



**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

Monday, April 6, 2015  
1:20 P.M.  
State Capitol, Conference Room 224

In **Support** of  
**Senate Concurrent Resolution 154**  
**Senate Resolution 96**

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

SCR 154 and SR 96 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. These resolutions reflect 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 these resolutions that call 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`OLAUPOKO HAWAIIAN CIVIC CLUB

April 5, 2015

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

From: Alice P. Hewett, President  
Ko`olaupoko Hawaiian Civic Club

Re: S.C.R. 154 / S.R. 96 – Requesting the Department of Health to Revise  
Its Administrative Rules and Policies to Facilitate and Encourage  
Traditional Hawaiian Burials – Testimony in Support

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

On behalf of the Ko`olaupoko Hawaiian Civic Club, I wish to offer our strong support for the passage of S.C.R. 154 and S.R. 96, which is asking that the Department of Health revise its administrative rules and policies to facilitate and encourage traditional Hawaiian Burials.

We realize that the Department has previously testified that it feels unable to fulfill the desired outcomes of these resolutions, during a hearing by the House Hawaiian Affairs committee.

We have met with DOH officials and have assured them that we will bring together people in the Hawaiian community who have expertise in these matters who can assist with updating the DOH administrative rules as they pertain to burials. Currently, those rules are silent on the issue of Hawaiian burials.

We feel these resolutions are needed to ensure that related legislation which is also under review by this body can be addressed more expeditiously.

We urge that your committee – and the Senate – approve these resolutions and assist in their passage by the full Senate.

Mahalo for allowing us to offer our mana`o.

*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".*

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Unity, Equality, Aloha for all



To: SENATE COMMITTEE ON HAWAIIAN AFFAIRS  
For hearing Monday, April 06, 2015

Re: SCR 154 AND SR 96  
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.

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**Subject:** Submitted testimony for SCR154 on Apr 6, 2015 13:20PM  
**Date:** Sunday, April 05, 2015 1:45:29 PM  
**Attachments:** [adminrules-cemeteries etc.pdf](#)

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**SCR154**

Submitted on: 4/5/2015

Testimony for HWN on Apr 6, 2015 13:20PM in Conference Room 224

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Mahealani Cypher	Koolau Foundation	Support	Yes

Comments: Attaching current doh admin rules to testimony

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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TITLE 11  
ADMINISTRATIVE RULES  
DEPARTMENT OF HEALTH

CHAPTER 22  
MORTUARIES, CEMETERIES, EMBALMERS, UNDERTAKERS,  
AND MORTUARY AUTHORITIES

TITLE 11  
DEPARTMENT OF HEALTH  
CHAPTER 22  
MORTUARIES, CEMETERIES, EMBALMERS, UNDERTAKERS,  
AND MORTUARY AUTHORITIES

§11-22-1	Purpose
§11-22-2	Definitions
§11-22-3	Mortuaries
§11-22-4	Embalming and embalmers
§11-22-5	Burial
§11-22-6	Transportation of bodies
§11-22-7	Public funerals
§11-22-8	Penalty
§11-22-9	Severability

Historical Note: Chapter 22 of Title 11, Administrative rules, is based substantially on the former Public Health Regulations chapter 1, Sections 11, 12, 13, 14, and 15) [Eff. 11/1/37, am 2/1/45, am 9/17/51, am 4/20/53, am 4/16/54, am 8/1/60, am 7/27/61, am 4/1/64, am 7/1/64, am 1/16/71, am 2/2/73, am 9/12/75, am 2/3/79; R Dec 26 1981]

§11-22-1 Purpose. the purpose of this chapter is to provide minimum standards relating to the practice of embalming, to the business of an undertaker, and to the sanitary condition of places where such business or practice is conducted. [Eff. Dec 26 19981] (Auth: HRS §469-2) (Imp: HRS §469-2)

§11-22-2 Definitions. As used in this chapter:  
"Cemetery" means a place dedicated to and used or intended to be used for the permanent interment of human remains. It may be either a burial park, for earth interment; a mausoleum; for vault or crypt interments; a structure or place used or intended to be used for the interment of cremated remains; or any combination of one or more thereof.

