

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

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HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Testimony of
WILLIAM AILA, JR
Chairperson

Before the House Committee on
OCEAN, MARINE RESOURCES & HAWAIIAN AFFAIRS

Wednesday, January 30, 2013
10:00 am
State Capitol, Conference Room 325

In consideration of
HOUSE BILL 221
RELATING TO ISLAND BURIALS COUNCILS

House Bill 221 seeks to clarify quorum for the Island Burial Councils, which have failed to meet due to a lack of quorum. The Department of Land and Natural Resources (Department) supports the concept of this bill and offers the following comments and amendments.

House Bill 221 sets membership at nine (9) for all Councils except Kauai, which is set at 11. The Department notes that Kauai was unable to meet in 2012 due to a lack of quorum. The department believes the Moku of Na Pali should be eliminated and representation for its lands distributed between the Moku of Waimea and Hanalei. Representation from Na Pali is difficult because no one lives there anymore. In general, burials found in Na Pali are inadvertent discoveries and handled by the Departments' Division of State Parks and the State Historic Preservation Division (SHPD).

SHPD also believes that Moloka'i should have five (5) or at most seven (7) members. The Molokai Island Burial Council has not met for over five years because they have been unable to recruit enough members. In particular, landowners have not been willing to sit on the Council. Thus to reduce the number of landowners on the Council to one is a good idea and may allow Molokai to again have a Burial Council. The other option is to join the Molokai Council to the Maui/Lanai Council and have a Maui Nui Council. If the State decides to define Councils by county, rather than island, this would work.

The Department also suggests that the language requiring that the Governor to select from list provided by the Department provided that a minimum of the 20% of the regional representatives be selected from a list of nine candidates provided by the Office of Hawaiian Affairs. We suggest the following language:

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 and the office of Hawaiian affairs. The office of Hawaiian affairs may submit a separate list to the governor, in which case, a minimum of 20% of the regional vacancies shall be filled by qualified candidates from this separate list.

The Department suggests that the following requirements for landowner/developers be included in the law:

1. Owns or manages over 100 acres of land; or
2. Is actively developing 10 acres in areas with a high probability of finding burials, such as Kakaako, Waikiki, Kailua, Hanalei and Wailuku; or
3. Represents property owners or developers in an area of high development, such as the Waikiki Improvement Association.

The Department notes that landowners have played an important role in all of the councils and often sit as the council chair.

Thank you for the opportunity to testify in support of House Bill 221.



HB221
RELATING TO ISLAND BURIAL COUNCILS

House Committee on Ocean, Marine Resources, & Hawaiian Affairs

January 30, 2013

10:00 a.m.

Room: 325

The Office of Hawaiian Affairs (OHA) strongly **SUPPORTS** HB221 **with amendments**, which is a bill in OHA's 2013 Legislative Package. HB221 seeks to resolve the longstanding impediments to the island burial councils' efficacy resulting from ambiguity in statutory language regarding composition and quorum requirements.

The island burial councils bear the tremendous kuleana to mālama "our most cherished possession", the iwi of our beloved kūpuna. In recent years, the burial councils have faced administrative confusion and difficulty fulfilling the composition and quorum requirements provided in the statute and administrative rules.

These obstacles have disrupted the ability of the burial councils to fully function, as some have had to cancel multiple meetings due to seat vacancies. For example, the O'ahu Island Burial Council was not able to meet for a five-month period last year, and the Moloka'i Island Burial Council has not met since 2008, after facing several years of similar dysfunction. These cancelled meetings have stalled public discourse on iwi protection, burial treatment plan formulation, and enforcement actions. Moreover, they have caused extended delays on development and infrastructure projects at considerable cost to developers, including the state and county governments.

There have been several efforts in recent years to fix the issue, including a bill last year that would have dissolved all the island burial councils and replaced them with a single statewide island burial council. OHA has engaged the leadership of the island burial councils to develop solutions to these issues. Reduced composition and a fixed quorum requirement for each council would greatly reduce the burden of filling the requisite number of seats with qualified regional and landowner representatives. Under a more clear and stable statute, full composition and quorum will be more easily met, and the island burial councils will again be able to meet regularly and fulfill both the spirit and intent of these important laws.

