
HOUSE CONCURRENT RESOLUTION

URGING THE UNITED STATES CONGRESS TO SCHEDULE A CONGRESSIONAL
OVERSIGHT HEARING TO INVESTIGATE THE STATE HISTORIC
PRESERVATION DIVISION AND AMEND THE NATIVE AMERICAN GRAVES
PROTECTION REPATRIATION ACT TO REQUIRE FREE, PRIOR AND
INFORMED CONSENT OF NATIVE AMERICAN INDIAN TRIBES, ALASKA
NATIVE VILLAGES, AND NATIVE HAWAIIAN ORGANIZATIONS BEFORE
APPROVING DEVELOPMENT PROJECTS.

1 WHEREAS, the importance of iwi in the kānaka 'ōiwi identity
2 is well established in 'ōlelo Hawai'i, as in the word, 'ōiwi,
3 meaning literally of the bone, said of a native kānaka brother
4 or sister; and

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6 WHEREAS, since Western contact with Native Hawaiians in
7 1778, there has been mass desecration of ancestral kānaka 'ōiwi
8 burial sites, remains, and burial goods; and

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10 WHEREAS, the State Burial Sites Program was established
11 within the State Historic Preservation Division of the
12 Department of Land and Natural Resources to fulfill the
13 Division's and Department's statutory responsibilities of
14 overseeing the five island burial councils and care, management,
15 and protection of all unmarked burial sites; however, the State
16 Burial Sites Program has been systematically underfunded and
17 left unable to fulfill the Division's and Department's
18 constitutional mandate; and

19
20 WHEREAS, a 2002 audit of the State Historic Preservation
21 Division, *Auditors Report 02-20*, recommended "that the Governor
22 intervene" and "the department chair and division administrator
23 take steps to improve the protection of the state's historic
24 properties and prevent the misuse, abuse and theft of the
25 division's limited resources."; and



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2 WHEREAS, in 2004, in response to complaints by island
3 burial council members and descendants about irregularities of
4 process and departmental politics in island burial council
5 appointments by the Department of Land and Natural Resources and
6 State Historic Preservation Division, the Legislature called for
7 another audit of the Division to focus on island burial council
8 nominations and appointments in House Concurrent Resolution No.
9 165, S.D. 1; resulting in *Auditor's Report 04-15*, which
10 reported, "The burial sites program is not adequately staffed
11 and has resulted in the private funding of public positions.
12 The program's work is also suffering."; and
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14 WHEREAS, in the period between 1990 and 2000, Hawai'i had
15 the most disputes before the Native American Graves Protection
16 and Repatriation Act Review Committee on large, important, and
17 controversial cases, including litigation on the state and
18 federal level in several instances; and
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20 WHEREAS, in 2007, the Department of Interior Office of
21 Inspector General reviewed the National Parks Service oversight
22 of the State Historic Preservation Division and concluded that
23 several of the corrective actions recommended in State Auditor's
24 Report 02-20 still had not been implemented, impacting the
25 Division's administration of federally mandated historic
26 preservation responsibilities; and
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28 WHEREAS, from 2009 to 2014, the National Parks Service team
29 developed two corrective action plans for the State Historic
30 Preservation Division to implement in order to remain an
31 approved State Historic Preservation Office and to continue to
32 receive grant assistance from the National Parks Service through
33 the Historic Preservation Fund, and that failure to meet the
34 milestones would result in the suspension of Hawaii's Historic
35 Preservation Fund grant; and
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37 WHEREAS, the State Historic Preservation Division submitted
38 two progress reports on the corrective action plan to the
39 National Parks Services in November 2012 and February 2013,
40 which were both determined to be inadequate by the National
41 Parks Service; and
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1 WHEREAS, the National Parks Service's corrective action
2 plans failed to take into account the dismantling of the Burial
3 Sites Program and mismanagement of the burial responsibilities
4 and functioning and efficacy of the island burial councils,
5 despite the councils being recognized as Native Hawaiian
6 Organizations under the Native American Graves Protection and
7 Repatriation Act and active claimants in many Native American
8 Graves Protection and Repatriation Act repatriation cases, as
9 well as Native Hawaiian organizations consulted under Section
10 106 of the National Historic Preservation Act of 1966, as
11 amended; and
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13 WHEREAS, hundreds of ancestral Native Hawaiian remains are
14 currently sitting in the State Historic Preservation Division's
15 inventory across the State awaiting final disposition, with most
16 remains having sat for years and even decades in non-climate-
17 controlled environments in violation of National Parks Services
18 curation standards and with many stored over the decades in
19 shipping containers; and
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21 WHEREAS, from 2005 through 2021, the State Historic
22 Preservation Division has been in serious noncompliance with
23 chapter 6E, Hawaii Revised Statutes, which establishes the State
24 Historic Preservation Program, and chapter 13-300, Hawaii
25 Administrative Rules, which establishes the rules of practice
26 and procedure relating to burial sites and human remains; and
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28 WHEREAS, despite requests for criminal and civil
29 investigations into violations of law and rule, including
30 criminal statutes regarding desecration of a burial, no
31 investigations have occurred and no action has been taken by the
32 State Historic Preservation Division, Department of Land and
33 Natural Resources, or Department of the Attorney General; and
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35 WHEREAS, in *Brown v. Hawai'i*, 679 F. Supp. 2d 1188 (D. Haw.
36 2009), which involved former State Historic Preservation
37 Division archaeologist and whistleblower David Brown, the court
38 ruled that the Division is required to follow the repatriation
39 process imposed upon museums by the Native American Graves
40 Protection and Repatriation Act, raising the issue of the
41 applicability of the federal Act as having federal supremacy