“Cemetery authority” means any person who undertakes to establish, maintain, manage, operate, improve, or conduct a cemetery, the interring of human remains, or the care, preservation, and embellishment of cemetery property, whether or not the person undertakes such activity for profit.

“Director” means the director of health of the State department of health or his duly authorized agent.

“Embalm” means the injection of fluid or agent of sufficient strength and quantity to accomplish a thorough disinfection and preservation of a dead human body, the fluid or agent being injected arterially in addition to cavity injection.

“Funeral services” means arranging for or providing for pick up of human remains, embalming, placing the same on display, or otherwise providing for final disposition of human remains.

“State” means the State of Hawaii. [Eff. Dec. 26, 1981] (Auth: HRS §§441-1, 469-2) (Imp: HRS §§441-1, 469-2)

§11-22-3 Mortuaries. (a) Requirements for establishing, purchasing, or altering.

- (1) It shall be unlawful to establish a mortuary without the approval of plans and specifications by the director.
  - (2) Any person desiring to establish or purchase a mortuary shall make application to the director, submitting a complete set of plans and specifications therefore, with full description of the grounds, buildings, roads, water supply, and sewage disposal system.
  - (3) The approved plans and specifications of a mortuary shall not be changed without the prior written approval of the director. The facility shall be built or established only in accordance with approved plans.
- (b) Equipment and sanitation.
- (1) A mortuary shall be devoted exclusively to the business of providing funeral services and shall include a preparation room equipped with tile or cement floor, necessary drainage, ventilation, and provided with proper and convenient receptacles for refuse, bandages, cotton, and other waste material and supplies, embalming tables, hoppers, sinks, instruments, and other appliances used in the embalming of dead human bodies for burial or transportation.
  - (2) All mortuaries shall be kept and maintained in a clean and sanitary condition and all equipment, instruments and appliances used in the preparation of dead human bodies for burial or other disposition, shall be thoroughly cleansed and sterilized immediately after each individual case. No linens, sheets, and other materials of any kind, smocks or gowns, which shall have come in contact with any dead human body, shall be used more than once without being laundered, and such linens, sheets, and other materials, gowns, or smocks, shall be sanitized in a disinfectant before being laundered or before they leave the premises to be laundered.
- (c) Licensing.

- (1) Each mortuary in the State shall upon application and payment of a fee of \$50, be licensed by the director, provided that the mortuary has been approved in accordance with §11-22-3(b) (1), and further provided that an embalmer, licensed by the director, is employed full-time by the mortuary, except that the director may approve a part-time embalmer in unusual circumstances; and that the person in charge of the mortuary shall have his name, residence, and official title registered with the director.
- (2) Each licensed mortuary shall, between July 1 and 10 of each year, renew its license by registering with the director, paying a renewal fee of \$10, and being inspected and approved by the director within three months immediately preceding the date of registration for renewal. Every license that is not renewed shall expire on August 1, and shall not be renewed except upon payment of \$25 and compliance with other provisions for renewals.
- (3) The director shall be notified when there is a change in the person in charge of a mortuary, and the new officer shall register with the director in accordance with §11-22-3(c) (1).
- (d) Employment of part-time embalmers. Mortuaries employing licensed embalmers on a part-time basis in addition to a full-time embalmer as required by §11-22-3(c) (1), shall be required to have a contract in writing with the employee showing a bona fide employer-employee relationship and such agreement shall be available for inspection by the director.
- (e) Soliciting. A mortuary authority shall not authorize or ratify the solicitation of funeral or embalming business, after a death, or while a death is impending, by its employees, agents, or by commission persons. Violation of this provision shall constitute grounds for suspension of license in addition to the penalty provided in §11-22-8. This section does not prohibit general advertising or the sale of insurance plans involving embalming and funeral services. [Eff. Dec. 26, 1981] (Auth: HRS §§321-9, 321-11, 469-2) (Imp: HRS §§321-11, 441-19.5, 469-2)

§11-24-4 Embalming and embalmers. (a) Embalming.

