
HOUSE CONCURRENT RESOLUTION

REQUESTING THE OFFICE OF HAWAIIAN AFFAIRS TO CONVENE A WORKING GROUP TO EXAMINE AND CONSIDER THE TRANSFER OF NATIVE HAWAIIAN BURIAL SITE MANAGEMENT UNDER CHAPTER 6E, HAWAII REVISED STATUTES, FROM THE STATE HISTORIC PRESERVATION DIVISION TO THE OFFICE OF HAWAIIAN AFFAIRS.

1 WHEREAS, the Legislature recognizes that it is the State's
2 duty to protect the Native Hawaiian cultural and religious
3 practice of caring for iwi kūpuna pursuant to article XII,
4 section 7, of the Hawaii State Constitution; and

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6 WHEREAS, in enacting Act 104, Session Laws of Hawaii 1976,
7 which established chapter 6E, Hawaii Revised Statutes, to codify
8 the State's Historic Preservation program, the Legislature
9 recognized and declared that historic properties and burial
10 sites are included in the State's public trust, stating that "it
11 shall be the public policy of this State to provide leadership
12 in preserving, restoring, and maintaining historic and cultural
13 property, to ensure the administration of such historic and
14 cultural property in a spirit of stewardship and trusteeship for
15 future generations, and to conduct activities, plans, and
16 programs in a manner consistent with the preservation and
17 enhancement of historic and cultural property"; and

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19 WHEREAS, in 1990, the Legislature amended section 6E-43,
20 Hawaii Revised Statutes, to include language stating that "at
21 any site, other than a known, maintained, actively used cemetery
22 where human skeletal remains are discovered or are known to be
23 buried and appear to be over fifty years old, the remains and
24 their associated burial goods shall not be moved without the
25 department's approval"; and

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27 WHEREAS, the amendments made to section 6E-43, Hawaii
28 Revised Statutes, also included language stating that "all



1 burial sites are significant and shall be preserved in place
2 until compliance with this section is met"; and

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4 WHEREAS, chapter 10H, Hawaii Revised Statutes, formally
5 recognizes Native Hawaiians as the "only indigenous, aboriginal,
6 maoli people of Hawaii" and facilitates and furthers Native
7 Hawaiian self-governance; and

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9 WHEREAS, the United Nations Declaration on the Rights of
10 Indigenous Peoples states that "[i]ndigenous peoples have the
11 right to self-determination", the "right to maintain, protect,
12 and have access...to their religious and cultural sites", and
13 "repatriation of their human remains"; and

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15 WHEREAS, the State and this body recognize that the Office
16 of Hawaiian Affairs was constitutionally established as a trust
17 vehicle to act on behalf of Native Hawaiians until a Native
18 Hawaiian governing entity could be reestablished; and

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20 WHEREAS, the State Historic Preservation Division of the
21 Department of Land and Natural Resources was established to
22 administer a comprehensive historic preservation program
23 pursuant to chapter 6E, Hawaii Revised Statutes; and

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25 WHEREAS, the State Historic Preservation Division is tasked
26 with the identification and protection of historic burial sites,
27 and, with respect to Native Hawaiian burial sites, is tasked
28 with sharing decision-making over relocation or preservation in
29 place, transfer, or other disposition of previously identified
30 Native Hawaiian burial sites, with the State's island burial
31 councils that were established pursuant to section 6E-43.5,
32 Hawaii Revised Statutes; and

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34 WHEREAS, pursuant to H.R. No. 113, H.D. 1 (2021), and S.R.
35 No. 171, S.D. 1 (2021), the Office of Hawaiian Affairs convened
36 a Burial Sites Working Group in 2022 to investigate the matter
37 of burial site treatment and to offer recommendations for
38 improvements; and

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40 WHEREAS, the Burial Site Working Group took extensive
41 community testimony as part of its fact-finding mandate and in
42 its final report dated February 2023, made three key findings:



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(1) The State had failed to adequately manage its burial law responsibilities, including a failure to provide, or advocate for the provision of, adequate resources to administer burial laws and a failure to adequately administer laws intended to protect Native Hawaiian burial sites;

(2) The State has demonstrated a lack of will to fulfill its burial law responsibilities; and

