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CATHERINE P. AWAKUNI COLÓN
DIRECTOR
JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

**PRESENTATION OF THE
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

TO THE HOUSE COMMITTEE ON
WATER & LAND

TWENTY-NINTH STATE LEGISLATURE
Regular Session of 2017
Friday, February 3, 2017
9:00 a.m.

TESTIMONY ON HOUSE BILL NO. 1245, RELATING TO CEMETERIES.

TO THE HONORABLE RYAN I. YAMANE, CHAIR,
TO THE HONORABLE SAM SATORU KONG, VICE CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Catherine Awakuni Colón, Director of the Department of Commerce and Consumer Affairs (“DCCA” or “Department”). DCCA appreciates the opportunity to submit testimony in support of House Bill No. 1245, Relating to Cemeteries. The Department also offers amendments to improve the proposed volunteer liability protection language contained in this measure and some comments on a limited number of concerns DCCA has with respect to specific provisions of this measure.

House Bill. No. 1245 proposes to address the issues that continue to negatively impact the condition and operations of the privately held Sunset Memorial Park Cemetery (“Sunset Memorial”). The proposed solutions in this measure include the

creation of specific volunteer liability protections under Chapter 662D, Hawaii Revised Statutes, for those persons and organizations providing voluntary upkeep and maintenance of privately owned and operated cemeteries, and also the requirement that DCCA develop both short- and long-term strategies for the upkeep, repair, and maintenance of Sunset Memorial, including consideration of possible state ownership. In addition, this measure would authorize DCCA to use Sunset Memorial Trust Fund amounts for repair and maintenance purposes.

The Department appreciates the Legislature's continuing leadership and support – and, in particular, the leadership of area legislators – in finding both short- and long-term solutions to the issues affecting Sunset Memorial. While DCCA continues to work on carrying out a number of solutions identified and pursued during the interim of 2016, we fully support the provisions of this measure that will further support ongoing efforts. In particular, the Department supports the bill's creation of a special cemetery volunteer liability protection law, which is intended to encourage members of the public who have expressed a desire to volunteer on the Sunset Memorial grounds to do so without fear of liability resulting from their charitable activities. DCCA would appreciate the Committee's consideration of a number of proposed revisions meant to improve the measure's current language on volunteer liability protection. That proposed language is included for the Committee's reference at the end of the Department's testimony.

The Department is committed to continuing to work with area legislators, the affected community and businesses, and all others interested in finding a practical, sustainable way forward for Sunset Memorial. Accordingly, DCCA does not object to the portion of this measure that would have the Department continuing to work on

developing short- and long-term strategies for Sunset Memorial. The Department would only ask the Legislature to give careful consideration when exploring certain long-term options listed in this bill that may not be practical or appropriate for the State, namely a possible state takeover of Sunset Memorial and the utilization of perpetual care funds to be used by DCCA and not a private licensee. The Department believes it is best to focus on finding solutions that would leave the State's current private cemetery operator licensing model in place without also creating the need for significant intervention in cemetery operations by the State, excepting the State's current abandoned cemetery care program.

Thank you for the opportunity to provide testimony in support of this measure. I am happy to answer any questions the Committee may have.

PROPOSED LANGUAGE FOR HOUSE BILL NO. 1245, RELATING TO CEMETERIES

SECTION 2. Chapter 662D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"662D- Limited liability for volunteers maintaining or repairing cemetery grounds. (a) A volunteer who maintains or repairs cemetery grounds located in the State, 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. For purposes of this section, and notwithstanding any other law to the contrary, a "volunteer" shall include an individual who maintains or repairs cemetery grounds located in the State, including cemeteries operated for profit pursuant to chapter 441, and who provides those volunteer maintenance and repair services:

- (1) As an individual and not as a member or affiliate of a cemetery authority, nonprofit corporation, nonprofit organization, or other entity;
- (2) Without compensation or other reimbursement; and

(3) After first seeking approval to provide services from the cemetery owner or cemetery authority, if one can be identified.

