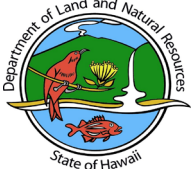


DAVID Y. IGE
GOVERNOR OF HAWAII



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

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**Testimony of
SUZANNE D. CASE
Chairperson**

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

**Tuesday, March 23, 2021
1:01 PM**

State Capitol, Via Videoconference, Conference Room 016

**In consideration of
SENATE CONCURRENT RESOLUTION 206/SENATE RESOLUTION 171
REQUESTING THE WILLIAM S. RICHARDSON SCHOOL OF LAW TO ESTABLISH
THE BURIAL SITES WORKING GROUP TO EXAMINE THE BURIAL SITES
PROGRAM UNDER THE DEPARTMENT OF LAND AND NATURAL RESOURCES'
STATE HISTORIC PRESERVATION DIVISION**

Senate Concurrent Resolution 206/Senate Resolution 171 (Resolutions) request that the William S. Richardson School of Law establish a Burial Sites Working Group (BSWG) to examine the Burial Sites Program under the Department of Land and Natural Resources' (Department) State Historic Preservation Division (SHPD) and make formal recommendations on how to correct any mismanagement by the Department. **The Department acknowledges the intent of these resolutions and offers comments.**

The resolutions urge that the BSWG include the Chairpersons of all Island Burial Councils (Councils); Administrator of SHPD; History and Culture Branch Chief of SHPD; Burials Specialist of SHPD; a representative of the Office of Hawaiian Affairs; two representatives of large landowners and developers to be appointed by the Governor; a representative of the Hawaiian community familiar with and experiences with the Burial Sites Program to be appointed by the Office of Hawaiian Affairs; and a representative of Huliauapa'a/Kali'uokapa'akai Collective to be selected by that organization. The BSWG is requested to submit a report detailing the formal findings and recommendations for corrective action, including proposed legislation, to the Legislature no later than twenty days prior to the convening of the Regular Session of 2022.

Section 6E-43.5, Hawaii Revised Statutes (HRS), establishes five island burial councils (Councils), one each for Hawai'i, Maui/Lāna'i, Moloka'i, O'ahu, and Kaua'i/Ni'ihau, and attaches them to the Department for administrative purposes. The Councils carry out duties

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

established by Sections 6E-43, 6E-43.5 6E 43.6, HRS. Specifically, the Councils are tasked with: (1) determining whether previously identified native Hawaiian burial sites that appear to be over 50 years old should be preserved in place or relocated; (2) being consulted by SHPD with respect to burial treatment and preservation plans, and make recommendations to the SHPD regarding the appropriate management, treatment, and protection of native Hawaiian burial sites; (3) makes determinations as to whether to recognize a claimant to native Hawaiian burials as a lineal or cultural descendant; (4) assist the SHPD with the inventory and identification of native Hawaiian burial sites by providing information from families and other sources; (5) and maintain a list of appropriate Hawaiian organizations, agencies and offices to notify regarding the discovery of native Hawaiian burial sites.

SHPD's responsibility is to provide administrative support to the Councils under Section 13-300-28, Hawaii Administrative Rules (HAR), including: (1) posting notices of council agendas; (2) (in a non-pandemic world) making arrangements for meeting locations and site visits; (3) recording meeting minutes; (3) providing the applicants written notification of the Councils' determinations; and (5) other administrative duties. Aside from providing such administrative support to the Councils under Section 6E-43.6, HRS, & Section 13-300-40(b), HAR, SHPD has jurisdiction over any inadvertent discovery (unanticipated finding of human skeletal remains and any burial goods resulting from unintentional disturbance, erosion, or other ground disturbing activity) of human skeletal remains and any burial goods over fifty years old, regardless of ethnicity.

These Resolutions appear to assume that SHPD is failing to support the Councils to the extent possible with currently available resources, and that it is failing to 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. When not in attendance at a Council meeting, the History and Culture Branch Chief is available by cell phone 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 statutes and administrative rules. It is probably the case that more Sunshine Law and Ethics training is needed for the councils 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 Council members feel the need for training, SHPD and the Deputy Attorney Generals (Deputy AG) from the Department of the Attorney General (AGs) assigned to SHPD are currently working on training material that is currently targeted for presentation at the May or June 2021 council meetings.

