

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

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Testimony of
WILLIAM J. AILA, JR.
Chairperson

Before the House Committee on
FINANCE

Wednesday, March 27, 2013
4:45 p.m.
State Capitol, Conference Room 308

In consideration of
SENATE BILL 407, SENATE DRAFT 1, HOUSE DRAFT 1
RELATING TO ISLAND BURIAL COUNCILS

Senate Bill 407, Senate Draft 1, House Draft 1 proposes to clarify statutory provisions relating to the composition and quorum of island burial councils. **The Department of Land and Natural Resources (Department) appreciates the efforts to improve the language in the Section 6E-43.5, Hawaii Revised Statutes, relating to burial councils and agrees that quorum problems that have plagued the burial councils' ability to meet need to be addressed. However, the Department is concerned that amendments included in the House Draft 1 which the Department did not have an opportunity to comment on will continue to make it difficult to get quorum for the burial councils.**

Specifically, language requiring that the Governor must be provided a list that includes at least two names for every vacant seat will be difficult to meet. One of the problems faced by the Department in sending nominations to the Governor has been the difficulty finding people willing and qualified to fill vacancies. This is particularly true for the large landowner category. The Department has not been able to find one candidate, much less two to fill the large landowner seat on Molokai.

While the most difficult positions to fill tend to be the landowner positions, it can also be difficult to fill regional seats and the requirement for at least two names has the potential to cause a failure to fill a regional seat as well. Serving on the burial council is a difficult job that council members do without compensation and with great dedication. The Department appreciates all who are willing to serve. However, the Department has noticed that in the past two years it has become more difficult to find people for these positions.

This difficulty in finding people to serve on the burial councils has manifested itself in several ways. In the past, rather than submitting a separate list, the Office of Hawaiian Affairs (OHA) often concurred with the Department's list, thus enabling the governor to have the required OHA

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ENGINEERING
FORESTRY AND WILDLIFE
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LAND
STATE PARKS

nominated representatives on each council. OHA has committed to submitting names under this new legislation, and the apparent intent is that the Department is supposed to come up with additional names should OHA fail to submit at least two for each vacancy. While the Department agrees that the Governor should have a choice, experience suggests that this choice is often not possible. The Department encourages as many candidates as possible come forward and the Department believes that this can be done by both OHA and the Department without making multiple candidates a requirement.

To ensure the amendments work in the best interest of getting quorum for the burial councils, the Department believes the language requiring two candidates per vacant seat needs to be struck from the language of the bill.



SB407 SD1 HD1
RELATING TO ISLAND BURIAL COUNCILS
House Committee on Finance

March 25, 2013

4:45 a.m.

Room: 308

The Office of Hawaiian Affairs (OHA) strongly **SUPPORTS WITH AMENDMENTS** SB407 SD1 HD1, which is a bill in OHA's 2013 Legislative Package. SB407 SD1 HD1 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.

Proposed Amendments

Attached is a proposed HD2 that we have been working on with the Department of Land and Natural Resources and the Attorney General's Office. Our proposed amendments, which are highlighted and in red in the attached bill, would:

1. Replace the word "from" to "for" on line 7, page 2; and
2. Add the phrase "in the region they each represent" to the end of the sentence on line 6, page 3.

The purpose of these amendments is to allow for more flexibility in who can represent a region. Some regional seats have historically been difficult to fill, and these vacancies have hindered the ability of the councils to make quorum. Our proposed amendments would allow a person with an understanding of a region's culture, history, burial beliefs, customs and practices to represent the region without having to reside in the region. For example, this would allow someone who was raised in and learned the cultural practices of a region but has since moved away to still represent the region. While this is not the ideal situation, we believe that it is a reasonable compromise to address a longstanding issue.

Therefore, OHA urges the committee to **PASS** SB407 SD1 HD1 with these suggested amendments. Mahalo for the opportunity to testify on this important measure.

A BILL FOR AN ACT

RELATING TO THE ISLAND BURIAL COUNCILS.