(b) No nonprofit organization or nonprofit corporation that provides volunteers to maintain or repair cemetery grounds located in the State, including cemeteries operated for profit pursuant to chapter 441, shall be liable to any person for injury or damage sustained as a result of the actions of the volunteer provided by the organization to maintain or repair the cemetery grounds, except for injury or damages resulting from gross negligence or intentional misconduct.

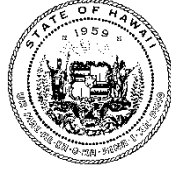
(c) This section does not relieve any cemetery property owner or cemetery authority from having to comply with the requirements of chapter 441.

(d) A volunteer providing services under this section for a nonprofit organization, nonprofit corporation, or other entity may only receive reimbursement for actual expenses incurred that have been authorized for payment by the nonprofit organization, nonprofit corporation, or other entity.

(e) Nothing herein shall be construed to authorize or permit the use of perpetual care funds for the purposes of reimbursing costs incurred pursuant to this section.

(f) Notwithstanding any other law to the contrary, actions of a volunteer in conformance with this section shall not require licensure under chapter 441; provided that maintenance and repair activities covered under this section shall be limited to general maintenance, care, and preservation of cemeteries including keeping sod or grass in repair and caring for trees and shrubs, but shall not include activities related to burials."

DAVID Y. IGE
GOVERNOR



RODERICK K. BECKER
Comptroller

AUDREY HIDANO
Deputy Comptroller

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

P.O. BOX 119, HONOLULU, HAWAII 96810-0119

TESTIMONY OF
RODERICK K. BECKER, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE
HOUSE COMMITTEE ON WATER & LAND
ON
FRIDAY, FEBRUARY 3, 2017
9:00 A.M.
CONFERENCE ROOM 325

H.B. 1245

RELATING TO CEMETERIES.

Chair Yamane, Vice Chair Kong, and members of the Committee, thank you for the opportunity to submit testimony on H.B. 1245.

The Department of Accounting and General Services (DAGS) appreciates the intent of the bill and will work with the Department of Commerce and Consumer Affairs in developing strategies for the repair and maintenance of Sunset Memorial Park.

Thank you for the opportunity to submit testimony on this matter.

kong2 - Crystal

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 2, 2017 2:28 PM
To: waltestimony
Cc: tsakamoto1@honolulu.gov
Subject: *Submitted testimony for HB1245 on Feb 3, 2017 09:00AM*

Follow Up Flag: Follow up
Flag Status: Flagged

HB1245

Submitted on: 2/2/2017

Testimony for WAL on Feb 3, 2017 09:00AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Councilmember Brandon Elefante	Individual	Support	No

Comments:

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.

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Nanette N. Napoleon

131-A Hauoli St. / Kailua, HI 96734
Ph. (808) 261-0705 / Email: nanetten@hawaii.rr.com

February 1, 2017

TESTIMONY IN FAVOR OF HB1245 RELATING TO CEMETERIES

From: Nanette Napoleon, Director, Hawaii Cemetery Research Project
To: Committee on Water & Land, Rep. Ryan I. Yamane, Chair
Hearing Date: Friday, February 3, 2017, 9:00 a.m.

I in my capacity as the director of the Hawaii Cemetery Research Project for more than 30 years--during which time I have become the state's leading expert on the history and conditions of Hawaii's post-European contact type cemeteries--one of my main responsibilities has been to take inquiries from the public regarding cemeteries they are interested in. While most of these inquiries are requests to help individuals find old family gravesites, many have been about issues of poor cemetery management and maintenance.

Over the years, the cemetery that I have received the most inquiries about poor cemetery management and maintenance is Sunset Memorial Park in Pearl City. All of these inquiries, I repeat ALL of these inquiries, have been complaints from family members of those buried there who have experienced difficulties with the management, and/or lack of maintenance of the site.

