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# 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 [~~7 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) Review mitigation plans for the inadvertent discovery  
11 of native Hawaiian burial sites;
- 12 [~~4~~] (5) Elect a chairperson for a four-year term who  
13 shall serve for not more than two consecutive terms;  
14 and
- 15 [~~5~~] (6) Maintain a list of appropriate Hawaiian  
16 organizations, agencies, and offices to notify  
17 regarding the discovery of remains."

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

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

21 "(c) After notification of the discovery of multiple  
22 skeletons, the following shall be done within [~~two~~] three



1 working days, if on Oahu, and [~~three~~] four working days, if in  
2 other council jurisdictions:

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

10 (2) The department shall gather sufficient information,  
11 including oral tradition, to document the nature of  
12 the burial context and [~~determine~~] assist in the  
13 determination of appropriate treatment of the  
14 remains[-] as set forth in section 6E-43. Members of  
15 the appropriate council shall be allowed to oversee  
16 the on-site examination and, if warranted, removal;  
17 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  
3 chapter 91, the removal of the remains shall be  
4 overseen by a qualified archaeologist and a mitigation  
5 plan shall be prepared by the department or with the  
6 concurrence of 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 two working [~~day~~] days if on Oahu, and [~~two~~] three working days,  
10 if in other council jurisdictions."

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

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



1 from lineal or cultural descendants may be accommodated provided  
2 that the additional expenses incurred are paid by the affected  
3 descendants."

4 SECTION 4. Notwithstanding any other law to the contrary,  
5 the provisions of this Act shall not apply to any public-works  
6 projects undertaken by state or county agencies.

7 SECTION 5. Statutory material to be repealed is bracketed  
8 and stricken. New statutory material is underscored.

9 SECTION 6. This Act shall take effect upon its approval.





**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. Provides for the treatment of inadvertently discovered native Hawaiian burial sites. (HB155 HD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

