



STATE OF HAWAII
DEPARTMENT OF HEALTH
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Testimony COMMENTING on HCR 149, H.D. 1

**REQUESTING THE DEPARTMENT OF HEALTH TO REVISE ITS
ADMINISTRATIVE RULES AND POLICIES TO FACILITATE AND ENCOURAGE
TRADITIONAL HAWAIIAN BURIALS.**

SENATOR MAILE S. L. SHIMABUKURO, CHAIR
SENATE COMMITTEE ON HAWAIIAN AFFAIRS

Hearing Date: April 17, 2015

Room Number: 224

Time: 1:15 p.m.

1 **Fiscal Implications:** This resolution has minor fiscal implications.

2 **Department Testimony:** The department supports the intent of this resolution, but does have
3 some reservations. The department would request that a basic definition of traditional Hawaiian
4 burials practices be included. The departments' initial opposition was due to the lack of
5 information regarding what is meant by "Traditional Hawaiian Burials." The department does
6 not have any objections, nor is it a violation of HAR 11-22, Mortuaries, Cemeteries, Embalmers,
7 Undertakers, and Mortuary Authorities, to bury a body that has not been embalmed. Embalming
8 of a human body is not required by the department for burial. There is no public health concern
9 with burying a body that has not been embalmed, as long as it is interred at a depth sufficient to
10 prevent a public nuisance or public health hazard and to make it impossible for animals or
11 surface drainage to uncover the body. The department has in the past sought to repeal HAR 11-
12 22, as this Chapter regulates an industry that has very minimal public health significance.

13 There no longer exists communicable diseases of public health importance that warrants
14 continued regulation of mortuaries, embalmers and cemeteries through HAR.

15 The DCCA regulates and approves of the creation of cemeteries and the continued
16 operation of the cemetery through the creation and approval of cemetery authorities. HIOSH
17 handles any exposure that embalmers may have to chemicals used in the embalming process.
18 The Medical Examiner (ME) determines whether or not the cause of death was due to a
19 communicable disease, and if so, the body may must be cremated or buried in a hermetically
20 sealed vessel contained within an outer box.

21 Thank you for the opportunity to testify.



HANDLING HUMAN REMAINS - Q & A

SANITATION BRANCH ENFORCES HAR 11-22 MORTUARIES, CEMETERIES, EMBALMERS, UNDERTAKERS, AND MORTUARY AUTHORITIES. THESE QUESTIONS RELATE TO THIS REGULATION.

What happens to a dead human body?

It must be embalmed, cremated, or buried within 30 hours after death, unless the body has been placed in the custody of the coroner, medical examiner, county or county physician. Once released, the body shall be embalmed, cremated, or buried within 30 hours or placed in a State approved hospital refrigerated storage unit.

*For removal, burial, or other disposition of a dead human body, a burial-transit permit is required from the **DOH Office of Health Status Monitoring - Vital Statistics - Registration Section (586-4540)**. This includes transporting the body.*

For disinterment of a body, a burial-transit permit is required.

Must a body be buried in a coffin or casket?

No. The body must be buried at a depth sufficient to prevent the creation of any public nuisance or public health hazard and to make it impossible for animals, or surface drainage or wash to uncover it.

Must a body be transported in coffin or casket?

No, unless the transport is by a "common carrier". A coffin or casket is required if transport is by modes of transportation such as trains, buses, planes, ships, etc. whose main purpose or business is transportation. It would not apply to private vehicles or vehicles used by the mortuary or related entities that are in the business of handling dead human bodies. If the death resulted from specified diseases, additional safeguards are required as detailed in HAR Section 11-22-6.

Is there a restriction on the type of vehicle used to transport a body?

No. The body should be appropriately enclosed to prevent fluid spills or the release of odors. It should be done in a sanitary manner.

Must a body be embalmed?

No. It may be buried or cremated.

Are there requirements for handling or displaying an embalmed body?

No. There is no public health significance if the body was properly embalmed. It should be handled in good taste.

Where may a body be buried?

*It must be buried in a cemetery that has been dedicated pursuant to HRS Chapter 441 Cemeteries and Funeral Trusts. It is under the purview of the **Department of Commerce and Consumer Affairs (DCCA) Cemetery Board at 586-2704.***

*HRS Section 441-5.5 also contains a provision for owners of residential or agricultural property to create a "Family Burial Plot", which is not a dedicated cemetery. Individual county zoning requirements may prohibit them or impose strict conditions. **Refer them to DCCA.***

Is "outdoor cremation" allowed?

*Probably not. It would require approval from the DOH Clean Air Branch (CAB), but it is likely to be denied. In Sept 2009, a proposal for outdoor cremation on Maui was denied by the Director. Refer all queries to **Clean Air Branch at 586-4200.** [Crematories, incinerators, and other generators of air emissions/pollutants are regulated by CAB under HAR 11-60.1 Air Pollution Control.]*

What are the requirements for a burial at sea?

