

SB2082

Measure Title: RELATING TO CEMETERIES.

Report Title: Sunset Memorial Park; Repairs; Maintenance; Cemetery;
Department of Commerce and Consumer Affairs

Description: Limits liability for persons maintaining or repairing cemetery grounds. Requires the director of commerce and consumer affairs, in consultation with the comptroller, to develop strategies for repair and maintenance of Sunset Memorial Park in Pearl City, Oahu. Requires report to Legislature.

Companion:

Package: None

Current Referral: CPH, JDC

Introducer(s): HARIMOTO, BAKER, S. Chang, Espero, Ihara, Kim, Nishihara, Riviere, L. Thielen

**TESTIMONY OF ROBERT TOYOFUKU AND NAHELANI WEBSTER ON
BEHALF OF THE HAWAII ASSOCIATION FOR JUSTICE (HAJ) S.B. 2082**

January 31, 2018
9:30 a.m.
CR 229

To: Chair Rosalyn H. Baker and Members of the Senate Committee on Commerce,
Consumer Protection and Health:

We are 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 S.B. 2082, relating to Cemeteries.

S.B. 2082 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 remain accountable for reasonable upkeep of the premises because this measure will also apply to commercially profitable cemeteries.

We request that the committee insert "without compensation" on page 2, line 20, after "State" 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 section 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."

To clarify, there are two versions of the bill on today's hearing agenda; S.B. 2082 refers to limited liability for "persons," whereas S.B. 2246 refers to limited liability for "volunteers." If the bill moves forward, the preference would be to title the new section as, "Limited liability for volunteers maintaining or repairing cemetery grounds." "Persons" is an overly broad term and does not appropriately match the language and intent of the new section being added.

We also request that the committee insert, ", or from the duty to maintain their premises in a reasonably safe condition" on page 3, line 16 so that section (c) reads:

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

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