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# A BILL FOR AN ACT

RELATING TO A STATEWIDE ISLAND BURIAL COUNCIL.

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

1           SECTION 1. The legislature finds that the island burial  
2 councils have been having difficulty meeting quorum, in large  
3 part because of the difficulty of finding qualified large  
4 landowner representatives to serve on the island burial  
5 councils. The Molokai island burial council has not been able  
6 to meet since April 2008 because the State has not been able to  
7 attract large landowners on Molokai to serve on the island  
8 burial council.

9           Recently, this has also become a problem for the other  
10 island burial councils. Maui and Hawaii have canceled nine  
11 meetings due to quorum issues and Kauai has lost two regional  
12 representatives and is seeking an additional large landowner.

13           The purpose of this Act is to address the quorum issue by  
14 reducing the number of island burial councils to one statewide  
15 island burial council with equal representation from all  
16 islands, while maintaining the quorum ratio of large landowners  
17 to regional representatives. In addition to fixing long-  
18 standing quorum problems, a statewide island burial council will

1 also address the following long-standing concerns of the island  
2 burial councils:

3 (1) It will allow for statewide coordination when dealing  
4 with burials. This has been a concern for the island  
5 burial councils who have been unable to have statewide  
6 meetings due to funding issues.

7 (2) It will distribute the need for large landowners  
8 across a broader base, and allow landowners who have  
9 lands on multiple islands (Crown Trusts) to sit one  
10 person, rather than commit staff from multiple  
11 islands.

12 SECTION 2. Section 6E-7, Hawaii Revised Statutes, is  
13 amended 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~~] statewide  
18 island burial council."

19 SECTION 3. Section 6E-43, Hawaii Revised Statutes, is  
20 amended by amending subsections (b), (c), and (d) to read as  
21 follows:

22 "(b) All burial sites are significant and shall be  
23 preserved in place until compliance with this section is met,

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

20 (c) Council determinations may be administratively  
21 appealed to a panel composed of [~~three council chairpersons and~~  
22 ~~three~~] two island representatives and two members from the board  
23 of land and natural resources, as a contested case pursuant to

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

5 (d) Within ninety days following the final determination,  
6 a preservation or mitigation plan shall be approved by the  
7 department in consultation with any lineal descendants, the  
8 [~~respective~~] statewide island burial council, other appropriate  
9 Hawaiian organizations, and any affected property owner."

10 SECTION 4. Section 6E-43.5, Hawaii Revised Statutes, is  
11 amended to read as follows:

12 "§6E-43.5 [~~Island~~] Statewide island burial [~~councils,~~]  
13 council; creation; appointment; composition; duties. (a) The  
14 department shall establish a statewide island burial [~~councils~~  
15 ~~for Hawaii, Maui/Lanai, Molokai, Oahu, and Kauai/Niihau,~~]  
16 council to implement section 6E-43.

17 (b) [~~Appointment~~] Notwithstanding any other law to the  
18 contrary, appointment of members to the [~~councils~~] statewide  
19 island burial council shall be made by the governor [~~, in~~  
20 ~~accordance with section 26-34,~~] from a list provided by the  
21 department, provided that a minimum of twenty per cent of the  
22 [~~regional~~] island representatives shall be appointed from a list  
23 of at least nine candidates provided by the office of Hawaiian

1 ~~affairs[. The department shall develop the list in consultation~~  
2 ~~with appropriate Hawaiian organizations, such as Hui Malama I Na~~  
3 ~~Kupuna O Hawai'i Nei.]~~, and provided further that the governor  
4 may appoint council members to serve three- or four-year  
5 terms. The membership of [each] the statewide island burial  
6 council shall include [at least one representative from] no more  
7 than two representatives each [~~geographic region of the island~~  
8 ~~as well as representatives of development and large property~~  
9 ~~owner interests. Regional representatives]~~ from Kauai, Oahu,  
10 Maui, Molokai, Lanai, and Hawai'i, provided that a portion of the  
11 members will also represent development and large landowner  
12 interests. Representatives shall be selected [~~from the Hawaiian~~  
13 ~~community]~~ on the basis of their understanding of the culture,  
14 history, burial beliefs, customs, and practices of native  
15 Hawaiians[~~.]~~ and of their understanding of land use in the  
16 State. The [~~councils]~~ statewide island burial council shall  
17 have a minimum of [~~nine]~~ six and a maximum of [~~fifteen]~~ twelve  
18 members, and [~~have a ratio of not more than three to one and no~~  
19 ~~less than two to one in favor of regional representatives.]~~ a  
20 majority of seated members shall constitute a quorum to do  
21 business. Island representatives that represent development and  
22 large landowner interests shall constitute no more than thirty-

1 three per cent and no less than twenty-five per cent of the  
2 total number of all island representatives. The chairperson of  
3 the board of land and natural resources or the chairperson's  
4 designee shall serve as the chair of the statewide island burial  
5 council.