Assigning a Deputy AG to attend Council meetings is a decision of the AGs. Each month there are between 4-7 meetings of the various Councils. Currently, the Department of the AG must provide support to the State of Hawaii's over 150 plus boards and commissions. Deputy AGs cannot be present at the meetings of all those boards and commissions. The Deputy AGs regularly provide support via cell phone during Council meetings when they cannot be physically in attendance at a meeting. All of the individual councils have utilized that method of AG support for at least a year now. In addition, Deputy AGs do attend meetings to provide

guidance and advice when prior to the meeting SHPD is able to provide them with specific matters on which the Councils will likely need legal advice.

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 AG's 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 AG's.

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 burial 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.

In closing, 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, to amend statutes, or to recommend amendments to administrative rules.

Thank you for the opportunity to comment on these resolutions.

SR-171

Submitted on: 3/22/2021 10:00:06 AM

Testimony for HWN on 3/23/2021 1:01:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Alan Downer	Testifying for DLNR	Comments	No

Comments:

I am available for questions. Please allow me Zoom access. Thank you

Testimony in Support of SCR206, HCR133, and SR171 with proposed amendments
Requesting the William S. Richardson School of Law to Establish the Burial Sites Working Group
to Examine the Burial Sites Program Under the Department of Land and Natural Resources'

State Historic Preservation Division
Hearing: Tuesday, March 23, 2021, 1:01 p.m.

Aloha, Sen Shimabukuro, Chair; Sen Keohokalole, VC; and members, Cmte on Hawaiian Affairs;
Senator Inouye, Chair; Senator Keith-Agaran, VC; and members, Cmte on Water and Land

Please support SCR206, HCR 133, and SR171. Reviews of programs are always good, especially if the intention is to resolve allegations of mismanagement and to find solutions. I note that the working group will include chairpersons of the Island Burial Councils, representatives of the Dept of Land and Natural Resources, two representatives of large landowners and developers to be appointed by the governor, and a couple of members from the community. Well-rounded!

While the William S. Richardson School of Law is being requested to form the Burial Sites Working Group, the resolution itself does not list them as a member of the working group. It also does not contain information on who the chairperson will be, though it is implied that it will likely be a member of the William S. Richardson School of Law as determined by them. Recommend that the resolution be more specific on who the chairperson will be. Funding may also be necessary to provide the necessary logistical support to the working group, for example, someone to take minutes of meetings, to write the report, etc.

Also, recommend that the following Be It Further Resolved clause be amended as follows since as worded, makes it impossible for the Burial Sites Working Group to do since it has not yet been formed:

BE IT FURTHER RESOLVED that the ~~Burial Sites Working Group~~ William S. Richardson School of Law is urged to include the chairpersons of all Island Burial Councils; Administrator of the Department of Land and Natural Resources' State Historic Preservation Division; History and Culture Branch Chief of the Department of Land and Natural Resources' State Historic Preservation Division; Department of Land and Natural Resources' State Historic Preservation Division Burials Specialist; a representative of the Office of Hawaiian Affairs; two representatives of large landowners and developers to be appointed by the Governor; a representative of the Hawaiian community familiar with and experienced with the Burial Sites Program to be appointed by the Office of Hawaiian Affairs; and a representative of Huliauapa'a/Kali'uokapa'akai Collective to be selected by that organization.

OR

BE IT FURTHER RESOLVED that the Burial Sites Working Group ~~is urged~~ shall include the chairpersons of all Island Burial Councils; Administrator of the Department of Land and Natural Resources' State Historic Preservation Division; History and Culture Branch Chief of the Department of Land and Natural Resources' State Historic Preservation Division; Department of Land and Natural Resources' State Historic Preservation Division Burials Specialist; a representative of the Office of Hawaiian Affairs; two representatives of large landowners and developers to be appointed by the Governor; a representative of the Hawaiian community familiar with and experienced with the Burial Sites Program to be appointed by the Office of Hawaiian Affairs; and a representative of Huliauapa'a/Kali'uokapa'akai Collective to be selected by that organization.

Mahalo for your consideration of my testimony.

Respectfully

/s/ Leimomi

LEIMOMI KHAN

SR-171

Submitted on: 3/22/2021 11:57:08 AM

Testimony for HWN on 3/23/2021 1:01:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Trisha Kehaulani Watson, JD, PhD	Individual	Comments	No

Comments:

I would like to offer **comments** on this measure and specific **concerns regarding the fiscal implications**.