OHA is currently engaged with the Department of Land and Natural Resources, burial council leadership, interested stakeholders, and the greater Hawaiian community to develop a solution – including amendments to HB221 – to enable the island burial councils to serve their functions to protect iwi kūpuna.

OHA recommends HB221 be amended to reflect the changes in the attached document and is open to considering additional amendments consistent with the spirit and aim of the bill.

Therefore, OHA urges the committee to **PASS** HB221 with amendments. Mahalo for the opportunity to testify on this important measure.

____.B. NO.____

A BILL FOR AN ACT

RELATING TO THE ISLAND BURIAL COUNCILS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAI'I:

1 SECTION 1. The Legislature finds that the statute
2 providing for the establishment of the island burial councils
3 needs to be clarified and simplified to ensure that the island
4 burial councils can fulfill their critical responsibilities.

5 SECTION 2. Section 6E-43.5, Hawaii Revised Statutes, is
6 amended to read as follows:

7 ~~"§6E-43.5 Island burial councils; creation; appointment;~~
8 ~~composition; duties.~~ (a) ~~[The department shall establish]~~ There
9 are established within the department five island burial
10 councils, one each for [Hawaii, Maui/Lanai, Molokai, Oahu, and
11 Kauai/Niihau,] Hawai'i, Maui/Lāna'i, Moloka'i, O'ahu, and
12 Kaua'i/Ni'ihau, to implement section 6E-43. Each council shall
13 consist of nine members, except the Moloka'i Kaua'i/Ni'ihau
14 council, which shall consist of 11-5 members. Each council shall
15 consist of no more than three representatives of development and
16 large property owner interests and at least one representatives
17 from each-the geographic regions identified in this section
18 below, provided that the Moloka'i council shall consist of no

.B. NO.

1 | more than one representative of development and large property
2 | owner interests.

3 | (1) The Hawai'i council shall consist of the following
4 | geographic regions: Kohala, Kona, Ka'ū, Puna, Hilo,
5 | and Hāmākua;

6 | (2) The Maui/Lāna'i council shall consist of the following
7 | geographic regions: Lahaina, Wailuku, Makawao, Hāna,
8 | and Lāna'i;

9 | (3) The Moloka'i council shall consist of the following
10 | geographic regions: West Moloka'i, Central Moloka'i,
11 | East Moloka'i, and Kalawao;

12 | (4) The O'ahu council shall consist of the following
13 | geographic regions: Wai'anae, 'Ewa, Kona, Ko'olaupoko,
14 | Ko'olauloa, and Waialua; and

15 | (5) The Kaua'i/Ni'ihau council shall consist of the
16 | following geographic regions: Waimea/Na Pali, Kōloa,
17 | Līhu'e, Kawaihau, Hanalei, ~~Na Pali~~, and Ni'ihau.

18 | Regional representatives shall be selected from the Hawaiian
19 | community on the basis of their understanding of the culture,
20 | history, burial beliefs, customs, and practices of native
21 | Hawaiians.

.B. NO.

1 (b) Appointment of members to the councils shall be made by
2 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.]

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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

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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. A majority of all members to which each council is
12 entitled shall constitute a quorum to do business. Concurrence
13 of a majority of the members present at a meeting shall be
14 necessary to make any action of a council valid.

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

19 (f) The councils shall:

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

.B. NO.

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

12 SECTION 3. Each current sitting council member shall serve

13 the remainder of their term. However, once their term ends,

14 their seat must be filled in accordance with this Act. All

15 future appointments to the burial councils shall be filled in

16 accordance with this Act.

17 SECTION 4. Statutory material to be repealed is bracketed

18 and stricken. New statutory material is underscored.

