
SENATE RESOLUTION

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

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

11
12 WHEREAS, the State and Legislature recognize that the
13 Office of Hawaiian Affairs was constitutionally established as a
14 trust vehicle to act on behalf of Native Hawaiians until a
15 Native Hawaiian governing entity could be reestablished; and

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

21
22 WHEREAS, the State Historic Preservation Division is tasked
23 with the identification and protection of historic burial sites,
24 and, with respect to Native Hawaiian burial sites, is tasked
25 with sharing decision-making over relocation or preservation in
26 place, transfer, or other disposition of previously identified
27 Native Hawaiian burial sites, with the State's island burial
28 councils that were established pursuant to section 6E-43.5,
29 Hawaii Revised Statutes; and

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

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

- 40
41 (1) The State had failed to adequately manage its burial
42 law responsibilities, including a failure to provide,



1 or advocate for the provision of, adequate resources
2 to administer burial laws and a failure to adequately
3 administer laws intended to protect Native Hawaiian
4 burial sites;

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6 (2) The State has demonstrated a lack of will to fulfill
7 its burial law responsibilities; and

8
9 (3) There are fundamental inadequacies in the laws
10 affecting burial sites; and

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

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

29
30 WHEREAS, section 10-3(4), Hawaii Revised Statutes, requires
31 that the Office of Hawaiian Affairs advance the betterment of
32 Native Hawaiians by assessing the effects of policies and
33 practices of other state agencies on Native Hawaiians; and

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

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40 WHEREAS, occasionally, the State Historic Preservation
41 Division faces potential conflicts of interest, or the
42 appearance of conflicts of interest, resulting from historic



1 preservation reviews, inadvertent discoveries, descendency
2 claims, and making recommendations to the Island Burial
3 Councils; and
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5 WHEREAS, these potential conflicts of interest may be
6 resolved by transferring parts of the Burial Sites Program to
7 another agency; now, therefore,
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9 BE IT RESOLVED by the Senate of the Thirty-third
10 Legislature of the State of Hawaii, Regular Session of 2025,
11 that the Office of Hawaiian Affairs is requested to convene a
12 working group to examine and consider the transfer of Native
13 Hawaiian burial site management under chapter 6E, Hawaii Revised
14 Statutes, from the State Historic Preservation Division to the
15 Office of Hawaiian Affairs; and
16

17 BE IT FURTHER RESOLVED that the working group is requested
18 to:
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- 20 (1) Identify and determine which duties and
21 responsibilities of the State Historic Preservation
22 Division regarding the protection of Native Hawaiian
23 burial sites and administration of the Island Burial
24 Councils under chapter 6E, Hawaii Revised Statutes,
25 may be shared with or assumed by the Office of
26 Hawaiian Affairs;
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- 28 (2) Consider the staff and financial resources of the
29 Office of Hawaiian Affairs, legal requirements,
30 technological needs, and other relevant factors, in
31 determining whether it is feasible for the Office of
32 Hawaiian Affairs to assume these duties and
33 responsibilities;
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- 35 (3) Develop and recommend an implementation plan and
36 associated timeline for the transfer of any duties,
37 including any necessary statutory and administrative
38 amendments to effectuate the transfer;
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- 40 (4) Consider in its discussions whether implementing the
41 recommendations made in the final report of the Burial
42 Sites Working Group may improve the operation of the



1 burial sites program and protection of Native Hawaiian
2 burial sites; and
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- 4 (5) Submit a report of its findings and recommendations,
5 including any proposed legislation, to the Legislature
6 no later than twenty days prior to the convening of
7 the Regular Session of 2027; and
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9 BE IT FURTHER RESOLVED that the working group is requested
10 to comprise the following members:
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- 12 (1) Two members representing the State Historic
13 Preservation Division;
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15 (2) Two members representing the Office of Hawaiian
16 Affairs;
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18 (3) One member from each Island Burial Council, to be
19 selected by a majority vote of its respective members;
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21 (4) Up to five members of the community with expertise and
22 experience in protecting Native Hawaiian burial sites,
23 including but not limited to recognized lineal and
24 cultural descendants, who self-identify and submit
25 their names for selection by a majority vote of the
26 working group; and
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28 (5) One member representing Hui Iwi Kuamo‘o, the leading
29 repatriation and reburial advocacy organization; and
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31 BE IT FURTHER RESOLVED that certified copies of this
32 Resolution be transmitted to the Governor, Attorney General,
33 Chief Executive Officer of the Office of Hawaiian Affairs,
34 Branch Chief of the History and Culture Branch of the State
35 Historic Preservation Division, Chairperson of each Island
36 Burial Council, and Executive Director of Hui Iwi Kuamo‘o.