- (1) No person shall embalm a dead human body unless licensed by the director as an embalmer or registered with the director as an apprentice embalmer under the supervision of a licensed embalmer.
- (2) Except as provided in §11-22-4(a) (3), a dead human body shall be embalmed, if the condition of the body permits, cremated, or buried within thirty hours after death, unless the body has been placed in the custody of the coroner, medical examiner, county, or county physician. In such instances, the body shall be embalmed, cremated, buried within thirty hours after release, or placed in refrigerated storage in a State approved hospital.
- (3) No embalming fluid, or substitute therefor, shall be injected into any dead body:
  - (A) if the death is subject to investigation by the coroner or medical examiner, or

- (B) if the death was from plague, asiatic cholera, smallpox, epidemic typhus fever, yellow fever, or louse-borne relapsing fever, or any approved term indicating such diseases. Permission to embalm in case (A) above must be secured from the office of the coroner or medical examiner and in case (B) from the director.
- (b) Embalmer's license.
  - (1) Any application for an embalmer's license in the State must be made under oath to the director on forms provided for that purpose. the applicant shall meet the requirements prescribed by §469-1, HRS.
  - (2) An examination shall be held at least once a year and at such time as the director may determine. All applications shall be filed with the director on or before the first of the month in which the examination is to be held. A fee of \$25 shall be submitted with the application.
  - (3) There shall be a written examination, supplemented by a practical examination. Applicants shall be examined in the subjects of embalming, anatomy, pathology, bacteriology, and chemistry and in such other related subjects as the director may prescribe. all examination papers shall be filed in the department of health.
- (c) Apprentice embalmers.
  - (1) Whenever any person wishes to qualify as an apprentice embalmer, the person shall register with the director upon forms furnished for the purpose and shall otherwise comply with the requirements of §469-4, HRS.
  - (2) An apprentice who is a graduate of an embalming school recognized by the Commission of Schools of the American Board of Funeral Service Education may begin embalming upon registration; an apprentice without such training may not actually embalm as defined in §11-22-2, until after completing one year of apprenticeship. In all cases, an apprentice shall embalm only in the presence of and under the direction of a license embalmer.
  - (3) The maximum term of apprenticeship shall be not more than two years beyond the required period of practical experience specified in §469-1, HRS, except that apprentices on register as of July 1, 1957 shall not be affected.
  - (4) The director may grant leaves of absence and approve absences during the term of apprenticeship.
  - (5) An apprentice must work under the personal supervision of the licensed embalmer under whom apprenticed. The director must be notified of any substitute arrangement with another licensed embalmer that is expected to last more than one month. [Eff. Dec. 26, 1981] (Auth: HRS §§321-11, 469-2) (Imp: HRS §§321-11, 469-1, 469-2, 469-4)

§11-22-5 Burial. (a) Cemeteries; Requirements for establishing, constructing, modifying, operating.

- (1) No place shall be used as a cemetery (as defined in §441-1, HRS) without the prior written approval of the director.
- (2) No place shall be approved for use as a cemetery unless
  - (A) It has been dedicated pursuant to chapter 441, HRS;
  - (B) All planned construction and all existing construction of the grounds, plots, buildings, roads, water supply, and sewage disposal system has been approved by the director;
  - (C) Proposed rules governing the operation of the cemetery have been approved by the director; and
  - (D) A cemetery authority has registered pursuant to §11-22-5(a) (5) herein.
- (3) All construction shall be only in accordance with approved plans and specifications. Any changes must be submitted in writing and approved by the director prior to construction.
- (4) Every cemetery shall have and be supervised by a cemetery authority properly licensed under chapter 441, HRS. The cemetery authority shall insure compliance with all regulations made by the director relating to cemeteries and burials.
- (5) Every person who acts as a cemetery authority shall register with the department of health on a form to be designated by the director.
- (6) A cemetery authority shall be responsible for the prevention of any unhygienic condition or danger to public health arising from operation of the cemetery; shall oversee that no damage is done to the tombs, grave markers, and fences; shall prevent cattle and beasts from entering the cemetery; shall maintain and deliver, whenever required by the director, records of burials; shall deliver said records over to successor cemetery authorities; shall provide for the identification of tombs, vaults, or other sites of burial by appropriate markings; and shall prepare and keep up-to-date a map or plot showing the location of each body buried or interred within the cemetery.
  - (b) Location; depth of grave.
    - (1) It shall be unlawful for any person to bury any human body unless he has first obtained a burial-transit permit from the local agent of the department. The burial shall be made only in a cemetery approved by the director.
    - (2) A dead human body shall be interred at a depth sufficient to prevent the creation of any public nuisance or public health hazard and to make it impossible for hogs and other animals, or surface drainage or wash, to uncover it. [Eff. Dec. 26, 1981] (Auth: HRS §§321-11, 469-2) (Imp: HRS §§321-11, 338-23, 441-195)

