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# SENATE CONCURRENT RESOLUTION

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REQUESTING THE OFFICE OF HAWAIIAN AFFAIRS TO CONVENE A WORKING GROUP TO EXAMINE AND CONSIDER THE TRANSFER OF NATIVE HAWAIIAN BURIAL SITE MANAGEMENT UNDER CHAPTER 6E, HAWAII REVISED STATUTES, FROM THE STATE HISTORIC PRESERVATION DIVISION TO THE OFFICE OF HAWAIIAN AFFAIRS.

1 WHEREAS, the Legislature recognizes that it is the State's  
2 duty to protect the Native Hawaiian cultural and religious  
3 practice of caring for iwi kūpuna pursuant to article XII,  
4 section 7, of the Hawaii State Constitution; and  
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6 WHEREAS, in enacting Act 104, Session Laws of Hawaii 1976,  
7 which established chapter 6E, Hawaii Revised Statutes, to codify  
8 the State's Historic Preservation program, the Legislature  
9 recognized and declared that historic properties and burial  
10 sites are included in the State's public trust, stating that "it  
11 shall be the public policy of this State to provide leadership  
12 in preserving, restoring, and maintaining historic and cultural  
13 property, to ensure the administration of such historic and  
14 cultural property in a spirit of stewardship and trusteeship for  
15 future generations, and to conduct activities, plans, and  
16 programs in a manner consistent with the preservation and  
17 enhancement of historic and cultural property"; and  
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19 WHEREAS, in 1990, the Legislature amended section 6E-43,  
20 Hawaii Revised Statutes, to include language stating that "at  
21 any site, other than a known, maintained, actively used cemetery  
22 where human skeletal remains are discovered or are known to be  
23 buried and appear to be over fifty years old, the remains and  
24 their associated burial goods shall not be moved without the  
25 department's approval"; and  
26

27 WHEREAS, the amendments made to section 6E-43 also included  
28 language stating that "all burial sites are significant and  
29 shall be preserved in place until compliance with this section  
30 is met"; and



1  
2 WHEREAS, chapter 10H, Hawaii Revised Statutes, formally  
3 recognizes Native Hawaiians as the "only indigenous, aboriginal,  
4 maoli people of Hawaii" and facilitates and furthers Native  
5 Hawaiian self-governance; and  
6

7 WHEREAS, the United Nations Declaration on the Rights of  
8 Indigenous Peoples states that "[i]ndigenous peoples have the  
9 right to self-determination", the "right to maintain, protect,  
10 and have access...to their religious and cultural sites", and  
11 "repatriation of their human remains"; and  
12

13 WHEREAS, the State and Legislature recognize that the  
14 Office of Hawaiian Affairs was constitutionally established as a  
15 trust vehicle to act on behalf of Native Hawaiians until a  
16 Native Hawaiian governing entity could be reestablished; and  
17

18 WHEREAS, the State Historic Preservation Division of the  
19 Department of Land and Natural Resources was established to  
20 administer a comprehensive historic preservation program  
21 pursuant to chapter 6E, Hawaii Revised Statutes; and  
22

23 WHEREAS, the State Historic Preservation Division is tasked  
24 with the identification and protection of historic burial sites,  
25 and, with respect to Native Hawaiian burial sites, is tasked  
26 with sharing decision-making over relocation or preservation in  
27 place, transfer, or other disposition of previously identified  
28 Native Hawaiian burial sites, with the State's island burial  
29 councils that were established pursuant to section 6E-43.5,  
30 Hawaii Revised Statutes; and  
31

32 WHEREAS, pursuant to H.R. No. 113, HD1 (2021), and S.R.  
33 No. 171, SD1 (2021), the Office of Hawaiian Affairs convened a  
34 Burial Sites Working Group in 2022 to investigate the matter of  
35 burial site treatment and to offer recommendations for  
36 improvements; and  
37

38 WHEREAS, the Burial Site Working Group took extensive  
39 community testimony as part of its fact-finding mandate and in  
40 its final report dated February 2023, made three key findings:  
41



1 (1) The State had failed to adequately manage its burial  
2 law responsibilities, including a failure to provide,  
3 or advocate for the provision of, adequate resources  
4 to administer burial laws and a failure to adequately  
5 administer laws intended to protect Native Hawaiian  
6 burial sites;  
7

8 (2) The State has demonstrated a lack of will to fulfill  
9 its burial law responsibilities; and  
10

11 (3) There are fundamental inadequacies in the laws  
12 affecting burial sites; and  
13

