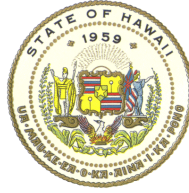
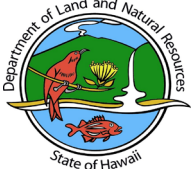


DAVID Y. IGE  
GOVERNOR OF HAWAII



**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

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**Testimony of  
SUZANNE D. CASE  
Chairperson**

**Before the House Committee on  
JUDICIARY & HAWAIIAN AFFAIRS**

**Wednesday, April 14, 2021  
2:00 PM**

**State Capitol, Via Videoconference, Conference Room 325**

**In consideration of  
HOUSE RESOLUTION 113, Proposed HOUSE DRAFT 1  
REQUESTING THE ESTABLISHMENT OF A BURIAL SITES WORKING GROUP TO  
REVIEW AND RECOMMEND IMPROVEMENTS TO THE BURIAL SITES  
PROGRAM**

House Resolution 113, Proposed House Draft 1 requests that a Burial Sites Working Group (BSWG) be established to review and recommend improvements to the Burial Sites Program within the State Historic Preservation Division (SHPD) of the Department of Land and Natural Resources (Department). **The Department acknowledges the intent of this resolution and offers comments.**

The Department believes that it is always possible to improve the operations of the divisions and programs within it, including SHPD's Burial Sites Program. However, the Department believes that House Concurrent Resolution 131, Proposed House Draft 1 is based on a misunderstanding of the authorities and duties of the Island Burial Councils (IBCs), the Burial Sites Program as established by statute and rule, as well as the relationship between SHPD and the IBCs established by statute. The Department provides the following comments to clarify these authorities and relationships.

As far as the Department is aware, SHPD was subject to a single performance audit nineteen years ago; SHPD's annual financial audits have not made findings relative to burial council management.. The resolution correctly notes that SHPD was required by the National Park Service (NPS) to develop corrective action plans to improve operations of the federally funded activities; the NPS program review and June 2014 corrective action plan also did not find problems with the Burials Sites Program and, accordingly, did not impose conditions relating to it in the corrective action plan.

This Resolution also appears to be predicated on the assumption that SHPD is failing to support the Councils to the extent possible with currently available resources, and that is failing to

**SUZANNE D. CASE**  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

**ROBERT K. MASUDA**  
FIRST DEPUTY

**M. KALEO MANUEL**  
ACTING DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

comply with the statutes and administrative rules, to the extent that it has become necessary to form a working group. The Department does not concur with this assumption.

The Hawai'i, Maui/Lāna'i, and O'ahu burial councils are supported by two burial sites specialist each. The History and Culture Branch Chief, who oversees the Burial Sites Program, frequently attends IBC meetings, and when not in attendance at a Council meeting, is available by cell phone to consult with staff or the IBC, as necessary. With a few exceptions, the questions that the Councils may have regarding statute, regulation, and procedures can be answered by referring to the council member manual given to each council member at the first meeting of their term. All staff are properly trained in the applicable statutes, administrative rules, and procedures. It is probably the case that more Sunshine Law and Ethics Law training is needed for the IBC members, as compliance with these statutes, with the exception of posting meeting agendas and producing minutes, are Council rather than SHPD administrative responsibilities.

Having heard that some IBC members feel the need for training, SHPD, in consultation with the Attorney General, is currently working on training material that is currently targeted for presentation at the May or June 2021 IBC meetings.

Every allegation of burial disturbance reported to SHPD is investigated by SHPD staff. When SHPD staff feel their observations warrant, allegations are forwarded to the Department's Division of Conservation and Resources Enforcement (DOCARE) for investigation, as well as the Deputy Attorney Generals for advice. When the result of the DOCARE investigation appears to support it, the decision to pursue civil and criminal charges is made by SHPD in consultation with the the Department of the Attorney General.

