

SB2246

Measure Title: RELATING TO CEMETERIES.

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

Description: Limits liability for volunteers and certain entities that provide volunteers to maintain or repair 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): BAKER, GALUTERIA, HARIMOTO, INOUE, NISHIHARA, TOKUDA, S.
Chang, Espero, Gabbard, Ihara, Keith-Agaran, Kim, Taniguchi

**TESTIMONY OF ROBERT TOYOFUKU AND NAHELANI WEBSTER ON BEHALF
OF THE HAWAII ASSOCIATION FOR JUSTICE (HAJ) REGARDING S.B. 2246**

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. 2246, relating to Cemeteries.

S.B. 2246 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.

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 15 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.

January 31, 2018

The Honorable Rosalyn H. Baker, Chair
The Honorable Clarence K. Nishihara, Vice Chair
And members of the Committee on Commerce, Consumer Protection and Health
415 South Beretania Street #229
Honolulu, Hawaii 96818

Subject: HB 1245 HD@, Relating to Cemeteries
Hearing: January 31, 2018, 9:30 am

First, let me thank you for hearing this bill. My name is Maureen Andrade who's family members are buried at the Sunset Memorial Park in Pearl City.

More than 10 years ago my brother and I were interviewed by Channel 2 News regarding the Sunset Memorial Park Cemetery. My father was told after the interview by a legislator, that our concerns would be addressed, and here we are 10 plus years later with no results and my dad now buried at the cemetery.

I go to the graveyard every weekend, Saturday or Sunday (unless bad weather prevents me from doing so). I bring with me a battery operated weed whacker, 8 to 10 gallons of water and my flowers. I spend 2 or more hours normally weed whacking about quarter of a football field in the area where the little babies are buried during the 1950's and where my parents, my baby sister, grandparents and great grandparents are buried. I clean and care for not only my family's area but clean the entire area which is about ¼ of a football field, located near and around my family's gravesite. The water faucets have not worked for over a year.

This measure will address some of the issues that negatively impact the conditions at Sunset Memorial Park. Rep. Takayama and the Department of Commerce and Consumer Affairs were gracious enough to step in and began assisting the community and family members whose loved ones are buried there, to address and carry out solutions.

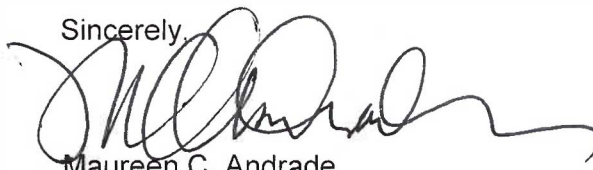
Chair Baker and committee members, my family and I along with family members who's families are buried at this cemetery truly appreciate your consideration to this matter.

This measure will allow the Department of Commerce and Consumer Affairs to continue to develop strategies for the upkeep, repair and maintenance of Sunset Memorial Park. It will also create a special cemetery volunteer liability protection law, as there are groups who expressed a desire to volunteer their sweat equity, as needed for maintain the grass, keeping it watered, ridding the area of trash, and filling in gravesites that have collapsed.

On behalf of my entire Ohana and other families who have relatives buried at Sunset Memorial Park, this measure will help many of us move forward in restoring this final resting place back to its original, pristine state.

I respectfully request your passage of SB2246 and/or SB2082.

Sincerely,



Maureen C. Andrade