

MAR 12 2021

---

---

# SENATE CONCURRENT RESOLUTION

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.

1           WHEREAS, the Hawaii State Constitution recognizes the value  
2 of conserving and developing the historic and cultural property  
3 within the State; and  
4

5           WHEREAS, according to section 6E-1, Hawaii Revised  
6 Statutes, the historic and cultural heritage of the State is  
7 among its most important assets and that the rapid social and  
8 economic developments of contemporary society threaten to  
9 destroy the remaining vestiges of this heritage; and  
10

11           WHEREAS, section 6E-1, Hawaii Revised Statutes, provides  
12 that it is in the public's interest to engage in a comprehensive  
13 program of historic preservation at all levels of government to  
14 promote the use and conservation of such property for the  
15 education, inspiration, pleasure, and enrichment of its  
16 citizens; and  
17

18           WHEREAS, section 6E-1, Hawaii Revised Statutes, sets forth  
19 that the State must provide leadership in preserving, restoring,  
20 and maintaining historic and cultural property to ensure the  
21 administration of historic and cultural property in a spirit of  
22 stewardship and trusteeship for future generations, and to  
23 conduct activities, plans, and programs in a manner consistent  
24 with the preservation and enhancement of historic and cultural  
25 property; and  
26

27           WHEREAS, native Hawaiian traditional prehistoric and  
28 unmarked burials are especially vulnerable and often not  
29 afforded adequate protection of law, which assures dignity and  
30 freedom from unnecessary disturbance; and  
31



1           WHEREAS, the Island Burial Councils were created by Act  
2 306, Session Laws of Hawaii 1990 (Act 306), to further its  
3 purpose of augmenting current procedures relating to the proper  
4 care and protection of burial sites found in the State, avoid  
5 future disputes arising from the discovery of human skeletal  
6 remains, and provide additional protection for native Hawaiian  
7 burial sites of high preservation value; and

8  
9           WHEREAS, the Department of Land and Natural Resources'  
10 State Historic Preservation Division serves to protect and  
11 preserve historic properties significant to Hawaii's history  
12 through several program areas; and

13  
14           WHEREAS, audits of the State Historic Preservation Division  
15 have reported serious internal strife and a significant backlog  
16 of project reviews, resulting in the undermining of the  
17 preservation and protection of unmarked burial sites throughout  
18 the islands; and

19  
20           WHEREAS, on January 19, 2021, the chairpersons of the  
21 burial councils for the islands of Oahu, Maui/Lanai, and Hawaii  
22 coordinated an islands-wide protest to raise awareness of their  
23 collective duties and responsibilities to protect Hawaiian  
24 burial sites and care for iwi kupuna (ancestral bones) and moepu  
25 (funerary possessions); and

26  
27           WHEREAS, the chairpersons of the Island Burial Councils  
28 asserted that systemic and chronic mismanagement of the burial  
29 councils by the Department of Land and Natural Resources' State  
30 Historic Preservation Division has effectively undermined the  
31 ability of the Island Burial Councils to exercise their legally  
32 established authorities, rights, and responsibilities, resulting  
33 in the inability to provide protection and cultural care to  
34 unmarked Hawaiian burial sites in accordance with the program  
35 enacted by Act 306; and

36  
37           WHEREAS, the chairpersons of the Island Burial Councils  
38 cited examples of the State Historic Preservation Division's  
39 mismanagement of the Island Burial Councils and Burial Sites  
40 program, including the failure to:



- 1           (1) Adequately staff the Island Burial Councils and manage
- 2           the terms of council members;
- 3
- 4           (2) Provide training to State historic preservation staff
- 5           and burial council members regarding the burial law
- 6           and administrative rules, Sunshine Law, and Code of
- 7           Ethics;
- 8
- 9           (3) Require the Department of the Attorney General to
- 10          ensure independent legal representation of the island
- 11          burial councils;
- 12
- 13          (4) Implement administrative rules to develop the burial
- 14          sites inventory;
- 15
- 16          (5) Provide proper administrative support to the island
- 17          burial councils, including timely actions, decisions,
- 18          and recommendations regarding the preparation of
- 19          agenda items, and providing the councils proper
- 20          guidance on the processes involving burial matters;
- 21
- 22          (6) Comply with legal requirements applicable to the
- 23          inadvertent discovery of human remains; and
- 24
- 25          (7) Undertake enforcement actions of documented statutory
- 26          and regulatory violations involving burial sites;
- 27

28 now, therefore,

29

30           BE IT RESOLVED by the Senate of the Thirty-first

31 Legislature of the State of Hawaii, Regular Session of 2021, the

32 House of Representatives concurring, that the William S.

33 Richardson School of Law is requested to form the Burial Sites

34 Working Group to provide formal recommendations on how to

35 correct the mismanagement by the Department of Land and Natural

36 Resources' State Historic Preservation Division; and

37

38           BE IT FURTHER RESOLVED that the Department of Land and

39 Natural Resources' State Historic Preservation Division is

40 requested to cooperate with the Burial Sites Working Group; and

41



1 BE IT FURTHER RESOLVED that the Burial Sites Working Group  
 2 is urged to include the chairpersons of all Island Burial  
 3 Councils; Administrator of the Department of Land and Natural  
 4 Resources' State Historic Preservation Division; History and  
 5 Culture Branch Chief of the Department of Land and Natural  
 6 Resources' State Historic Preservation Division; Department of  
 7 Land and Natural Resources' State Historic Preservation Division  
 8 Burials Specialist; a representative of the Office of Hawaiian  
 9 Affairs; two representatives of large landowners and developers  
 10 to be appointed by the Governor; a representative of the  
 11 Hawaiian community familiar with and experienced with the Burial  
 12 Sites Program to be appointed by the Office of Hawaiian Affairs;  
 13 and a representative of Huliauapa'a/Kali'uokapa'akai Collective to  
 14 be selected by that organization; and

15  
 16 BE IT FURTHER RESOLVED that the Burial Sites Working Group  
 17 is requested to submit a report detailing the formal findings  
 18 and recommendations for corrective action, including proposed  
 19 legislation, to the Legislature no later than twenty days prior  
 20 to the convening of the Regular Session of 2022; and

21  
 22 BE IT FURTHER RESOLVED that certified copies of this  
 23 Concurrent Resolution be transmitted to the Governor,  
 24 Chairperson of the Board of Land and Natural Resources,  
 25 Chairperson of the Board of Trustees of the Office of Hawaiian  
 26 Affairs, Chairperson of each Island Burial Council, Dean of the  
 27 William S. Richardson School of Law, and President of the  
 28 Huliauapa'a/Kali'uokapa'akai Collective.

29  
 30  
 31 OFFERED BY: 