Now the cemetery is in the unfortunate position of not having an identified property owner, and very little money to maintain the cemetery, which has led to the deterioration of the site to such an extent that it is now become a serious public safety hazard.

Last year, torrential rains in the area over an extended period of time caused severe ground erosion that resulted in the 2-4 foot sinking of dozens of marked graves. While these gravesites were later filled in with donated dirt and volunteer assistance, the maintenance problems at the site are still not properly being addressed.

While many family members have stepped up to the plate to form an ad hoc volunteer management hui, and have been making good faith efforts to maintain the site on their own, the fact of the matter is that there is still no viable professional cemetery management entity in place

to address the numerous financial, administrative, maintenance and safety issues at hand at this time.

In this regard, I highly support HB1245, which requires the Department of Commerce and Consumer Affairs, in consultation with the Comptroller, to develop strategies for repair and maintenance of Sunset Memorial Park; and authorizes DCCA to access the Sunset Memorial Park Trust Fund, which possibly only amounts to less than \$5,000. I also support the provision which provides limited liability for persons maintaining or repairing cemetery grounds, and requires a report to the legislature.

These above actions are long overdue and will be in the best interest of the all the families of Sunset Memorial Park, and the community at-large.

Thank you,

Nanette Napoleon

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

February 3, 2017

To: Chairman Ryan I. Yamane and Members of the House Committee on Water and
Land:

My name is Bob Toyofuku and I am presenting this testimony on behalf of the
Hawaii Association for Justice (HAJ) regarding H.B. 1245, relating to Cemeteries.

H.B. 1245 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.

Therefore, we ask that 662D-__ (c) be amended to read:

“(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 reasonable safe condition condition.”

This will take care of Sunset Memorial Park because there is no owner and
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.

TESTIMONY OF

LARRY S VERAY

TO THE HOUSE COMMITTEE OF THE CONSUMER PROTECTION & COMMERCE

ON HB1245 RELATING TO CEMETERIES

FEBRUARY 1, 2017

Aloha Chair Yamane and members of the Committee on Water & Land. Thank you for allowing me the opportunity to provide testimony in support of HB1245. I am Larry Veray, Chair for the Pearl City Neighborhood Board and today I represent my board, the many citizens and grieving families who have been negatively impacted by Sunset Memorial Park Cemetery unsatisfactory conditions.

In October 2015, the Pearl City Neighborhood Board held a special meeting where over 150 citizens and families provided heartfelt testimony about the current and previous owners neglect to maintain satisfactory operations of the cemetery. We heard the tearful stories of numerous family members reporting grave sites with headstones and urns that have disappeared or have been stolen from the property. Headstones have sunken into wet ground and grounds have collapsed due to collapsing coffins that were buried on the property. In addition, there is literally no regularly scheduled maintenance of the cemetery resulting in overgrown grass and weed that with its current appearance is way below cemetery standards.

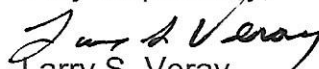
On February 23, 2016, the Pearl City Neighborhood Board passed a board resolution in support of the Hawaii State Legislature enacting law to support the upkeep, repair and maintenance for Sunset Memorial Park.

In closing, I urge you to pass HB1245 to develop legislation and require the DCCA with the Comptroller to:

- Develop strategy for repair and maintenance of Sunset Memorial Park Cemetery
- Authorize DCCA to access the Sunset Memorial Park Cemetery Trust Fund
- Provide limited liability for citizens who would volunteer their time to maintain and repair the cemetery grounds.

If legislation is enacted, I know that our citizens, churches and many volunteers will form the Friends for Sunset Memorial Park Cemetery where I fully expect these families to improve the cemetery grounds and appearance. Thank you for your support.