While the intent of this measure is admirable, I am deeply concerned that this measure, as written, categorically fails to involve the necessary stakeholders in this discussion. As a result, this measure could have extensive negative effects on these laws and regulations.

Specifically, this measure excludes the following critical stakeholders:

- Lineal descendants;
- Cultural descendants;
- Cultural resource management (CRM) firms; and
- The Society of Hawaiian Archaeology (SHA).

Rather than lay out a process and opportunity to make meaningful process, the authors of this measure have drafted a bill that demonstrates an alarming lack of understanding as to how the professional CRM field works. As a graduate of the William S. Richardson School of Law, I am deeply disappointed in the poor quality and exclusionary nature of this measure.

Those of us who are actually professionals in this field understand how grossly understaffed SHPD remains. Additionally, the hiring freeze in place as a result of the COVID-19 pandemic has only exasperated SHPD's struggles. This measure would only further strain an agency already crippled by a lack of funding and understaffing.

CRM firms handle the over-whelming majority of burial cases. SHPD has consistently introduced measures to improve the professional work done in the field for years. These measures have yet to pass the legislature. I would urge this committee to defer this measure and instead look to the existing solutions that have been offered to address these issues.

There is no doubt as to the importance of the burial councils. And there are importance discussions that need to be had, but this measure completely misses key stakeholders

to that discussion, as a result, this would be a terrible waste of important state resources.



HULIAUAPA'A

Aloha Honorable Senator Lorraine Inouye, Chair of the Committee on Water and Land & Senators of the Committee:

Aloha Honorable Senator Maile Shimabukuro, Chair of the Committee on Hawaiian Affairs & Senators of the Committee:

My name is Kelley L. Uyeoka, and I am the Executive Director of Huliauapa'a and we strongly support the passage of SCR 206 / SR 171.

Huliauapa'a is a Hawai'i 501c3 non-profit organization that envisions wahi kūpuna thriving through Hawaiian self-determination. Our mission is to grow Hawai'i's communities through culturally based dimensions of innovative learning, leadership development and collaborative networking in wahi kūpuna stewardship.

Huliauapa'a also serves as the backbone organization of the Kali'uokapa'akai Collective, which is a community of practice of advocates in wahi kūpuna stewardship that was created from the need to organize our shared ideas, resources, and strategies to build capacity and take collective action in safeguarding Hawai'i's wahi kūpuna. The Collective's purpose is to strengthen Wahi Kūpuna Stewardship through collaboration and collective efforts.

For generations, Native Hawaiian have cared for loved ones upon their passing by watching over and protecting their iwi kūpuna (ancestral bones). The relationship between the deceased and their descendants is an ongoing connection. When this connection is disrupted through disturbance, damages, or destruction of iwi kūpuna— via development, vandalism, or other circumstances— it inhibits and sometimes stops this process of the spirit returning to source (Baldauf & Akutagawa 2013:5-8). Anything that disrupts this process has direct spiritual implications to descendants today which is why Hawaiians fight so fiercely for the protection of these remains.

However, despite state and federal laws intended to protect them, iwi kūpuna are still constantly threatened in Hawai'i. Over the years, it has become increasingly evident that the current historic preservation system limits the Burial Sites Program's ability to protect iwi kūpuna (OHA letter to SHPD re Controversy at Kau'ula, Lāhainā, Maui and Related Concerns Regarding the State Historic Preservation Division Statutory Compliance, dated Nov. 11, 2020). Thus, Huliauapa'a supports the ongoing efforts to establish a Burial Sites Working Group to study the mismanagement SHPD and to develop a report with findings and recommendations to the 2022 Legislature regarding proposed improvements through the passage of SCR 206 / SR 171.

Mahalo for your consideration,
Kelley L. Uyeoka
Executive Director
Huliauapa'a



HULIAUAPA'A

LATE

SR-171

Submitted on: 3/22/2021 5:29:54 PM

Testimony for HWN on 3/23/2021 1:01:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Hinaleimoana Wong-Kalu	Individual	Support	No

Comments:

I strongly support SR 171 in an effort towards ensuring greater support towards the burial sites program and all those whom engage this process. A comprehensive review of possible options towards this goal must be had in order to ensure greater respect, honor, and dignity afforded to malama iwi kupuna in Hawaii. Mahalo for your consideration. Please vote to support SR 171. Aloha.