§11-22-6 Transportation of bodies. (a) By common carrier

- (1) The transportation of dead human bodies by a common carrier shall be conducted in such a manner as not to be a menace to the health of the general public.
  - (2) A burial-transit permit issued pursuant to chapter 338, HRS, or chapter 841, HRS, shall accompany the body.
  - (3) The body must be placed in a coffin or casket. If the death resulted from a disease specified in §11-22-4(a) (3) and the body is not embalmed, it shall be placed in a hermetically sealed coffin or casket and encased in an outer box; provided, however, that no section of this chapter shall be interpreted to prohibit the transportation of dead bodies without the use of an outer case or box in closed vehicles designed exclusively for the transportation of dead human bodies.
- (b) Disinterred bodies. No disinterred body shall be shipped or transported within the State or out of the State without approval by the director. Such approval shall be given in the form of burial-transit permit, provided that no burial-transit permit shall be issued until a disinterment permit is issued in accordance with section 338-25.5, HRS. [Eff. Dec. 26, 1981] (Auth: HRS §§321-11, 469-2) (Imp: HRS §§321-11, 338-25, 338-25.5)

§11-22-7 Public funerals. A public or a church funeral shall not be held for any person who has died of a disease specified in §11-22-4(a) (3) unless the written consent of the director has first been obtained. If a funeral is held, attendance at the funeral shall be restricted to those persons who are not in the quarantinable stage of the disease as determined by the director. [Eff. Dec. 26, 1981] (Auth: HRS §§321-9, 321-11) (Imp: HRS §§321-1, 321-11)

§11-22-8 Penalties. (a) Any person who shall violate any provision of this chapter shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than \$500 or by imprisonment for not more than one year or both, as provided in §321-18, HRS.

(b) Any person who practices as an embalmer or undertaker without being registered with the department of health as herein provided shall be fined not less than \$50 nor more than \$250 or imprisoned no less than thirty days nor more than ninety days, or both, as provided in §469-8, HRS.

(c) Each and every violation of the provisions of this chapter shall constitute a separate offense. [Eff. Dec. 26, 1981] (Auth: HRS §§321-11, 469-2) (Imp: HRS §§321-18, 469-8)

§11-22-9 Severability. Should any section, paragraph, sentence, clause, phrase, or application of this chapter be declared unconstitutional or invalid for any reason, the remainder or any other application of this chapter shall not be affected. [Eff. Dec. 26, 1981] (Auth: HRS §§321-9, 321-11) (Imp: HRS §321-9)

The Department of Health authorized the adoption of Chapter 22 of Title 11, Administrative Rules on Dec 7 1981 following public hearing held on Oahu on October 28, 1981, on Hawaii on October 27, 1981, on Kauai on October 29, 1981, on Maui on October 26, 1981 after public notice was given in the Honolulu Star Bulletin on October 2, 1981, in the Hawaii Tribune-Herald on October 2, 1981, in the Garden Isle on October 2, 1981, and in the Maui News on October 2, 1981.

Chapter 22 of Title 11, Administrative Rules shall take effect ten days after filing with the Office of the Lieutenant Governor.