1 over chapter 6E, Hawaii Revised Statutes, the previous legal
2 framework by which the Division operated under; and
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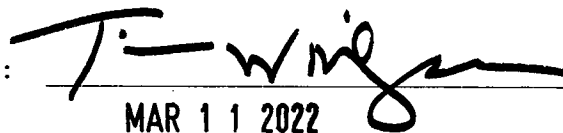
4 WHEREAS, despite the enactment of the federal Native
5 American Graves Protection and Repatriation Act and chapter 6E,
6 Hawaii Revised Statutes, implementing the State Historic
7 Preservation Program, ancestral Native Hawaiian burial sites
8 continue to be destroyed, excavated, exhumed, built upon, or
9 otherwise irreparably mismanaged, causing great harm to the
10 living Native Hawaiian descendants in violation of basic human
11 and civil rights; now, therefore,
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13 BE IT RESOLVED by the House of Representatives of the
14 Thirty-first Legislature of the State of Hawaii, Regular Session
15 of 2022, the Senate concurring, that this body urges the United
16 States Congress to schedule a Congressional Oversight Hearing to
17 investigate the State Historic Preservation Division of the
18 Department of Land and Natural Resources, particularly on the
19 Division's failure to adhere to and enforce state and federal
20 laws; and
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22 BE IT FURTHER RESOLVED that this body further urges the
23 United States Congress to amend the Native American Graves
24 Protection Repatriation Act to require free, prior and informed
25 consent of Native American Indian Tribes, Alaska Native
26 villages, and Native Hawaiian organizations before approving
27 development projects; and
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29 BE IT FURTHER RESOLVED that certified copies of this
30 Concurrent Resolution be transmitted to the Chairperson and
31 members of the United States Senate Committee on Homeland
32 Security & Governmental Affairs, Chairperson and members of the
33 United States House of Representatives Committee on Oversight
34 and Reform, members of Hawaii's congressional delegation,
35 members of the Native American Graves Protection and
36 Repatriation Act Review Committee, Chairperson of the Board of
37 Land and Natural Resources, and Administrator of the State
38 Historic Preservation Division.
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OFFERED BY:


MAR 11 2022