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

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~~]
9 There 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 council, which shall
14 consist of five members. Each council shall consist of no more
15 than three representatives of development and large land owner
16 interests; provided that the Moloka'i council shall consist of no
17 more than one representative of development and large property

1 owner interests. The remaining council members shall represent
2 the geographic regions identified in paragraphs (1) through
3 (5). At all times, at least two of the regional representatives
4 of each council shall have been appointed from a list of
5 nominees submitted to the governor by the office of Hawaiian
6 affairs, as provided under subsection (b). Each council shall
7 include at least one representative for each geographic region
8 identified as follows:

- 9 (1) The Hawai'i council shall include the following
10 geographic regions: Kohala, Kona, Ka'u, Puna, Hilo,
11 and Hāmākua;
- 12 (2) The Maui/Lāna'i council shall include the following
13 geographic regions: Honua'ula, Lahaina, Wailuku,
14 Makawao, Hāna, and Lāna'i;
- 15 (3) The Moloka'i council shall include the following
16 geographic regions: West Moloka'i, Central Moloka'i,
17 East Moloka'i, and Kalawao;
- 18 (4) The O'ahu council shall include the following
19 geographic regions: Wai'ānae, 'Ewa, Kona, Ko'olaupoko,
20 Ko'olauloa, and Waialua; and
- 21 (5) The Kaua'i/Ni'ihau council shall include the following

1 geographic regions: Waimea/Na Pali, Kōloa, Līhu'e,
2 Kawaihau, Hanalei, and Ni'ihau.

3 Regional representatives shall be selected from the Hawaiian
4 community on the basis of the representatives' understanding of
5 the culture, history, burial beliefs, customs, and practices of
6 native Hawaiians in the region they each represent.

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

1 ~~less than two to one in favor of regional representatives.] and~~
2 the office of Hawaiian affairs. Lists to fill vacancies on the
3 councils shall be submitted as follows:

4 (1) For vacancies attributable to the expiration of terms,
5 the list shall be submitted on the first business day
6 of December prior to the expiration of the terms.

7 Each list submitted by the department and by the
8 office of Hawaiian affairs for any council shall
9 include enough names to permit the governor to fill
10 the last vacant seat on the council with one of at
11 least two listed individuals qualified to fill the
12 vacancy; and

13 (2) For a vacancy that occurs during a council
14 representative's term, the list shall be submitted
15 within thirty business days after the vacancy occurs,
16 except as provided in subsection (c). Each list shall
17 include at least two individuals qualified to fill
18 each vacancy.

19 (c) The department may submit any list to fill a vacancy
20 up to fifteen days after the office of Hawaiian affairs submits
21 its list for the same vacancy; provided that the failure of the
22 department to submit any list by any relevant deadline or
23 fifteen days after the office of Hawaiian affairs submits its

1 list, whichever occurs later, shall be construed as a waiver of
2 the department's right to submit a list.

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

13 ~~[(d)]~~ (e) The councils shall hold meetings and acquire
14 information as they deem necessary and shall communicate their
15 findings and recommendations to the department. Notwithstanding
16 section 92-3, whenever the location and description of burial
17 sites are under consideration, the councils may hold closed
18 meetings. A majority of all members to which each council is
19 entitled shall constitute a quorum to do business. Concurrence
20 of a majority of the members present at a meeting shall be
21 necessary to make any action of a council valid.

22 ~~[(e)]~~ (f) Department records relating to the location and
23 description of historic sites, including burial sites, if deemed

1 sensitive by a council or the [~~Hawaii~~] Hawai'i historic places
2 review board, shall be confidential.

3 [~~(f)~~] (g) The councils shall:

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

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

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

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

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

17 SECTION 3. Notwithstanding the amendments made by this Act
18 to section 6E-43.5, Hawaii Revised Statutes, each current
19 sitting council member is authorized to serve the remainder of
20 the member's term.

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

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



Association of Hawaiian Civic Clubs

P. O. Box 1135
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HOUSE COMMITTEE ON FINANCE

SENATE BILL 407 SD1, HD1(HSCR1020) RELATING TO ISLAND BURIAL COUNCILS

Wednesday, March 27, 2013; 4:45PM; Room 308

Aloha Madam Chair Luke, Vice chairs Nishimoto and Johanson and members of the House Committee on Finance. The Association of Hawaiian Civic Clubs(AHCC) supports this bill to clarify statutes relating to Island Burial Councils.

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, 2013 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 SB407SD1, HD1 and appreciates the opportunity to support this bill.