Very respectfully,


Larry S. Veray

kong2 - Crystal

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 2, 2017 9:48 AM
To: waltestimony
Cc: foodsovereignty@now@gmail.com
Subject: Submitted testimony for HB1245 on Feb 3, 2017 09:00AM

HB1245

Submitted on: 2/2/2017

Testimony for WAL on Feb 3, 2017 09:00AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Mitsuko Hayakawa	Individual	Support	No

Comments: Aloha Chair Yamane and Members of the Water and Land Committee, As a member of the Pearl City Neighborhood Board, I have heard many testimonies of community members distraught with the unsatisfactory and unsafe conditions of the Sunset Memorial Cemetery. This situation has continued for too long. Many of the family members are seniors and are unable to take care of the physical upkeep of the grave sites of their loved ones. Some are fearful of liability issues in trying to remedy the problems. Please support HB1245 to develop ways for DCCA to address repair and maintenance of the Cemetery and allow their access to the Cemetery Trust Fund. Mahalo for your consideration.

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kong2 - Crystal

From: Nelson Tokuhama <neltoku@yahoo.com>
Sent: Thursday, February 2, 2017 10:39 AM
To: waltestimony
Subject: HB 1245

Hi Crystal,

I just wanted to share a brief testimony regarding Sunset Memorial Park. My parents and other relatives are buried there, and during my visits I've witnessed and spoken with volunteers who water and cut the grass at the cemetery. If not for them, the cemetery would be in complete disrepair because there is no maintenance crew due to ownership issues. It's gotten worse, as the water supply has been turned off. It will continue to get worse unless ownership issues get resolved. I would urge the state to consider taking ownership for the sake of all those buried there and their families, or come up with a plan to relocate the grave sites.

Thank you,
Nelson Tokuhama

Theresa Papali'i-Imbuido
4814 Pagosa Springs Drive
Las Vegas, NV 89139
702.981.0935
dohnyetus@gmail.com
February 1, 2017

Testimonial Letter: Sunset Memorial Cemetery

Dear To Whom It May Concern:

This letter is to testify against the condition that Sunset Memorial Cemetery is in and how it's affecting our loved ones graves. In the month of December 3rd, 2016, my sister Victorious Olive-Uta had a stroke and passed away suddenly. It was a phone call that no one would want to hear and in the previous year, my mother passed away suddenly as well. So, I've traveled from Las Vegas to Hawaii to find homeless building their tents over my father Tenisio Olive, Uncle Sani Olive and Aunt Nora Olive's grave. It was a horrific and heartbroken scene to see. I could not believe what I witnessed and how horrible the condition of the Cemetery was in as well.

The homeless had built their tents over my loved ones grave, used their graves as their bathroom. They've also built a fire pit over my father's grave where they