*Burial at sea of human remains must take place at least 3 nautical miles from land and in water at least 600 feet deep. The applicant should contact the U.S. Environmental Protection Agency (EPA) for information on the reporting requirements [EPA San Francisco office, **Burial at Sea Coordinator (415) 972-3476.**] The Code of Federal Regulations (CFR) Title 40 Part 229 requires reporting within 30 days after the burial.*

Are there requirements for scattering of ashes (cremated remains) on land, air, or sea?

No, since ashes have no public health significance. The scattering should be done without creating a nuisance. [Technically, if the disposal of ashes were done more than 3 nautical miles from land, it comes under the purview of the EPA with similar reporting requirements as burial at sea]

Are fetal remains subject to the requirements of HAR 11-22 Mortuaries, Cemeteries, Embalmers, Undertakers, and Mortuary Authorities?

*HAR 11-22 addresses the handling of dead human bodies, but a dead human body is not defined. However, HRS Section 338-23 provides that a burial-transit permit is **NOT** required if the dead fetus is less than 24 weeks old. **Due to this statute, a dead fetus less than 24 weeks old is NOT subject to the requirements of HAR 11- 22.***

Note that even though a burial transit permit is not required by law, there are requirements for a fetal death certificate (required by DOH Vital Statistics) wherein the "final disposition" must be reported.

Since a dead fetus less than 24 weeks old is not covered by HAR 11-22, can a hospital release such fetal remains to the parent?

*Most likely not. If fetal remains are not treated as a dead human body (embalmed, cremated, etc.), then it is considered to be "infectious waste" under HAR 11-104.1 Management and Disposal of Infectious Waste, which hospitals must comply with. Refer questions to **DOH Office of Health Care Assurance (OHCA) 692-7420**.*

Hospitals can release untreated infectious wastes for disposal only to a DOH permitted medical waste treatment facility. [Medical waste treatment facilities are regulated by DOH Solid & Hazardous Waste Branch under HAR 11-58.1 Solid Waste Management Control.] Untreated fetal remains cannot be released to the parent. Theoretically, a fetus could be preserved (e.g. in formalin or other fixative agent whereby it was no longer infectious) by the hospital and released, but the hospital would be required to have an approved infectious waste treatment plan. A hospital may be allowed to release an untreated dead fetus (or amputated limbs, etc.) to a mortuary for cremation, after which the ashes would be returned to the hospital/patient. Under DOH Clean Air Branch rules, a medical waste incinerator is required to have a permit as such, which no crematory possesses. [There is currently only one approved medical waste incinerator in the state, in Kona.] However, mortuaries/crematories are familiar with handling dead bodies and after incineration the ashes are returned to the hospital/patient; therefore OHCA may allow it since there was no actual "disposal". Refer questions to OHCA.

It should also be noted that the county zoning policies may not differentiate between a body and a fetus, and whether or not it has been "treated" or not. Therefore, if questions arise regarding burial of fetal remains, they should also be advised to contact their county zoning office.

Can a hospital release a human placenta to the parent?

Yes, upon negative findings of infection or hazard after appropriate testing of the mother. This is allowed under HRS Section 321-11; refer questions to OHCA.



HCR149 HD1

REQUESTING THE DEPARTMENT OF HEALTH TO REVISE ITS ADMINISTRATIVE RULES AND POLICIES TO FACILITATE AND ENCOURAGE TRADITIONAL HAWAIIAN BURIALS

Senate Committee on Hawaiian Affairs

April 17, 2015

1:15 p.m.

Room 224

The Office of Hawaiian Affairs (OHA) **SUPPORTS** HCR149 HD1, which requests the Department of Health to expressly accommodate traditional Native Hawaiian methods of preparing and burying human remains in its administrative rules and policies, thereby supporting the perpetuation of Native Hawaiian traditional and customary practices.

Currently, Hawai'i Administrative Rules Chapter §11-22 regulates the embalming, transportation, and burial of human remains, and includes requirements relating to the encasement and interment of the deceased. However, these regulations do not specifically address or expressly accommodate the partial cremation and burial of human remains, as is consistent with Native Hawaiian traditional practices. This resolution requests that the Department of Health accommodate such practices, so that Native Hawaiians may lawfully and confidently perpetuate our ancestors' sacred burial traditions, notwithstanding their differences from more commonly recognized Western religious rituals.

Therefore, OHA urges the Committee to **PASS** HCR149 HD1. Mahalo for the opportunity to testify on this important measure.