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

17 (d) The [~~councils~~] statewide island burial council shall  
18 hold meetings and acquire information as [~~they deem~~] it deems  
19 necessary and shall communicate [~~their~~] its findings and  
20 recommendations to the department. Meetings shall rotate to  
21 each different island, with no one island hosting more than two  
22 meetings per year. Notwithstanding section 92-3, whenever the  
23 location and description of burial sites are under

1 consideration, the [~~councils~~] statewide island burial council  
2 may hold closed meetings. Concurrence of a majority of the  
3 members present at a meeting shall be necessary to make any  
4 action of [a] the statewide island burial council valid.

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

9 (f) The [~~councils~~] statewide island burial council shall:

- 10 (1) Determine the preservation or relocation of previously  
11 identified native Hawaiian burial sites;
- 12 (2) Assist the department in the inventory and  
13 identification of native Hawaiian burial sites;
- 14 (3) Make recommendations regarding appropriate management,  
15 treatment, and protection of native Hawaiian burial  
16 sites, and on any other matters relating to native  
17 Hawaiian burial sites;
- 18 [~~(4) Elect a chairperson for a four-year term who shall~~  
19 ~~serve for not more than two consecutive terms;~~] and
- 20 [~~(5)~~] (4) Maintain a list of appropriate Hawaiian  
21 organizations, agencies, and offices to notify  
22 regarding the discovery of remains."

1 SECTION 5. Section 6E-43.6, Hawaii Revised Statutes, is  
2 amended as follows:

3 (1) By amending subsections (b), (c), and (d) to read as  
4 follows:

5 "(b) The discovery shall be reported as soon as possible  
6 to the department, the appropriate medical examiner or coroner,  
7 and the appropriate police department. As soon as practicable,  
8 the department shall notify the [~~appropriate~~] statewide island  
9 burial council and the office of Hawaiian affairs.

10 (c) After notification of the discovery of multiple  
11 skeletons, the following shall be done within two working days,  
12 if on Oahu, and three working days, if in other statewide island  
13 burial council jurisdictions:

14 (1) A representative of the medical examiner or coroner's  
15 office and a qualified archaeologist shall examine the  
16 remains to determine jurisdiction. If the remains are  
17 the responsibility of the medical examiner or coroner,  
18 the department's involvement shall end. If the  
19 remains are historic or prehistoric burials, then the  
20 remainder of this section shall apply;

21 (2) The department shall gather sufficient information,  
22 including oral tradition, to document the nature of  
23 the burial context and determine appropriate treatment

1 of the remains. Members of the [appropriate]  
2 statewide island burial council shall be allowed to  
3 oversee the on-site examination and, if warranted,  
4 removal; and

5 (3) If removal of the remains is warranted, based on  
6 criteria developed by the department, in consultation  
7 with the [~~councils,~~] statewide island burial council,  
8 office of Hawaiian affairs, representatives of  
9 development and large property owner interests, and  
10 appropriate Hawaiian organizations, [~~such as Hui~~  
11 ~~Malama I Na Kupuna O Hawai'i Nei,~~] through rules  
12 adopted pursuant to chapter 91, the removal of the  
13 remains shall be overseen by a qualified archaeologist  
14 and a mitigation plan shall be prepared by the  
15 department or with the concurrence of the department.

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

20 (2) By amending subsection (f) to read as follows:

21 "(f) In cases where remains are archaeologically removed,  
22 the department shall determine the place of relocation, after  
23 consultation with the [appropriate] statewide island burial

1 council, affected property owners, representatives of the  
2 relevant ethnic group, and any identified lineal descendants, as  
3 appropriate. Relocation shall conform with requirements imposed  
4 by the department of health, and may be accompanied by  
5 traditional ceremonies, as determined by the lineal descendants,  
6 or, if no lineal descendants are identified, the [appropriate]  
7 statewide island burial council or representatives of the  
8 relevant ethnic group that the department deems appropriate.  
9 Specific or special reinterment requests from lineal or cultural  
10 descendants may be accommodated provided that the additional  
11 expenses incurred are paid by the affected descendants."