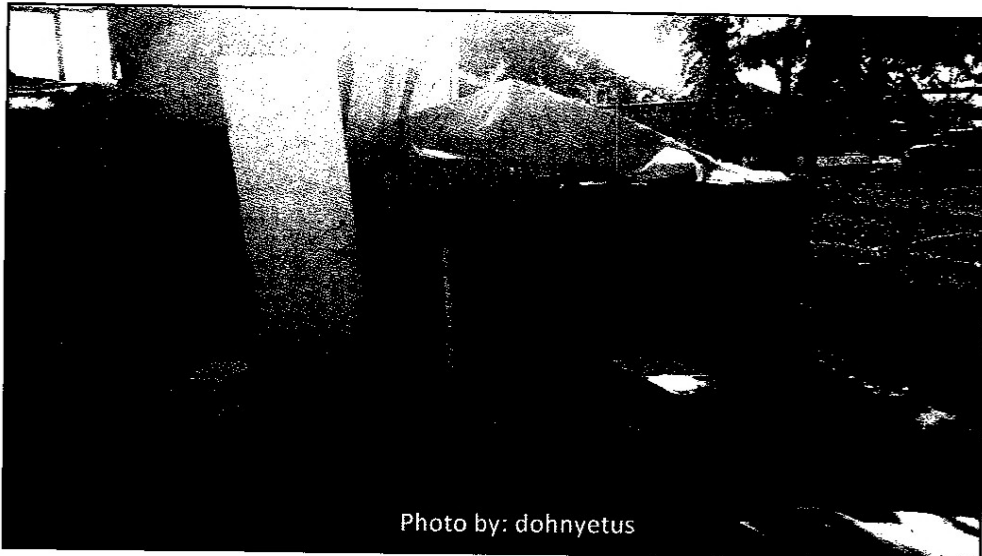


Photo by: dohnyetus

were cooking food over it. This has caused their monument to split in half. This is disrespectful and inhumane! Their graves has sunken in and also has foul odor that lingers from within. The grass is over grown, several graves has a slap of wooden board covering where the grounds had caved in. The shack that used to be a shed for the Cemetery tools has burnt down and a shell is still standing and it's attracting more homeless to sell and smoke drugs in it. The mausoleum has cracked stones, damage roof, open tombs, and a bee hive that has made its nest in someone else's tomb. The condition of Sunset Memorial Cemetery is appalled and a safety hazard for the families that are visiting their loved

To Whom It May Concern

February 1, 2017

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ones. I'm very disappointed in what I witnessed and wonder why anyone or anything has been done to keep Sunset Memorial Cemetery from continuing to be the way that is now. This is Hawaii, the land that has pure and authentic Aloha, where's the Aloha for Sunset Memorial Cemetery and for the families that has their loved ones buried there? I urged for your attention on this matter.