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

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INTRODUCED BY: _____

By Request

TO: Representative Faye P. Hanohano, Chair
House Committee on Ocean, Marine Resources & Hawaiian Affairs

FROM: Sara L. Collins, Ph.D., Legislative Chair
Society for Hawaiian Archaeology
sara.l.collins.sha@gmail.com

HEARING: Wednesday, January 30, 2013 10:00 AM, Room 325

SUBJECT: Testimony in SUPPORT of HB 221, Relating to Island Burial Councils

I am Dr. Sara Collins, Chair of the Legislative Committee of the Society for Hawaiian Archaeology (SHA). We have over 150 members that include professional archaeologists and advocates of historic preservation in general. Many of our members have a vital interest in the outcome of this bill. In the more than 20 years since the IBCs were established, SHA members have spent thousands of hours at IBC meetings providing background information on individual burials and on projects – information that is critical to the councils' deliberations. On behalf of SHA, I am providing testimony in SUPPORT of HB 221.

The subject bill proposes to clarify statutory provisions relating to the composition of the Island Burial Councils (IBCs) and how quorum is established for meetings. We have listed below the primary amendments proposed in HB 221 as we understand them:

§6E-43.5 (a) is amended as follows:

- Instead of the variable number of members currently serving on the five different IBCs, the councils will each have nine members except for the Kaua'i/Ni'ihau IBC, which will have eleven members.
- Each council will have no more than three members of the nine who are representatives of development and large property owner interests.
- The geographic areas to be represented on each IBC, currently found at Hawaii Administrative Rule (HAR) 13-300-22, are added to this section of the statute as are the qualifications for members.

§6E-43.5 (b) is amended as follows:

- The requirements pertaining to the ratios between geographic and landowner/developer representatives on each IBC have been removed entirely.
- The range of total members authorized for each IBC (nine to fifteen) has been deleted.

§6E-43.5 (d) is amended by redefining quorum as a majority of all members to which a council is entitled.

We believe that the proposed amendments – particularly those re-defining the number of total members allotted to each council and the number of members needed for a quorum – will, if adopted, allow the IBCs to operate with many fewer obstacles and much greater efficiency. If the proposed changes are adopted, quorum for most of the IBCs will consist of five members, six in the case of the Kaua'i/Ni'ihau IBC. A brief review of IBC minutes for all functioning councils over the last few years will show that a quorum of five or six could easily be achieved for nearly all of their meetings. In addition, the proposed removal of the requirement to maintain a ratio between geographic and landowner/developer representatives will also make it easier to recruit people to serve on the councils and for the IBCs to meet.

We would recommend that your committee review the proposed language pertaining to the numbers of council members appointed to represent landowners/developers. Perhaps we have misunderstood, but the language appears ambiguous. The amendment would have “not more than three representatives of development and large property interests” appointed to each IBC. It does not set a minimum number of development and large property representatives for each council and therefore appears to make this representation optional. Does this give the Governor the discretion not to appoint any representative of development and large property interests to a council? We are not offering an opinion on this representation but we do think the wording should be clarified.

Thank you for the opportunity to provide testimony in support of HB 221. Should you have any questions, please feel free to contact me at the above email address.



Association of Hawaiian Civic Clubs

P. O. Box 1135

Honolulu, Hawai`i 96807

Testimony of President Soulee Stroud

HOUSE COMMITTEE ON OCEAN, MARINE RESOURCES AND HAWAIIAN AFFAIRS

HOUSE BILL 221 RELATING TO ISLAND BURIAL COUNCILS

Wednesday, January 30, 2013; 10:00 am; Room 325

Aloha Madam Chair Hanohano, vice chair Cullen and members of the Committee. I am Soulee Stroud, president of the Association of Hawaiian Civic Clubs speaking in support of HB221 Relating to Island Burial Councils.

The Association of Hawaiian Civic Clubs (AHCC) is currently comprised of sixty nine component member clubs in Hawaii and fifteen states on the continent. The first civic club was organized in 1918 by Prince Kuhio and a group of prominent Hawaiian men when Kuhio was a Delegate to the US Congress. Kuhio recognized the need for Native Hawaiians to become more involved in the passage of the Hawaiian Homes Act then before the Congress, and to further become engaged in the intricacies of federal and local government.

Several civic club members also serve on burial councils of their islands and we have heard of the concerns with regard to the processes and procedures of the councils. When the AHCC Board of Directors met on January 19 and the OHA package of bills was discussed, it was agreed that there is a need to clarify requirements and statutes governing the councils.

The AHCC supports HB221 and appreciates the opportunity to testify today.

Contact: jalna.keala2@hawaiiantel.net