



SB2067
RELATING TO BURIAL SITES
Senate Committees on Hawaiian Affairs; and, Water and Land

January 27, 2022

1:00 p.m.

Room 016

The Administration of the Office of Hawaiian Affairs will recommend that the Board of Trustees **SUPPORT w/AMENDMENTS** SB2067, which will require the State Historic Preservation Division (SHPD) to establish an inter-division program to address the location, movement, relocation and restoration of Hawaiian burials sites that are exposed or likely to be exposed by coastal erosion due to climate change. SHPD shall collaborate with the Office of Conservation and Coastal Lands, Island Burial Councils, and OHA in the development of this program to 1) identify iwi within low-lying areas affected by coastal erosion; 2) examine fiscal impacts of the movement and relocation of iwi affected by coastal erosion; 3) examine the role of climate change on burial sites; 4) take appropriate steps to move and relocate iwi from impacted burial sites to areas further in land; 5) provide guidance and technical assistance to communities, organizations, and other stakeholders; and, 6) develop policies and procedures to protect impacted iwi and burial sites that have not been relocated. The bill currently obligates OHA with the funding needed for iwi relocation work. **While OHA supports the proactive effort to care for iwi effected by coastal erosion and recognizes the importance of inter-agency dialog to address the matter, we believe the funding mechanism for iwi relocation work is prematurely being placed solely on OHA without regard for 1) existing rules and statutes that currently vests SHPD with the responsibility to implement the State’s historic preservation program; and, 2) language within the bill itself that calls for the inter-division program to examine fiscal impacts of the iwi relocation first and to subsequently provide recommendations to the legislature ahead of regular session 2023.**

1) Existing rules and statutes currently vest SHPD with the responsibility to implement the State’s historic preservation program.

HRS 6E-3 establishes SHPD as being a division of the Department of Land and Natural Resources to carry out the historic preservation program. Notably, this work includes the development of a state-wide inventory to identify and document historic properties, inclusive of burial sites. As SHPD currently receives National Park Service funds to carry out the historic preservation program, the cost burden for any actions executed under the historic preservation program should remain with SHPD unless statutes and respective rules are amended. The bill as proposed does in fact recommend that the SHPD identify and adopt rules to carry out the relocation work.

Current administrative rules vests the jurisdiction of protecting inadvertently discovered human remains with SHPD. Notably, most iwi identified along coastlines are discovered

inadvertently, without any kind of permit or archaeological inventory survey nexus. In these cases, SHPD must make decisions on relocation or preservation in place, and further develop a burial site component of a preservation plan. OHA would assume that this trend will continue after establishment of the inter-division program prescribed in this bill, and that the current rules as written should prevail uninhibited until appropriately changed via the HRS 91 process. Notably, the rule making process does allow for public comment opportunities that will indeed be important to the development of any rules related to historic preservation, especially those pertinent to burial sites.

It is further solely SHPD's job to administratively assist the Island Burial Council and ensure protocols are carried out per the rules for various situations dealing with the discovery of human remains. It is currently SHPD that is responsible for going out to identify iwi that are reported and contacting the Island Burial Council moku representative and OHA. Historically, SHPD has failed to notify OHA of inadvertent burial discoveries in a timely manner. Inserting OHA into a more meaningful role throughout the process and obligating OHA funds would require further thought and examination. Thus, charging OHA with the costs to move and relocate iwi at this time is premature, and being dictated in way that ignores existing rules and statutes that require SHPD to shoulder historic preservation program responsibilities.

2) Language within the bill calls for SHPD to examine fiscal impacts of iwi relocation and to provide recommendations to the legislature ahead of the 2023 session.

OHA supports the current inter-division effort to address this important issue and believes that the bill rightfully calls for the inter-division program to examine the fiscal impact of iwi relocation. As an examination has yet to occur, OHA believes it is premature to solely designate OHA as being responsible for iwi relocation costs as SHPD is currently charged with administering the historic preservation program. It is further somewhat disingenuous to the inter-division cause proposed by the bill to designate OHA with such a responsibility without even consulting with OHA first. The bill proposes what seems to be a sincere collaborative effort, where each of the participating inter-division agencies provide input on how best to address the impacts of coastal erosion on iwi, both financially and practically.

