

MAR 12 2021

SENATE 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
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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
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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
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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
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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
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32 WHEREAS, the Island Burial Councils were created by Act
33 306, Session Laws of Hawaii 1990 (Act 306), to further its
34 purpose of augmenting current procedures relating to the proper



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1 care and protection of burial sites found in the State, avoid
2 future disputes arising from the discovery of human skeletal
3 remains, and provide additional protection for native Hawaiian
4 burial sites of high preservation value; and

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

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

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

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

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

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39 (1) Adequately staff the Island Burial Councils and manage
40 the terms of council members;

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- 1 (2) Provide training to State historic preservation staff
2 and burial council members regarding the burial law
3 and administrative rules, Sunshine Law, and Code of
4 Ethics;
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- 6 (3) Require the Department of the Attorney General to
7 ensure independent legal representation of the island
8 burial councils;
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- 10 (4) Implement administrative rules to develop the burial
11 sites inventory;
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- 13 (5) Provide proper administrative support to the island
14 burial councils, including timely actions, decisions,
15 and recommendations regarding the preparation of
16 agenda items, and providing the councils proper
17 guidance on the processes involving burial matters;
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- 19 (6) Comply with legal requirements applicable to the
20 inadvertent discovery of human remains; and
21
- 22 (7) Undertake enforcement actions of documented statutory
23 and regulatory violations involving burial sites;
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25 now, therefore,
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27 BE IT RESOLVED by the Senate of the Thirty-first
28 Legislature of the State of Hawaii, Regular Session of 2021,
29 that the William S. Richardson School of Law is requested to
30 form the Burial Sites Working Group to provide formal
31 recommendations on how to correct the mismanagement by the
32 Department of Land and Natural Resources' State Historic
33 Preservation Division; and
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35 BE IT FURTHER RESOLVED that the Department of Land and
36 Natural Resources' State Historic Preservation Division is
37 requested to cooperate with the Burial Sites Working Group; and
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39 BE IT FURTHER RESOLVED that the Burial Sites Working Group
40 is urged to include the chairpersons of all Island Burial
41 Councils; Administrator of the Department of Land and Natural
42 Resources' State Historic Preservation Division; History and



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1 Culture Branch Chief of the Department of Land and Natural
2 Resources' State Historic Preservation Division; Department of
3 Land and Natural Resources' State Historic Preservation Division
4 Burials Specialist; a representative of the Office of Hawaiian
5 Affairs; two representatives of large landowners and developers
6 to be appointed by the Governor; a representative of the
7 Hawaiian community familiar with and experienced with the Burial
8 Sites Program to be appointed by the Office of Hawaiian Affairs;
9 and a representative of Huliauapa'a/Kali'uokapa'akai Collective to
10 be selected by that organization; and

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

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

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OFFERED BY: *Araceli L. Brown*