**Department of Land and Natural Resources
Aha Moku Advisory Committee
State of Hawaii
Post Office Box 621
Honolulu, Hawaii 96809**

Testimony of
Rocky Kaluhiwa
Po'o, Moku O Kakuhihewa (O'ahu)

Before the Senate Committee on
Hawaiian Affairs

Friday, April 17, 2015
1:15 P.M.
State Capitol, Conference Room 224

In **Support** of
House Concurrent Resolution 149, HD 1

**REQUESTING THE DEPARTMENT OF HEALTH TO REVISE ITS ADMINISTRATIVE RULES
AND POLICIES TO FACILITATE AND ENCOURAGE TRADITIONAL HAWAIIAN BURIALS.**

HCR 149 HD 1 requests the Department of Health (DOH) to revise its Administrative Rules and Policies to facilitate and encourage traditional Hawaiian Burials. **The Aha Moku Advisory Committee (AMAC) supports this measure.**

The Legislature's intent in Act 288, the Aha Moku Bill is to authorize the AMAC to include providing opportunities for those in the Hawaiian community to work together to exhibit traditional Hawaiian values and customs that could be applicable to modern governmental affairs. And although the Aha Moku is attached to the Department of Land and Natural Resources (DLNR) to advise the Board and work with the divisions to address natural and cultural resource issues, some of these issues transcend to other state agencies. This Concurrent Resolution is one of those issues that impact Native Hawaiians in every governmental arena.

Traditionally, the foundation of the Hawaiian culture is their belief in, and connection to the natural resources around them. One cannot separate a Hawaiian from the land and the ocean. Their customs and treatment of their beloved 'ohana who pass on emphasizes how strong their connection to the 'aina is. The traditional Hawaiian burial practices are sacred to the families who would, if permitted, inter their loved ones in their sacred burial practices. They would once again become part of the very resources they honor throughout their lifetimes.

The Aha Moku supports this concurrent resolution that calls for the Dept. of Health to review and implement administrative rules and policies applicable to the processing, burial, and transportation of a corpse that would encourage and promote the use of traditional Hawaiian burial practices.



Ko`olau Foundation

P. O. Box 4749
Kane`ohe, HI 96744

April 16, 2015

Testimony in Support of H.C.R. 149, H.D. 1

To: Sen. Maile Shimabukuro, Chair
Sen. Brickwood Galuteria, Vice Chair
And Members
Committee on Hawaiian Affairs

From: Mahealani Cypher
Ko`olau Foundation

Aloha, Chair Shimabukuro, Vice Chair Galuteria and Members:

The Ko`olau Foundation strongly supports passage of House Concurrent Resolution 149, House Draft 1, which calls upon the State Department of Health to revise its administrative rules and policies to facilitate and encourage traditional Hawaiian burials.

Among the purposes of our organization is to advocate for the preservation of Hawaiian traditional and cultural practices; among those are our methods of preparing our loved ones for burial.

We have met with State Health officials and understand their concern over whether they would be able to fulfill the request presented in this concurrent resolution. We have offered to assist them with gathering Hawaiian cultural practitioners who are knowledgeable about burial practices, and also recommend that DOH call upon the Aha Moku Advisory Committee – which is comprised of Hawaiian kupuna who have a wide range of cultural expertise – and the island burial councils for assistance.

In our view, it is important to have some rules in place to ensure that Hawaiian-style burials are properly marked. Granted, in ancient times, we didn't mark our burial sites out of fear that someone would steal the iwi and use it disrespectfully. Today, we are more concerned about inadvertent disturbance of burials; if a family decides to bury their `ohana in the back yard and – decades later – the property is sold, it's important to ensure that the burials are respected.

We urge your committee to approve this resolution. Mahalo for this opportunity to offer our mana`o.



KO`OLAUPOKO HAWAIIAN CIVIC CLUB

April 16, 2015

TO: SEN. MAILE SHIMABUKURO, Chair
& Members, Hawaiian Affairs Committee

FROM: ALICE P. HEWETT, President
Ko`olaupoko Hawaiian Civic Club

RE: H.C.R. 149, H.D.1 – Supporting Testimony

Aloha, Chair Shimabukuro, Vice Chair Galuteria, and Committee Members:

The Ko`olaupoko Hawaiian Civic Club strongly supports passage of H.C.R. 149, H.D. 1, which asks the State Health Department to revise its rules and policies to support traditional Hawaiian burials.

What we are hoping for is that, by amending its rules relating to Hawaiian burials, this alternative way of preparing our loved ones for burial will be reinstated as a common practice, not just among the Hawaiian people but also among all people. This is what we see as “clean burials”, something that is healthy for our `aina and reduces the demand for burial space in community cemeteries. In addition, it can significantly reduce the cost of burials at a time when funeral expenses have become a tremendous hardship for island families.