OHA would further assume that the forthcoming inter-division program report to the legislature would include the results of the fiscal impact analysis with recommendations made collaboratively with each of the participating inter-division agencies. As such, the bill should not dictate where funding will come from for any iwi relocation effort beyond those funds already provided to SHPD for implementation of the historic preservation program. Deciding the funding mechanisms beyond those already afforded to SHPD for the historic preservation program presumes an understanding of OHA's existing financial commitments and undermines the collaborative nature of the inter-division effort.

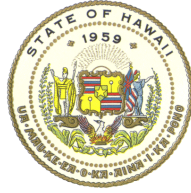
OHA respectfully offers the following language to replace that found on page 4, lines 17-19 of this bill, to read as follows:

"for iwi found, [~~the office of Hawaii affairs~~] the Department of Land and Natural Resources shall cover costs related to the movement and relocation of iwi impacted by coastal erosion over fifty years old until recommendations can be made by the inter-division program to appropriately allocate alternative funding sources, and the State Historic Preservation Division can alter respective rules to enable the sharing of historic preservation program responsibilities."

As the Committee may currently be aware, OHA has convened a Burial Sites Working Group to review and recommend improvements to the longstanding mismanagement of SHPD's burial sites program and Island Burial Councils as called for in House Resolution 113 and Senate Resolution 171 from the 2021 legislative session. This work is resulting in a soon to be released report to the legislature with findings and recommendations. OHA believes that this document, coupled with a possible inter-division program report pertaining to iwi impacted by coastal erosion as proposed in SB2067, could provide much needed insight to legislators on how to address these long-standing issues and better protect iwi. As such, assigning a funding obligation to OHA for iwi relocation work at this time is premature, uninformed, and misaligned with current SHPD responsibilities under the historic preservation program.

Mahalo for the opportunity to provide support on this measure with suggested amendments.

DAVID Y. IGE
GOVERNOR OF HAWAII



**STATE OF HAWAII
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LAND
STATE PARKS

**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the Senate Committees on
HAWAIIAN AFFAIRS
and
WATER AND LAND**

**Thursday, January 27, 2022
1:00PM**

Conference Room 016 & Via Videoconference

**In consideration of
SENATE BILL 2067
RELATING TO BURIAL SITES**

Senate Bill 2067 proposes to amend the establish a Department of Land and Natural Resources (Department) inter-division program between the State Historic Preservation Division (SHPD), the burial councils from each county, and the Office of Conservation and Coastal Lands (OCCL), in partnership with the Office of Hawaiian Affairs (OHA) to identify and protect burial sites threatened by sea level rise, winter storms and erosion. **The Department appreciates the intent of this measure and offers comments.**

The Department already recognizes burial sites threatened by sea level rise, winter storms and erosion as a critically important issue. Every year seal level rise, winter storms, and erosion expose burial sites. While Section 6E-43, Hawaii Revised Statutes (HRS), and Chapter 13-300 Hawaii Administrative Rules provide a framework for addressing these occurrences, these are reactive rather than proactive measures. The Department currently lacks the resources to always be able to respond to the exposure of burial sites from these events as quickly as we believe the importance of the matter requires. Furthermore, the Department lacks the resources to address these matters proactively. The Department believes that this measure provides a starting place for developing a program that will allow the Department to address protection of burials threatened by sea level rise and climate change in a proactive, effective, and timely manner.

The Department offers the following comments on portions of this measure that we believe are in need of clarification or amendment.

Senate Bill 2076, SECTION 2 establishes a collaborative program among SHPD, OCCL, the Island Burial Councils, and OHA. Since some of the land subject to the erosion impacts of

climate change, and the land to relocate burials will most likely be managed by the effects the Department's Land Division, the Department recommends that the Land Division specifically be included as one of the collaborating agencies.

