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# SENATE CONCURRENT 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

5  
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

18  
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



1 shall be preserved in place until compliance with this section  
2 is met"; and

3

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

8

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

14

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

19

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

24

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

33

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

39

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



- 1
- 2 (1) The State had failed to adequately manage its burial
- 3 law responsibilities, including a failure to provide,
- 4 or advocate for the provision of, adequate resources
- 5 to administer burial laws and a failure to adequately
- 6 administer laws intended to protect Native Hawaiian
- 7 burial sites;
- 8
- 9 (2) The State has demonstrated a lack of will to fulfill
- 10 its burial law responsibilities; and
- 11
- 12 (3) There are fundamental inadequacies in the laws
- 13 affecting burial sites; and
- 14

15 WHEREAS, an opinion editorial entitled "Place the Kuleana

16 with OHA", authored by Dr. Kēhaunani Abad and Edward Halealoha

17 Ayau, a burial site expert and one of three authors of the 1990

18 amendments made to chapter 6E, Hawaii Revised Statutes, that

19 established the island burial councils, was published in the

20 June 1 issue of *Ka Wai Ola* and opined that the most effective

21 manner by which to improve the care and protection of unmarked

22 burial sites over fifty years old and the Hawaiian human remains

23 inadvertently discovered is to transfer the burial site program

24 from the State Historic Preservation Division to the Office of

25 Hawaiian Affairs; and

26

27 WHEREAS, section 10-3(3), Hawaii Revised Statutes, requires

28 that the Office of Hawaiian Affairs serve as "the principal

29 public agency in this State responsible for the performance,

30 development, and coordination of programs and activities

31 relating to native Hawaiians and Hawaiians"; and

32

33 WHEREAS, section 10-3(4), Hawaii Revised Statutes, requires

34 that the Office of Hawaiian Affairs advance the betterment of

35 Native Hawaiians by assessing the effects of policies and

36 practices of other state agencies on Native Hawaiians; and

37

38 WHEREAS, the State Historic Preservation Division and

39 Office of Hawaiian Affairs have identified several reoccurring

40 challenges regarding both the Burial Sites Program and the

41 Island Burial Councils; and

42



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;



1  
2 (4) Consider in its discussions whether implementing the  
3 recommendations made in the final report of the Burial  
4 Sites Working Group may improve the operation of the  
5 burial sites program and protection of Native Hawaiian  
6 burial sites; and  
7

8 (5) Submit a report of its findings and recommendations,  
9 including any proposed legislation, to the Legislature  
10 no later than twenty days prior to the convening of  
11 the Regular Session of 2027; and  
12

13 BE IT FURTHER RESOLVED that the working group is requested  
14 to comprise the following members:  
15

16 (1) Two members representing the State Historic  
17 Preservation Division;  
18

19 (2) Two members representing the Office of Hawaiian  
20 Affairs;  
21

22 (3) One member from each Island Burial Council, to be  
23 selected by a majority vote of its respective members;  
24

25 (4) Up to five members of the community with expertise and  
26 experience in protecting Native Hawaiian burial sites,  
27 including but not limited to recognized lineal and  
28 cultural descendants, who self-identify and submit  
29 their names for selection by a majority vote of the  
30 working group; and  
31

32 (5) One member representing Hui Iwi Kuamo'o, the leading  
33 repatriation and reburial advocacy organization; and  
34

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