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

14 "**§6K-6 Responsibilities and duties of the commission.** The  
15 general administration of the island reserve shall rest with the  
16 commission. In carrying out its duties and responsibilities,  
17 the commission:

- 18 (1) Shall establish criteria, policies, and controls for  
19 permissible uses within the island reserve;
- 20 (2) Shall approve all contracts for services and rules  
21 pertaining to the island reserve;

- 1           (3) Shall provide advice to the governor, the department,  
2                   and other departments and agencies on any matter  
3                   relating to the island reserve;
- 4           (4) Shall provide advice to the office of planning and the  
5                   department of the attorney general on any matter  
6                   relating to the federal conveyance of Kaho'olawe;
- 7           (5) May enter into curator or stewardship agreements with  
8                   appropriate Hawaiian cultural and spiritual community  
9                   organizations for the perpetuation of native Hawaiian  
10                  cultural, religious, and subsistence customs, beliefs,  
11                  and practices for the purposes stated in section 6K-3;
- 12          (6) Shall carry out those powers and duties otherwise  
13                  conferred upon the board of land and natural resources  
14                  and the land use commission with regard to  
15                  dispositions and approvals pertaining to the island  
16                  reserve. All powers and duties of the board of land  
17                  and natural resources and the land use commission  
18                  concerning dispositions and approvals pertaining to  
19                  the island reserve are transferred to the commission;
- 20          (7) Shall carry out those powers and duties concerning the  
21                  island reserve otherwise conferred upon the county of  
22                  Maui by chapter 205A. The powers and duties of the  
23                  county of Maui and its agencies concerning coastal

- 1 zone dispositions and approvals pertaining to the  
2 island reserve are transferred to the commission;
- 3 (8) Shall carry out those powers and duties concerning the  
4 island reserve otherwise conferred upon the statewide  
5 island burial [~~councils~~] council and the department  
6 with regard to proper treatment of burial sites and  
7 human skeletal remains found in the island reserve;
- 8 (9) Shall adopt rules in accordance with chapter 91 that  
9 are necessary for the purposes of this chapter and  
10 shall maintain a record of its proceedings and  
11 actions;
- 12 (10) May delegate to the executive director or employees of  
13 the commission, by formal commission action, such  
14 power and authority vested in the commission by this  
15 chapter as the commission deems reasonable and proper  
16 for the effective administration of this chapter; and
- 17 (11) May solicit and accept grants, donations, and  
18 contributions for deposit into the Kaho'olawe  
19 rehabilitation trust fund to support the purposes of  
20 this chapter."

21 SECTION 7. Statutory material to be repealed is bracketed  
22 and stricken. New statutory material is underscored.

H .B. NO. 2592

1 SECTION 8. This Act shall take effect on July 1, 2012.

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INTRODUCED BY: Calvin K. Y. Day

4

BY REQUEST  
JAN 23 2012

H. B. NO. 2592

**Report Title:**

Statewide Island Burial Council

**Description:**

Consolidates the five Island Burial Councils into a single Statewide Island Burial Council as a means to address long-standing quorum issues.

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

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JUSTIFICATION SHEET

DEPARTMENT: Land and Natural Resources

TITLE: A BILL FOR AN ACT RELATING TO A STATEWIDE ISLAND BURIAL COUNCIL.

PURPOSE: To consolidate the five Island Burial Councils into a single statewide island burial council as a means to address long-standing quorum issues.

MEANS: Amend sections 6E-7(d), 6E-43(b), (c), and (d), 6E-43.5, 6E-43.6(b), (c), (d), and (f), and 6K-6, Hawaii Revised Statutes (HRS).

JUSTIFICATION: The purpose of section 6E-43, HRS, is to ensure that Native Hawaiians and landowners have a forum to discuss and voice their opinions on the treatment of burials on their respective island. However, lack of quorum, particularly difficulty in getting large landowner representation on small islands, has hindered the ability of island burial councils to meet. The Molokai Island Burial Council has not been able to meet since April 2008 because the State has not been able to attract large landowners (section 6E-43.5(b), HRS, requires the representation of development and large property owners on island burial councils) on Molokai to serve on the Island Burial Council. Recently, this has also become a problem for the other island burial councils. Maui/Lanai and Hawaii have canceled nine meetings due to quorum issues and Kauai/Niihau has lost two regional representatives and is seeking an additional large landowner.

The bill seeks to address the quorum issue by reducing the number of island burial councils to one statewide island burial council with equal representation from all islands, while maintaining the quorum ratio of large landowners to regional

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representatives. In addition to fixing long-standing quorum problems, a statewide island burial council will also address the following long-standing concerns of the Island Burial Councils:

- (1) It will allow for statewide coordination when dealing with burials. This has been a concern for the island burial councils who have been unable to have statewide meetings due to funding issues.
- (2) It will distribute the need for large landowners across a broader base, and allow landowners who have lands on multiple islands (Crown Trusts) to sit one person, rather than commit staff from multiple islands.

Impact on the public: This bill would allow for more consistent statewide decisions.

Impact on the department and other agencies:

This bill will require only one statewide burial council meeting per month rather than having separate respective island burial council meetings, thus reducing time for preparation and taking minutes of meetings. Travel costs are expected to increase by \$5,000 per month, however, as a result of having to fly in neighbor island staff and island burial council representatives, and to cover other travel related expenses (car rental, meal allowance, and parking).

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: LNR 802.

OTHER AFFECTED AGENCIES: Kaho'olawe Island Reserve Commission.

EFFECTIVE DATE: July 1, 2012.