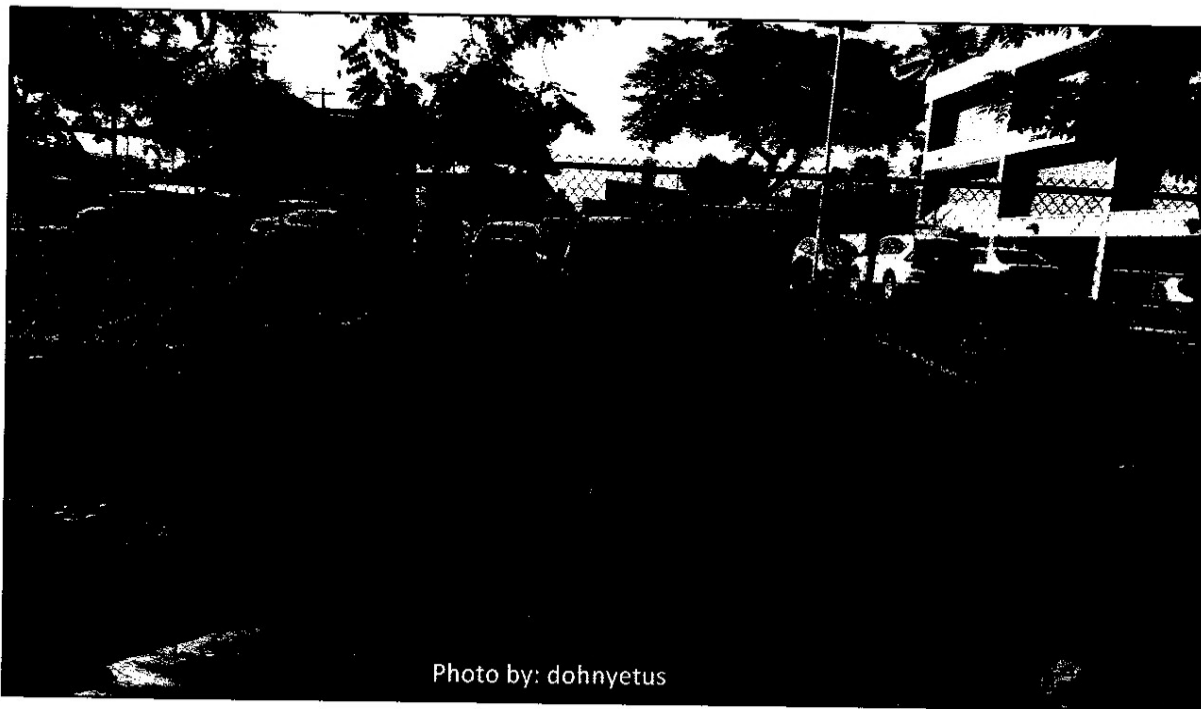


Photo by: dohnyetus

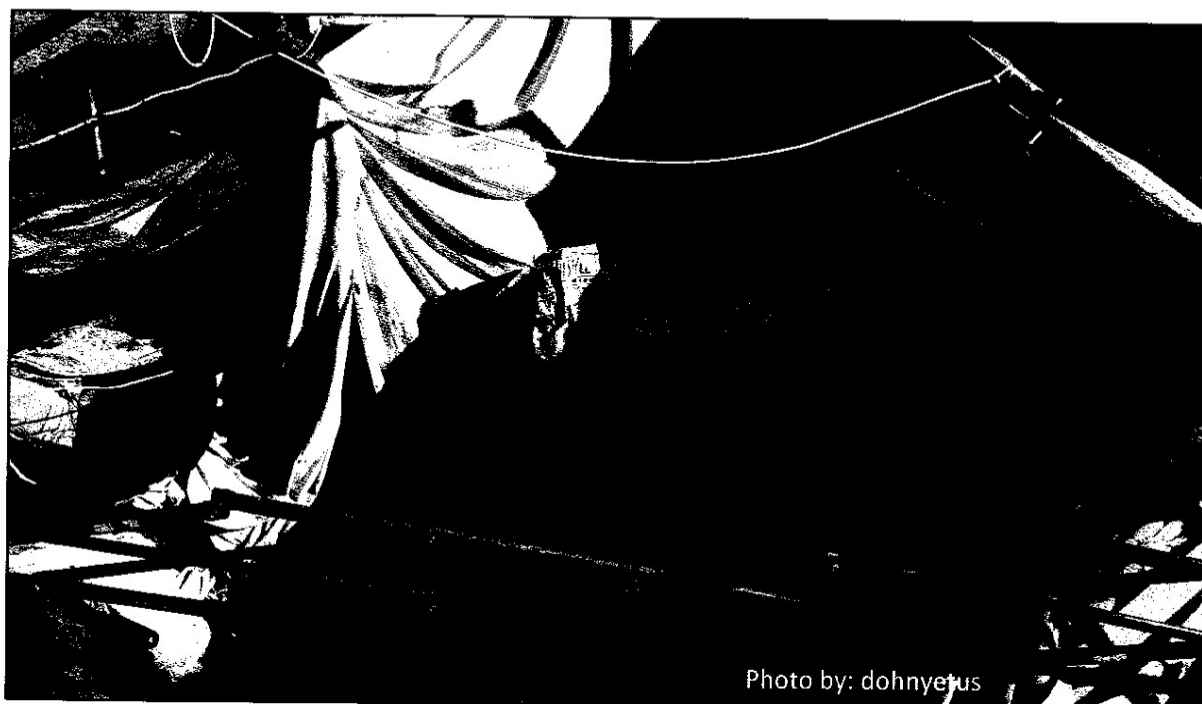


Photo by: dohnyetus

To Whom It May Concern

February 1, 2017

Page 3



Thank you for your time and God bless.

Sincerely,

Theresa Papali'i-Imbuido

To members of the Hawaii State House of Representatives, regarding Sunset Memorial Park:

As one of the many families affected by the conditions and mismanagement of Sunset Memorial Park, our primary concern is the maintenance of the cemetery. "Maintenance" involves four aspects: SAFETY, AESTHETICS, PLOT DIRECTORY and SECURITY.