Contact: jalna.keala2@hawaiiantel.net

SB407

Submitted on: 3/25/2013

Testimony for FIN on Mar 27, 2013 16:45PM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
Shane Nelsen	Kuakini Hawaiian Civic Club of Kona	Support	No

Comments: Aloha Chair Luke and Vice Chairs Nishimoto and Johanson, We STRONGLY support SB407,SD1 Relating to Island Burial Councils. Its been way too long that we have been dealing with quorum issues, in the mean time, many communities are suffering both economically and culturally. As Law Makers, you know how important it is to resolve issues. Kupuna 'iwi and cultural sites are needing resolve. I ask that this Committee on Finance supports SB 407. Mahalo for allowing me to testify. Mahalo, Shane Nelsen President

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Elaine Dunbar
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Lihue, HI 96766
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Comments/Concerns

SB407 SD1 HD1
RELATING TO ISLAND BURIAL COUNCILS.

The 2013 legislature has pretty much succeeded in discouraging public input on any bills, but I will continue to do so **for the record** because this legislature and the monies to fund it still belong to the civil power.

With respect to Burial Councils, the governor and state entities such as OHA have a tendency to overstep their kuleana by having a heavy presence in these matters, basically invalidating the concept of burial *council*.

OHA has requested insertion of the language *"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 purposes of this section."* By what standards do state entities determine what is an "appropriate" Hawaiian organization or even have the right? All the Hawaiian organizations in existence today believe in their respective "appropriateness". Your language implies that Hawaiian organizations other than **Hui Malama I Na Kupuna O Hawai'i Nei** are inappropriate; my comment is not meant to discredit **Hui Malama I Na Kupuna O Hawai'i Nei** but to stop the attempt to narrow the scope of consultation. There are MANY burial issues occurring on ALL islands and **Hui Malama I Na Kupuna O Hawai'i Nei** is only one entity. Where was **Hui Malama I Na Kupuna O Hawai'i Nei** on these latest issues, especially Kauai? Hawaiians are going to jail and court trying to protect their sacred sites.

It is a politically incorrect and culturally insensitive statement to narrow the scope of the consultation for the culture and descendants with the only concern being financial motivation for fast-track development. OHA needs to be reminded this is about the culture and any sincere and critical input by cultural practitioners, organizations, Hawaii Nationals or others for valuable input cannot be just dismissed because they don't have a 501C-3 non-profit license. It's troubling about William Aila's close ties and a potential conflict of interest through his former (current?) membership with **Hui Malama I Na Kupuna O Hawai'i Nei**.

The issue at hand for any legitimate burial 'council' is ancestral human remains that are held sacred by the Hawaiian culture. Does this committee really have to be reminded? Consistently we see the most restrictive requirement for participation is for the Hawaiian and the least restrictive for the developers/non-descendants, often granting them an over-riding majority on burial councils to the exclusion of the cultural descendants. In federal law the least restrictive methods are to be applied for traditional and customary rights of the Hawaiian. **No less than three developer/land owners is too many already**. Over-riding majority also means dis-proportionate in this instance as there should really not be developers on a burial council. Period. It's a paradox.

So some of the language completely defeats the spirit/intent of protection/preservation and invades the sanctum of the Hawaiian Burial Council: *"At all times, at least two of the regional representatives of each council shall have been appointed from a list of nominees submitted to the governor by the office of Hawaiian affairs..Appointment of members to the councils shall be made by the governor and the*

office of Hawaiian affairs." Why does this continue to be the criteria for members of a burial council? Is it to insure the state's interests are protected on development sites? The governor should have NO say in selection of burial council members. He should remain completely neutral. The appearance of impropriety is not without justification as he will certainly want to select, approve and control members to be loyal to his/state purposes.

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SB407

Submitted on: 3/25/2013

Testimony for FIN on Mar 27, 2013 16:45PM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
Godfrey Palacat	Individual	Support	No

Comments: supporting Bill SB407

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SB407

Submitted on: 3/25/2013

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Submitted By	Organization	Testifier Position	Present at Hearing
Junedale Palacat	Individual	Support	No

Comments: Stongly support SB407

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SB407

Submitted on: 3/25/2013

Testimony for FIN on Mar 27, 2013 16:45PM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
lea Palacat	Individual	Support	No

Comments: supporter of SB407

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