read:

18 "(c) After notification of the discovery of multiple
 19 skeletons, the following shall be done within [~~two~~] three
 20 working days, if on Oahu, and [~~three~~] four working days, if in
 21 other council 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 department's involvement shall end. If the
6 remains are historic or prehistoric burials, then the
7 remainder of this section shall apply;

8 (2) The department shall gather sufficient information,
9 including oral tradition, to document the nature of
10 the burial context and ~~[determine]~~ assist in the
11 determination of appropriate treatment of the
12 remains[-] as set forth in section 6E-43. Members of
13 the appropriate council shall be allowed to oversee
14 the on-site examination and, if warranted, removal;
15 and

16 (3) If removal of the remains is warranted, based on
17 criteria developed by the department, in consultation
18 with the councils, office of Hawaiian affairs,
19 representatives of development and large property
20 owner interests, and appropriate Hawaiian
21 organizations [~~such as Hui Malama I Na Kupuna O~~
22 ~~Hawai'i Nei,~~] through rules adopted pursuant to



1 chapter 91, the removal of the remains shall be
2 overseen by a qualified archaeologist and a mitigation
3 plan shall be prepared by the department or with the
4 concurrence of the department.

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

9 2. By amending subsection (f) to read:

10 "(f) In cases where remains are archaeologically removed,
11 the department shall determine the place of relocation, after
12 consultation with the appropriate council, affected property
13 owners, representatives of the relevant ethnic group, and any
14 identified lineal descendants [~~as appropriate~~]. Relocation
15 shall conform with requirements imposed by the department of
16 health, and may be accompanied by traditional ceremonies, as
17 determined by the lineal descendants, or, if no lineal
18 descendants are identified, the appropriate council or
19 representatives of the relevant ethnic group that the department
20 deems appropriate. Specific or special reinterment requests
21 from lineal or cultural descendants may be accommodated provided



1 that the additional expenses incurred are paid by the affected
2 descendants."

3 SECTION 4. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 5. This Act shall take effect upon its approval.

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INTRODUCED BY:

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Report Title:

Burial Sites

Description:

Clarifies provisions relating to inadvertently discovered native Hawaiian burial sites by amending sections 6E-43, 6E-43.5, 6E-43.6, Hawaii Revised Statutes. Conforms the treatment of inadvertently discovered native Hawaiian discovered burial sites with the treatment of previously discovered burial sites by the burial councils under the department of land and natural resources.

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