SHPD has a burial sites inventory. That inventory includes all burials identified during archaeological inventories and surveys, identified by descendants, and those inadvertently discovered. SHPD does not have the resources to carry on an active survey to identify burial sites throughout the state. In addition, there is a cultural belief and practice in a large segment of the native Hawaiian community that burials should not be identified, even though it may put the burials at risk of harm. This belief makes it difficult, and perhaps not entirely appropriate, for SHPD to implement a systematic survey effort, even if it had the resources to do so.

The Department believes that the proposed BSWG may bring clarity as to what the real issues are, and propose solutions, whether it will be an increase in resources for SHPD, the need to amend statutes, or to recommend amendments to administrative rules. Should the House decide to move forward with this resolution, the Department recommends that the following persons be added to the working group:

- the SHPD Administrator;
- a deputy attorney general to be appointed by the Attorney General;
- a landowner or developer's representative to be appointed by the Chair of the Department; and
- a representative from the list of archaeological firms permitted to do business in Hawai'i, to be appointed by the Chair of the Department.

Thank you for the opportunity to comment on this resolution.

**HR113 Proposed HD1**

Ke Kōmike Hale o ka Ho‘okolokolo a me ke Kuleana Hawai‘i  
House Committee on Judiciary & Hawaiian Affairs

‘Apelila 14, 2021

2:00 p.m.

Lumi 325

The Office of Hawaiian Affairs (OHA) **SUPPORTS** the HR113 Proposed HD1, which requests OHA to convene and facilitate a burial sites working group, to review and recommend improvements to the longstanding mismanagement of the State Historic Preservation Division’s (SHPD’s) burial sites program. Notably, the working group would be tasked with conducting the following activities: reviewing the implementation of Island Burial Councils’ (IBCs’) duties to better understand their relationship with SHPD; reviewing existing statutes and administrative rules pertaining to IBCs and ways to improve their implementation; and developing a statewide survey and inventory that documents where burial sites exist or may exist. Ultimately, this working group would submit a report of its findings and recommendations to the Legislature no later than twenty days prior to the convening of the regular session of 2022. **OHA believes that a working group to specifically examine and develop recommendations to address historic systemic issues with SHPD’s burial sites program may be a critical first step towards improving the care, management, and protection of ancestral burial sites, as well as the associated administration of the IBCs.**

Historically, state audits of SHPD have revealed chronic leadership dysfunction, employee discord, and a significant backlog of project reviews that have substantially undermined the historic preservation review process, particularly with respect to the protection of burial sites throughout the islands. Examples of SHPD’s systemic mismanagement of the IBCs and burial sites program include:

- Failure to adequately staff the IBCs and manage the terms of council members;
- Failure to provide training to its staff on the burial law and relevant administrative rules;
- Failure to provide training to IBC members regarding the burial law and relevant administrative rules;
- Failure to require the Department of the Attorney General to provide independent legal representation to the IBCs (separate from the interests of SHPD);
- Failure to implement administrative rules to develop a burial sites inventory;

- Failure to provide proper administrative support to the IBCs, including the failure to: take timely actions on burial matters, prepare agenda items, and provide the councils with proper guidance on the processes involving burial matters;
- Failure to comply with legal requirements applicable to the inadvertent discovery of human remains;
- Failure to undertake enforcement actions of documented violations involving burial sites; and
- Failure to properly notify OHA of inadvertent burial discoveries in a timely manner.

As evidenced by a recent January 19, 2021 press conference and press release by IBC leadership representing multiple islands and councils, **serious concerns also exist regarding the systemic and chronic mismanagement of the IBCs by SHPD for the past 25 years, which continue to undermine the ability of the IBCs to exercise their legally established authorities, rights, and responsibilities – to the significant detriment of Hawaiian burial sites and cherished cultural properties.**

On January 22, 2021, OHA issued its own press release in support of the position of the IBC leadership, given our agency’s longstanding concerns regarding the functioning and efficacy of this very important program to preserve and protect our iwi kūpuna, the last vestiges of our collective history and culture in these islands. OHA urged state policymakers, including SHPD leadership, to heed the calls of our IBC leaders, and address issues that have long been raised by Native Hawaiian community members and cultural practitioners, archaeologists, the state auditor, and OHA itself.

