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## HOUSE RESOLUTION

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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

5  
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

9  
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

26  
27 WHEREAS, in 2004, in response to complaints by island  
28 burial council members and descendants about irregularities of



1 process and departmental politics in island burial council  
2 appointments by the Department of Land and Natural Resources and  
3 State Historic Preservation Division, the Legislature called for  
4 another audit of the Division to focus on island burial council  
5 nominations and appointments in House Resolution No. 165, S.D.  
6 1; resulting in *Auditor's Report 04-15*, which reported, "The  
7 burial sites program is not adequately staffed and has resulted  
8 in the private funding of public positions. The program's work  
9 is also suffering."; and

10  
11 WHEREAS, in the period between 1990 and 2000, Hawai'i had  
12 the most disputes before the Native American Graves Protection  
13 and Repatriation Act Review Committee on large, important, and  
14 controversial cases, including litigation on the state and  
15 federal level in several instances; and

16  
17 WHEREAS, in 2007, the Department of Interior Office of  
18 Inspector General reviewed the National Parks Service oversight  
19 of the State Historic Preservation Division and concluded that  
20 several of the corrective actions recommended in State Auditor's  
21 Report 02-20 still had not been implemented, impacting the  
22 Division's administration of federally mandated historic  
23 preservation responsibilities; and

24  
25 WHEREAS, from 2009 to 2014, the National Parks Service team  
26 developed two corrective action plans for the State Historic  
27 Preservation Division to implement in order to remain an  
28 approved State Historic Preservation Office and to continue to  
29 receive grant assistance from the National Parks Service through  
30 the Historic Preservation Fund, and that failure to meet the  
31 milestones would result in the suspension of Hawaii's Historic  
32 Preservation Fund grant; and

33  
34 WHEREAS, the State Historic Preservation Division submitted  
35 two progress reports on the corrective action plan to the  
36 National Parks Services in November 2012 and February 2013,  
37 which were both determined to be inadequate by the National  
38 Parks Service; and

39  
40 WHEREAS, the National Parks Service's corrective action  
41 plans failed to take into account the dismantling of the Burial  
42 Sites Program and mismanagement of the burial responsibilities



1 and functioning and efficacy of the island burial councils,  
2 despite the councils being recognized as Native Hawaiian  
3 Organizations under the Native American Graves Protection and  
4 Repatriation Act and active claimants in many Native American  
5 Graves Protection and Repatriation Act repatriation cases, as  
6 well as Native Hawaiian organizations consulted under Section  
7 106 of the National Historic Preservation Act of 1966, as  
8 amended; and  
9

10 WHEREAS, hundreds of ancestral Native Hawaiian remains are  
11 currently sitting in the State Historic Preservation Division's  
12 inventory across the State awaiting final disposition, with most  
13 remains having sat for years and even decades in non-climate-  
14 controlled environments in violation of National Parks Services  
15 curation standards and with many stored over the decades in  
16 shipping containers; and  
17

18 WHEREAS, from 2005 through 2021, the State Historic  
19 Preservation Division has been in serious noncompliance with  
20 chapter 6E, Hawaii Revised Statutes, which establishes the State  
21 Historic Preservation Program, and chapter 13-300, Hawaii  
22 Administrative Rules, which establishes the rules of practice  
23 and procedure relating to burial sites and human remains; and  
24

25 WHEREAS, despite requests for criminal and civil  
26 investigations into violations of law and rule, including  
27 criminal statutes regarding desecration of a burial, no  
28 investigations have occurred and no action has been taken by the  
29 State Historic Preservation Division, Department of Land and  
30 Natural Resources, or Department of the Attorney General; and  
31

32 WHEREAS, in *Brown v. Hawai'i*, 679 F. Supp. 2d 1188 (D. Haw.  
33 2009), which involved former State Historic Preservation  
34 Division archaeologist and whistleblower David Brown, the court  
35 ruled that the Division is required to follow the repatriation  
36 process imposed upon museums by the Native American Graves  
37 Protection and Repatriation Act, raising the issue of the  
38 applicability of the federal Act as having federal supremacy  
39 over chapter 6E, Hawaii Revised Statutes, the previous legal  
40 framework by which the Division operated under; and  
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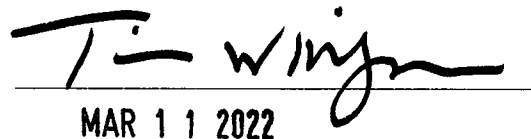
1 WHEREAS, despite the enactment of the federal Native  
2 American Graves Protection and Repatriation Act and chapter 6E,  
3 Hawaii Revised Statutes, implementing the State Historic  
4 Preservation Program, ancestral Native Hawaiian burial sites  
5 continue to be destroyed, excavated, exhumed, built upon, or  
6 otherwise irreparably mismanaged, causing great harm to the  
7 living Native Hawaiian descendants in violation of basic human  
8 and civil rights; now, therefore,  
9

10 BE IT RESOLVED by the House of Representatives of the  
11 Thirty-first Legislature of the State of Hawaii, Regular Session  
12 of 2022, that this body urges the United States Congress to  
13 schedule a Congressional Oversight Hearing to investigate the  
14 State Historic Preservation Division of the Department of Land  
15 and Natural Resources, particularly on the Division's failure to  
16 adhere to and enforce state and federal laws; and  
17

18 BE IT FURTHER RESOLVED that this body further urges the  
19 United States Congress to amend the Native American Graves  
20 Protection Repatriation Act to require free, prior and informed  
21 consent of Native American Indian Tribes, Alaska Native  
22 villages, and Native Hawaiian organizations before approving  
23 development projects; and  
24

25 BE IT FURTHER RESOLVED that certified copies of this  
26 Resolution be transmitted to the Chairperson and members of the  
27 United States Senate Committee on Homeland Security &  
28 Governmental Affairs, Chairperson and members of the United  
29 States House of Representatives Committee on Oversight and  
30 Reform, members of Hawaii's congressional delegation, members of  
31 the Native American Graves Protection and Repatriation Act  
32 Review Committee, Chairperson of the Board of Land and Natural  
33 Resources, and Administrator of the State Historic Preservation  
34 Division.  
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OFFERED BY:

  
MAR 11 2022