SAFETY – The grounds are unsafe, especially for the elderly, as the terrain is extremely uneven and full of holes and is often overgrown with weeds to the extent that it's difficult to see where one is stepping.

AESTHETICS – The cemetery just looks terrible, especially in comparison with a typical cemetery. It is in nearly constant need of mowing and raking. The trash bins are virtually always overflowing, with excess trash just in piles on the ground. Numerous plots have out-of-control shrubbery and/or monuments. This is likely due to no management to establish and enforce park regulations.

PLOT DIRECTORY – It would be of great value to create and maintain a directory of the plots and niches. Out of town relatives, or even local residents, who don't visit gravesites very often have no way of quickly determining where their loved ones are buried. This is a "nice to have", but would be most welcomed.

SECURITY – There is a transient population that has taken up residency in the park. They are likely not a threat to visitors, but they do create an aura of concern, create waste and use park water. A gated/secure entry and exit points that close at sunset and a security fence around the entire perimeter would be very useful in combating the homeless, vandalism and theft problems.

I suggest the concerned families create a nonprofit organization that would support and interface with any state run entity to ensure sustained maintenance of the cemetery. This volunteer group would need to be shielded from liability from onsite injuries and accidents and also any lawsuits stemming from disgruntled families with loved ones interred.

A nonprofit group (along with all concerned families) has no knowledge, experience or desire to manage cemetery operations, such as digging graves, interment, exhumations, etc.

As a concerned family member who is willing to serve on a nonprofit organization, I respectfully request that the Legislature do everything within its power to create a mechanism to restore the dignity of Sunset Memorial Park and ensure its maintenance into perpetuity.

Sincerely,

David H. Steele

Subject: Sunset Memorial Park

My name is Josephine Montecello writing this testimony concerning of the cemetery that wasn't kept up for years. My families who is buried there are now neglected cause of no care taker. Why our family have to go and cut our own grass that is over grown. We had no choice our family went there and cut the over grown grass. My father-in-law is buried there and now that we lost my mother-in-law in December and we cremated her we want to be buried here on my father in-law grave.

But there is problem in the way the cemetery running cause of all the sinking grave close to the air grave also have lots of large holes it because the other head stone sinking in and we don't know which head stone it belong to.

Josephine Montecello

LATE

kong2 - Crystal

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 2, 2017 6:58 PM
To: waltestimony
Cc: pclymer@cox.net
Subject: Submitted testimony for HB1245 on Feb 3, 2017 09:00AM

HB1245

Submitted on: 2/2/2017

Testimony for WAL on Feb 3, 2017 09:00AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Patsy Gonsalves Clymer	Individual	Support	No

Comments: I am Patsy Gonsalves-Clymer, and I am from Waianae. My Mom, Dad, one sister, two brothers, one sister-in-law, a nephew and other family members are resting at Sunset Memorial Park. Our family once thought that Sunset Memorial Park was a beautiful place to rest our love ones, and a nice place we could go to visit them and our memories. We wish it could be made a nice place again. We would be so happy to know that it is being cared for, and that someone really cares about it, and understands what it feels like to be broken hearted by the situation.

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LATE

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
3610 Kanaina Avenue
Honolulu, HI 96815
(808) 291-4868

LATE

February 3, 2017

TESTIMONY

HB1245

Hearing date: February 3, 2017

To: Chair Ryan Yamane
Vice Chair Sam Kong
Committee Members

I am sending this testimony in strong support of HB1245 and ask that you kindly move this bill forward. This bill will allow DCCA to move forward in trying to release monies that currently is "frozen" in a TRUST in the name of the original owner of the property...who we knew as "Slim".

Having these monies released will assist in some repairs and/or at the least getting the water faucets/damaged waterlines/pipes repaired and working again so that families visiting their loved ones won't have to carry water jugs to the grave sites.

Your continued support is very much appreciated

Mahalo

Maureen C. Andrade
808-386-5623