Senate Bill 2067, SECTION 2(b)(1) establishes a goal to identify iwi kupuna in low lying areas affected by climate change and coast erosion. The Department recognizes that this is a laudable goal. Identification of all burial sites in areas potentially impacted by climate would require large scale archaeological inventory activities as well as an intensive ethnographic interviewing program. Doing these at the scale necessary to identify all burial sites is likely to be prohibitively expensive. Furthermore, the limitations of current and reasonably foreseeable archaeological and ethnographic methods and techniques, even given sufficient funding, make it extremely unlikely that all burial sites in impacted areas can be identified. The Department recommends that this paragraph be **deleted** in order to focus efforts on the development of proactive policies and procedures to address protection of burials impacted or potentially impacted by sea level rise, and extreme climate events.

Senate Bill 2067 SECTION 2(b)(3) calls for the program to "Examine the role of climate change on burial sites, including the impacts of extreme weather events" in disturbance of iwi kupuna. The Department believes that climate change is the only reasonable explanation of sea level rise and extreme weather events and there is nothing useful to be gained directing this program to examine this particular question further. The Department recommends that this paragraph be **deleted**.

Senate Bill 2067 SECTION 2(b)(4) calls for the relocation of burials disturbed by sea level rise or extreme climate events "to areas further inland that have lineal genealogical or cultural significance...." There can be no question that burials will need to be relocated away from high impact zones. The reference to areas of lineal genealogical or cultural significance is confusing. The Department recommends that this paragraph be revised for clarity to read:

"Take appropriate steps to move and relocate 'iwi from impacted burial sites to areas further inland [~~that have lineal genealogical or cultural significance;~~] within the same moku;"

While this measure is silent on identification of areas to which impacted burial sites will be relocated, it seems likely that some, perhaps most, will have to be relocated to state lands. Reinterment of burials on state lands may potentially affect the state's ability to utilize and manage the state lands used for such purposes, so would need to be selected carefully with full agency consultation.

The Department fully supports Senate Bill 2067 SECTION 2(b)(6) as we view the development of proactive procedures is essential to effectively addressing the protection of burials sites threatened by sea level rise and extreme weather events.

The Department appreciates the proposed appropriation of general revenue to address relocation of non-native Hawaiian burial sites. The Department notes that required coordination and collaboration envisioned in Senate Bill 2067 will place a call on the resources of the Department and SHPD, which are not currently in the Governor's budget request. The Department supports this appropriation to the extent that it does not impact the priorities reflected in the Governor's budget. In addition, the Department recommends that the appropriation also be applicable to those expenses the Department and SHPD may incur in the coordination and collaboration required by this measure by amending this section as suggested below.

“SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$ or so much thereof as may be necessary for fiscal year 2022-2023 for the development of policies and procedures to advance the purposes of this by and for the movement and restoration of non-Hawaiian burial sites impacted by coastal erosion.”

Thank you for the opportunity to comment on this measure.

SB-2067

Submitted on: 1/25/2022 1:13:25 AM

Testimony for HWN on 1/27/2022 1:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Kamuela Kalai	Individual	Support	No

Comments:

Aloha mai. My name is Kamuela Kalai. I am writing in support of SB2067 Relating to Burial Sites. I support every effort to protect our iwi kupuna burials from being negatively impacted by the on-going erosion of Hawaii's coastline. I have personally been involved in helping to protect and prevent iwi kupuna burials from being washed out of their graves because of high surf, tidal surge, wind and rainstorms. When these events threaten intact burials, the most that can be done is to collect and recover any skeletal remains that fall out of their graves. With the threat of climate change and the steady rising of the ocean, these events are occurring more frequently everywhere in Hawaii. State and County agencies must work together to mitigate further harm to burials and our coastlines. In Kaaawa where I live, there are numerous stretches of road along Kamehameha Hwy where safety signs are the only measures to warn motorists and pedestrians of a crumbling roadway and a eroding coastline. The immediate danger to the public can be measured in inches between the road and the crumbling roadside. It is an accident waiting to happen. Public safety demands immediate attention to this problem that has been prevalent on our coast in Koolauloa and beyond. Protection of our burials demands action from the government agencies tasked with the responsibility to protect these precious resources. I appreciate the opportunity to submit this testimony and I ask for your support in protecting our iwi kupuna burials. Mahalo. Kamuela Kalai