14 WHEREAS, an opinion editorial entitled "Place the Kuleana  
15 with OHA", authored by Dr. Kēhaulani Abad and Edward Halealoha  
16 Ayau, a burial site expert and one of three authors of the 1990  
17 amendments made to chapter 6E, Hawaii Revised Statutes, that  
18 established the island burial councils, was published in the  
19 June 1 issue of *Ka Wai Ola* and opined that the most effective  
20 manner by which to improve the care and protection of unmarked  
21 burial sites over fifty years old and the Hawaiian human remains  
22 inadvertently discovered is to transfer the burial site program  
23 from the State Historic Preservation Division to the Office of  
24 Hawaiian Affairs; and  
25

26 WHEREAS, section 10-3(3), Hawaii Revised Statutes, requires  
27 that the Office of Hawaiian Affairs serve as "the principal  
28 public agency in this State responsible for the performance,  
29 development, and coordination of programs and activities  
30 relating to native Hawaiians and Hawaiians"; and  
31

32 WHEREAS, section 10-3(4), Hawaii Revised Statutes, requires  
33 that the Office of Hawaiian Affairs advance the betterment of  
34 Native Hawaiians by assessing the effects of policies and  
35 practices of other state agencies on Native Hawaiians; and  
36

37 WHEREAS, the State Historic Preservation Division and  
38 Office of Hawaiian Affairs have identified several reoccurring  
39 challenges regarding both the Burial Sites Program and the  
40 Island Burial Councils; and  
41



1 WHEREAS, occasionally, the State Historic Preservation  
2 Division faces potential conflicts of interest, or the  
3 appearance of conflicts of interest, resulting from historic  
4 preservation reviews, inadvertent discoveries, descendency  
5 claims, and making recommendations to the Island Burial  
6 Councils; and

7  
8 WHEREAS, these potential conflicts of interest may be  
9 resolved by transferring parts of the Burial Sites Program to  
10 another agency; now, therefore,

11  
12 BE IT RESOLVED by the Senate of the Thirty-third  
13 Legislature of the State of Hawaii, Regular Session of 2025, the  
14 House of Representatives concurring, that the Office of Hawaiian  
15 Affairs is requested to convene a working group to examine and  
16 consider the transfer of Native Hawaiian burial site management  
17 under chapter 6E, Hawaii Revised Statutes, from the State  
18 Historic Preservation Division to the Office of Hawaiian  
19 Affairs; and

20  
21 BE IT FURTHER RESOLVED that the working group is requested  
22 to:

- 23  
24 (1) Identify and determine which duties and  
25 responsibilities of the State Historic Preservation  
26 Division regarding the protection of Native Hawaiian  
27 burial sites and administration of the Island Burial  
28 Councils under chapter 6E, Hawaii Revised Statutes,  
29 may be shared with or assumed by the Office of  
30 Hawaiian Affairs;  
31  
32 (2) Consider the staff and financial resources of the  
33 Office of Hawaiian Affairs, legal requirements,  
34 technological needs, and other relevant factors, in  
35 determining whether it is feasible for the Office of  
36 Hawaiian Affairs to assume these duties and  
37 responsibilities;  
38  
39 (3) Develop and recommend an implementation plan and  
40 associated timeline for the transfer of any duties,  
41 including any necessary statutory and administrative  
42 amendments to effectuate the transfer;



(4) Consider in its discussions whether implementing the recommendations made in the final report of the Burial Sites Working Group may improve the operation of the burial sites program and protection of Native Hawaiian burial sites; and

(5) Submit a report of its findings and recommendations, including any proposed legislation, to the Legislature no later than twenty days prior to the convening of the Regular Session of 2027; and

BE IT FURTHER RESOLVED that the working group is requested to comprise the following members:

(1) Two members representing the State Historic Preservation Division;

(2) Two members representing the Office of Hawaiian Affairs;

(3) One member from each Island Burial Council, to be selected by a majority vote of its respective members; and

(4) One member representing Hua Iwi Kaumo'o, the leading repatriation and reburial advocacy organization; and

BE IT FURTHER RESOLVED that certified copies of this Concurrent Resolution be transmitted to the Governor, Attorney General, Chief Executive Officer of the Office of Hawaiian Affairs, Branch Chief of the History and Culture Branch of the State Historic Preservation Division, Chairperson of each Island Burial Council, and Executive Director of Hua Iwi Kaumo'o.

OFFERED BY:


