

JAN 17 2020

SENATE CONCURRENT RESOLUTION

REQUESTING THE DEPARTMENT OF LAND AND NATURAL RESOURCES TO ADOPT
ADMINISTRATIVE RULES THAT BETTER PROTECT IWI KUPUNA AND
NATIVE HAWAIIAN CULTURAL AND HISTORIC RESOURCES.

1 WHEREAS, our State's cultural heritage is imbued in its
2 historic and cultural resources; and
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4 WHEREAS, preservation of irreplaceable historic properties
5 and cultural resources as well as responsible stewardship of
6 precious and sacred iwi kupuna is of utmost importance to Native
7 Hawaiians and the State; and
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9 WHEREAS, the State Historic Preservation Division of the
10 Department of Land and Natural Resources is authorized to adopt
11 rules to administer historic preservation review laws and
12 regulate the treatment and protection of invaluable historic
13 properties and resources throughout the State; and
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15 WHEREAS, the current historic preservation rules adopted by
16 the Department of Land and Natural Resources have not been
17 updated in more than fifteen years; and
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19 WHEREAS, the current historic preservation rules, in some
20 respects, provide incomplete, ineffective, or inadequate
21 guidance on historic preservation processes and protection for
22 historic resources and iwi kupuna; and
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24 WHEREAS, the current historic preservation rules contain no
25 standards for professional responsibility in archaeology, no
26 process to regulate archaeology permits, and no procedures to
27 discipline archaeologists who engage in practices that cause
28 harm to historical resources; and
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30 WHEREAS, the current historic preservation rules fail to
31 distinguish requirements for projects for the development of



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1 land that may harm, displace, or destroy historic and cultural
2 resources and those that will rehabilitate, restore, preserve,
3 or steward historic or cultural resources; and
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5 WHEREAS, the current historic preservation rules have
6 failed to adequately effectuate statutory protections for burial
7 sites, especially in areas with large concentrations of skeletal
8 remains; and
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10 WHEREAS, under current historic preservation rules,
11 "previously identified" burials are burials identified during an
12 archaeological inventory survey or burials previously registered
13 with the State Historic Preservation Division; and
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15 WHEREAS, "inadvertently discovered" burials are all other
16 burials, including burials found during exploratory testing that
17 may use the same methodologies as an archaeological inventory
18 survey and that may occur prior to the commencement of work; and
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20 WHEREAS, the current distinction between "previously
21 identified" and "inadvertently discovered" burials leads to
22 vastly different decision-making processes regarding their
23 treatment, with determinations regarding the disposition of the
24 former made by the appropriate Island Burial Council and
25 determinations regarding disposition of the latter made by the
26 State Historic Preservation Division; and
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28 WHEREAS, each Island Burial Council possesses far more
29 appropriate expertise to advise and make determinations
30 regarding any disposition of burials and moepu, regardless of
31 classification as "previously identified" or "inadvertently
32 discovered"; and
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34 WHEREAS, the distinction between "previously identified"
35 burials and "inadvertently discovered" burials does not warrant
36 such vastly different treatment; and
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38 WHEREAS, specifically, it appears inconsistent for the
39 respective Island Burial Councils to be completely left out of
40 decision-making regarding burial dispositions for "inadvertently
41 discovered" burials, especially when the "inadvertently



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1 discovered" burials are located in close proximity to previously
2 identified burials; and

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4 WHEREAS, the vastly different treatment between "previously
5 identified" burials and "inadvertently discovered" burials has
6 led to a patchwork of inconsistent burial treatment plans; and

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8 WHEREAS, the different processes, treatments, and
9 dispositions applied respectively to "previously identified" and
10 "inadvertently discovered" burials has incentivized
11 irresponsible archaeological testing practices that minimize the
12 prior identification of burial sites, resulting in the
13 disinterment of countless burials contrary to the intent of
14 Hawaii's historic preservation laws; and

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16 WHEREAS, the current historic preservation rules require
17 perpetual protection of these sites through recordation of the
18 metes and bounds of unmarked burial sites with the Bureau of
19 Conveyances, but they do not require the same for historic
20 preservation sites such as heiau, which has caused the
21 unintentional destruction of many historic properties; and

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23 WHEREAS, the current historic preservation rules require
24 consultation with descendants and knowledgeable individuals to
25 inform determinations regarding the historic significance of
26 these sites, but these consultation requirements are
27 inconsistently effectuated and inadequately enforced; and

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29 WHEREAS, the inadequacy of the current historic
30 preservation rules has caused significant confusion, costly
31 litigation, and the destruction of invaluable and irreplaceable
32 historic resources and cultural sites, including iwi kupuna;
33 now, therefore,

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35 BE IT RESOLVED by the Senate of the Thirtieth Legislature
36 of the State of Hawaii, Regular Session of 2020, the House of
37 Representatives concurring, that the Department of Land and
38 Natural Resources is requested to adopt administrative rules
39 that strengthen historic resource protections by:

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41 (1) Improving accountability for archaeologists
42 responsible for surveying, recording, and making



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- 1 recommendations for treatment of historic resources
2 discovered on development sites;
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4 (2) Establishing an alternative or streamlined historic
5 preservation process to facilitate the approval of
6 preservation plans and permits for projects
7 specifically aimed at rehabilitating, preserving, or
8 stewarding historic properties or cultural resources;
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10 (3) Standardizing and formalizing the archaeological
11 inventory survey sampling and reporting requirements
12 to improve thoroughness and consistency;
13
14 (4) Creating a process to allow for the reclassification
15 of "inadvertently discovered" burials as "previously
16 identified", especially where burials are discovered
17 during exploratory testing authorized or ordered by
18 the Department of Land and Natural Resources or where
19 burials are discovered in concentrations;
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21 (5) Granting each Island Burial Council greater authority,
22 responsibility, and deference to advise during the
23 historic preservation review process and determine the
24 treatment of Native Hawaiian burials;
25
26 (6) Providing to each Island Burial Council stronger and
27 periodic training relating to relevant statutory and
28 administrative authorities and responsibilities;
29
30 (7) Requiring landowners to record the metes and bounds of
31 preservation sites with the Bureau of Conveyances to
32 ensure perpetual protection of culturally significant
33 and irreplaceable historic sites and resources;
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35 (8) Clarifying the requirements for consultation with the
36 Native Hawaiian community and organizations throughout
37 the historic preservation review process when Native
38 Hawaiian historic and cultural sites are threatened by
39 development; and
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41 (9) Providing for stricter fines, clearer enforcement
42 processes, and a process by which citizens may report



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1 the discovery and potential destruction of burials and
2 other historic resources, to improve the effectuation
3 of historic preservation review processes and the
4 enforcement of protections for historic properties;
5 and

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7 BE IT FURTHER RESOLVED that the Department of Land and
8 Natural Resources is requested to submit a report to the
9 Legislature on the status and progress of its administrative
10 rulemaking proceedings related to historic resource protections
11 no later than twenty days before the convening of the regular
12 session of 2021; and

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14 BE IT FURTHER RESOLVED that certified copies of this
15 Concurrent Resolution be transmitted to the Chairperson of the
16 Board of Land and Natural Resources, Chairperson of the Board of
17 Trustees of the Office of Hawaiian Affairs, each member of the
18 Hawaii Island Burial Council, each member of the Kauai and
19 Niihau Islands Burial Council, each member of the Maui and Lanai
20 Islands Burial Council, each member of the Oahu Island Burial
21 Council, and each member of the Molokai Island Burial Council.

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OFFERED BY:



By Request