Asking the DOH to expedite revision of its administrative rules will not only make this option available sooner, but it can help raise awareness in the broader community so that people can consider this process as a preferred alternative to other options such as embalming or cremation.

We urge your committee to approve this resolution. Mahalo nui loa.

The Ko`olaupoko Hawaiian Civic Club was established in 1937 and is a not-for-profit community organization dedicated to preserving and perpetuating the history, heritage and culture of Native Hawaiians. One of the largest of the Hawaiian Civic Clubs, its membership is open to people of Hawaiian ancestry and those who are “Hawaiian at heart”.

From: mailinglist@capitol.hawaii.gov
To: [HWNTestimony](#)
Cc: mkhan@hawaiiantel.net
Subject: Submitted testimony for HCR149 on Apr 17, 2015 13:15PM
Date: Tuesday, April 14, 2015 1:53:23 PM

HCR149

Submitted on: 4/14/2015

Testimony for HWN on Apr 17, 2015 13:15PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Leimomi Khan	Kalihi Palama HCC	Support	No

Comments: The Kalihi Palama HCC echoes the testimony of the Koolaupoko Hawaiian Civic Club, in support of this measure. The Health Department's rules currently require certain procedures for burials that are not necessary for traditional Hawaiian burials what we call clean burials and which certainly increase the cost of burying our loved ones. This resolution encourages the DOH to expedite its rule review to ensure that guidance is available for those who choose a Hawaiian style burial i.e., reducing the remains to iwi do not have to incur unnecessary cost.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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From: mailinglist@capitol.hawaii.gov
To: [HWNTestimony](#)
Cc: pohlca@aol.com
Subject: *Submitted testimony for HCR149 on Apr 17, 2015 13:15PM*
Date: Tuesday, April 14, 2015 1:48:40 PM

HCR149

Submitted on: 4/14/2015

Testimony for HWN on Apr 17, 2015 13:15PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Bill Brown	Pana'ewa Hawaiian Home Lands Community Association	Support	No

Comments:

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Unity, Equality, Aloha for all



To: SENATE COMMITTEE ON HAWAIIAN AFFAIRS
For hearing Friday, April 17, 2015

Re: HCR 149, HD1
REQUESTING THE DEPARTMENT OF HEALTH TO REVISE ITS
ADMINISTRATIVE RULES AND POLICIES TO FACILITATE AND
ENCOURAGE TRADITIONAL HAWAIIAN BURIALS.

TESTIMONY IN SUPPORT BUT URGING IMPROVEMENTS

I note that this resolution contains much of the same language found in SB1166 and HB1297, and this resolution can be seen as a request that the Department of Health develop regulations for implementing those bills. I supported the intent of those bills but urged that they be amended in two ways. This resolution should also be amended to accommodate those two concerns, as follows:

1. Broaden the applicability to ensure that all ethnic groups are treated equally. Ethnic or religious groups other than Native Hawaiian should be given the same rights as Native Hawaiians to identify ways of treating corpses and conducting burials that might be outside "normal" or "mainstream" practices. Laws and regulations should be developed to allow and encourage all ethnic or religious groups to identify and specify ethnic-based or religion-based practices to be done safely and without fear of prosecution. Please do not limit the scope of this resolution to Native Hawaiians alone.

2. Narrow the applicability to ensure that no individual corpse or burial can be "hijacked" by any ethnic or religious group such that the individual is treated in a way contrary to what he would have wanted or what his next-of-kin wants on his behalf. An overly zealous group of cultural practitioners might try to treat an individual in a manner he or his family might find offensive or repulsive, merely because the group focuses on that individual's race or ancestry and holds a stereotype that all individuals of that ethnicity should be treated in the same way. Such a group of zealous cultural practitioners might conceivably try to dictate that every individual who lives or dies in a particular place must be treated in accord with the group's cultural or religious practices. Please limit the scope of this resolution to ensure that no individual corpse or burial can be hijacked in such a manner contrary to what the individual would have wanted or what his next-of-kin wants. There are Native Hawaiians who wish to have their corpses treated according to Christian, Buddhist, or Muslim customs rather than according to ancient Hawaiian customs.

From: mailinglist@capitol.hawaii.gov
To: [HWNTestimony](#)
Cc: shane.nelsen@gmail.com
Subject: Submitted testimony for HCR149 on Apr 17, 2015 13:15PM
Date: Friday, April 17, 2015 8:16:15 AM

HCR149

Submitted on: 4/17/2015

Testimony for HWN on Apr 17, 2015 13:15PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Shane Nelsen	Individual	Support	No

Comments: Aloha, Mahalo for hearing this Concurrent Resolution. As a Native Hawaiian practitioner, I strongly support. Many Native Hawaiians are reconnecting to traditional practices however, Administrative Rules do not provide an avenue for them to continue. I urge committee members to support this resolution. Mahalo nui

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