

**TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE HAWAII
ASSOCIATION FOR JUSTICE (HAJ) REGARDING H.B. 1245 H.D. 2 S.D.1**

March 30, 2017
9:50 a.m.
CR 211

To: Chair Gilbert S.C. Keith-Agaran of the Senate Committee on Judiciary and Labor
and Chair Jill N. Tokuda of the Senate Committee on Ways and Means:

My name is Bob Toyofuku and I am presenting this testimony on behalf of the Hawaii Association for Justice (HAJ) in opposition to parts of this measure and providing amendments to clarify the language regarding H.B. 1245 H.D. 2 S.D.1, relating to Cemeteries.

H.B. 1245 H.D. 2 S.D.1 seeks to address a long-term solution to repair and maintain Sunset Memorial Park. Within this bill, there is a provision for limited liability for persons maintaining or repairing any cemetery grounds, not just Sunset Memorial Park. While we understand that those who volunteer their time to assist in maintaining or repairing cemetery grounds want immunity, we believe it is also important that cemeteries ordinarily remain accountable for reasonable upkeep of the premises because this measure will apply to even commercially profitable cemeteries.

The H.D. 1 amendment deleted "without compensation" which we ask the committee to re-insert in order to clarify the meaning of "volunteer". Some volunteers may be paid a minimal amount for their services and we would like to clarify the language to pertain to only volunteers who perform work "without compensation".

Therefore, we ask that 662D- be amended to read as follows:

"(a) A volunteer who maintains or repairs cemetery grounds located in the State without compensation, including cemeteries operated for profit pursuant to chapter 441, shall not be liable to any person for injury or damage sustained as a result of the actions of the volunteer to maintain or repair the cemetery grounds, except for injury or damages resulting from gross negligence or intentional misconduct."

"(c) This section does not relieve any cemetery property owner or cemetery authority from having to comply with the requirements of chapter 441, or from the duty to maintain their premises in a reasonably safe condition."

This will take care of Sunset Memorial Park because there is no owner and the volunteers will be protected. At the same time, it will encourage profitable cemeteries to maintain their property in a safe condition – especially for the many elders who regularly visit cemeteries.

Thank you for allowing me to testify regarding this measure. Please feel free to contact me should you have any questions or desire additional information.

LATE TESTIMONY

HB1245/SB1113 Testimony

Sunset Memorial Park in Pearl City, Oahu is the final resting place for my mother, Elizabeth Naaikauna Bright. She had no preexisting conditions that caused her death so to say her death was a surprise would be an understatement. As a family we pulled together to plan her services; my grandfather constructed a concrete form for her headstone, my grandmother gave up her cemetery plot and I spoke at her funeral.

I have been visiting her grave for over twenty years and even then I witnessed visitors who had assumed the responsibility of cleaning their own family gravesite. After a while the cultural norm was such that instead of merely bringing flowers to pay your respects, landscaping tools like line trimmers, buckets and shovels were customary. Graves had slowly sunk with plywood the only method of repair.

About five to seven years ago I was given the advice to move my mother to another memorial park. Apparently there have been others that were not happy about the conditions of the park so they decided to move their family members to a more reputable organization. As a school teacher, I do not possess the means to consider this option.

Within the past two years I would visit my mother's grave to witness families performing tasks they entrusted to someone else. A family had traveled from the mainland to visit loved ones only to discover themselves ill prepared. The marker was masked by California grass that these elderly women tried to clear with only their hands. They were so grateful for my help. With my line trimmer I cleaned the tough grass from their relative's gravestone. Good Samaritans would be the only saving grace for this park as upon every visit those who had the means to clean their loved ones gravesite would clean the neighboring graves as well.

I do not represent all of the families associated with those buried at Sunset Memorial Park but I've witnessed and been a part of a travesty that no one should have to endure. Please I implore all of you to assist the people of Hawai'i continue to support their loved ones in life and death with dignity.

James Bright

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