One example of the chronic issues that OHA has been experiencing is the failure of SHPD to follow its own administrative rules in the reporting of inadvertently discovered burials. Hawai‘i Administrative Rules § 13-300-40 requires OHA to be notified of any inadvertent burial discovery once an inadvertent discovery report is generated. However, **OHA rarely receives notifications of inadvertently discovered burials in a timely matter, if at all.** Although OHA has established an email address, [burials@oha.org](mailto:burials@oha.org), to help facilitate this SHPD mandate, inadvertent discoveries discussed on IBC agendas or brought to OHA’s attention via other means are often not transmitted as required. Timely notification of inadvertent burial discoveries is not only required under the law, but is also critical to provide OHA with sufficient time to address beneficiary concerns regarding iwi kūpuna cases across the islands, as well as develop strategies and recommendations for the appropriate treatment of such burials.

Accordingly, **the working group established through this measure could help to identify the source(s) of such chronic issues within SHPD – ideally resulting in effective solutions to prevent continued mismanagement and harm to our sacred iwi kūpuna.**

OHA notes that the Proposed Draft of this measure would ask OHA to convene and facilitate the proposed working group. **OHA is open to convening a working group, but notes that the proposed working group has slightly different goals and a somewhat different composition than that in SR171 SD1.** SR171 SD1 is also aimed at evaluating and improving SHPD's burial sites program through a working group to be convened by OHA, and has already been adopted by the Senate; **while OHA supports both resolutions as a means to address longstanding concerns with SHPD, OHA notes that the differences between these two measures may result in both duplication and conflict between the two working groups' efforts.**

For the above reasons, OHA urges the Committee to **PASS** HR113 Proposed HD1. Mahalo for the opportunity to testify on this measure.

**HR-113**

Submitted on: 4/12/2021 10:29:04 PM

Testimony for JHA on 4/14/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Edward Halealoha Ayau	Individual	Oppose	No

Comments:

Aloha Rep. Nakashima,

I write to share my testimony in regards to HR 113 which is scheduled for hearing this Wednesday April 14, 2021. I am part of of volunteers called Hui Ola NĀ• Iwi who collectively hold knowledge and experience with the burials law, administrative rules and the burial sites program over the past three decades. I/we oppose this measure as follows:

1. Hui Ola NĀ• Iwi is satisfied that the aims of our press conference held on January 19, 2021, which was to bring public awareness to the ongoing mismanagement of the island burial council's by the SHPD has been achieved with the language of SR 171 SD1, which has passed the Senate, mainly because the representation on the Burial Sites Working Group includes the stakeholders most affected. I/we therefore assert that HR 113 is unnecessary.
2. Hui Ola NĀ• Iwi members testified against similar language contained in the current version of HR 113, which was also contained in HCR 131 SD1. However, none of our concerns were incorporated into that resolution when approved by the House Judiciary and Hawaiian Affairs Committee. We have the same concerns with HR 113 and therefore I/we oppose for the reasons we already testified to on HCR 131, unless the JHA Committee is willing to adopt the language of SR 171 SD 1 in its entirety and without exception replacing the current language of HR 113.

Finally, I/we tried repeatedly to explain our rational for the resolution language to your staff. However, in the end our concerns were largely ignored. Our opposition to HR 113 comes after numerous attempts to share our knowledge of the burial law and administrative rules and our experience with the cyclical patterns of mismanagement by SHPD.

Again, our concerns are effectively addressed by SR 171, SD1 and we look forward to OHA establishing the Burial Sites Working Group as provided in that resolution, mahalo for your time and attention to the important matter of restoring the ancestral foundation of the Hawaiian people.

Ola nÄ• iwi,

E Halealoha Ayau

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144 Kulana Street

Hilo, HI 96720-2243

**HR-113**

Submitted on: 4/13/2021 9:16:00 PM

Testimony for JHA on 4/14/2021 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Dana Keawe	Individual	Support	No

Comments:

I support hr113