(3) There are fundamental inadequacies in the laws affecting burial sites; and

WHEREAS, an opinion editorial entitled "Place the Kuleana with OHA", authored by Dr. Kēhaulani Abad and Edward Halealoha Ayau, a burial site expert and one of three authors of the 1990 amendments made to chapter 6E, Hawaii Revised Statutes, that established the island burial councils, was published in the June 1 issue of *Ka Wai Ola* and opined that the most effective manner by which to improve the care and protection of unmarked burial sites over fifty years old and the Hawaiian human remains inadvertently discovered is to transfer the burial site program from the State Historic Preservation Division to the Office of Hawaiian Affairs; and

WHEREAS, section 10-3(3), Hawaii Revised Statutes, requires that the Office of Hawaiian Affairs serve as "the principal public agency in this State responsible for the performance, development, and coordination of programs and activities relating to native Hawaiians and Hawaiians"; and

WHEREAS, section 10-3(4), Hawaii Revised Statutes, requires that the Office of Hawaiian Affairs advance the betterment of Native Hawaiians by assessing the effects of policies and practices of other state agencies on Native Hawaiians; and

WHEREAS, the State Historic Preservation Division and Office of Hawaiian Affairs have identified several reoccurring challenges regarding both the Burial Sites Program and the Island Burial Councils; and



1 WHEREAS, occasionally, the State Historic Preservation
2 Division faces potential conflicts of interest, or the
3 appearance of conflicts of interest, resulting from historic
4 preservation reviews, inadvertent discoveries, descendency
5 claims, and making recommendations to the Island Burial
6 Councils; and

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8 WHEREAS, these potential conflicts of interest may be
9 resolved by transferring parts of the Burial Sites Program to
10 another agency; now, therefore,

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12 BE IT RESOLVED by the House of Representatives of the
13 Thirty-third Legislature of the State of Hawaii, Regular Session
14 of 2025, the Senate concurring, that the Office of Hawaiian
15 Affairs is requested to convene a working group to examine and
16 consider the transfer of Native Hawaiian burial site management
17 under chapter 6E, Hawaii Revised Statutes, from the State
18 Historic Preservation Division to the Office of Hawaiian
19 Affairs; and

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21 BE IT FURTHER RESOLVED that the working group is requested
22 to:

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- 24 (1) Identify and determine which duties and
- 25 responsibilities of the State Historic Preservation
- 26 Division regarding the protection of Native Hawaiian
- 27 burial sites and administration of the Island Burial
- 28 Councils under chapter 6E, Hawaii Revised Statutes,
- 29 may be shared with or assumed by the Office of
- 30 Hawaiian Affairs;
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- 32 (2) Consider the staff and financial resources of the
- 33 Office of Hawaiian Affairs, legal requirements,
- 34 technological needs, and other relevant factors in
- 35 determining the feasibility of the Office of Hawaiian
- 36 Affairs assuming these duties and responsibilities;
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- 38 (3) Develop and recommend an implementation plan and
- 39 associated timeline for the transfer of any duties,
- 40 including any necessary statutory and administrative
- 41 amendments to effectuate the transfer;
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- 1 (4) Consider in its discussions whether implementing the
2 recommendations made in the final report of the Burial
3 Sites Working Group may improve the operation of the
4 burial sites program and protection of Native Hawaiian
5 burial sites;
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- 7 (5) Identify and consider issues to improve legislation
8 and develop recommendations for improving the process
9 of protecting Native Hawaiian burial sites and the
10 effectiveness of the current burial sites program
11 under the State Historic Preservation Division; and
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- 13 (6) Submit a report of its findings and recommendations,
14 including any proposed legislation, to the Legislature
15 no later than twenty days prior to the convening of
16 the Regular Session of 2027; and
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18 BE IT FURTHER RESOLVED that the working group is requested
19 to consist of the following members:
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- 21 (1) Two members representing the State Historic
22 Preservation Division;
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- 24 (2) Two members representing the Office of Hawaiian
25 Affairs;
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- 27 (3) One member from each Island Burial Council, to be
28 selected by a majority vote of its respective members;
29 and
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- 31 (4) Five members from the community that self-identify and
32 represent unique Native Hawaiian organizations with
33 expertise and experience in protecting Native Hawaiian
34 burial sites, to be selected randomly by the working
35 group from a list of submitted names; and
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37 BE IT FURTHER RESOLVED that certified copies of this
38 Concurrent Resolution be transmitted to the Governor, Attorney
39 General, Chief Executive Officer of the Office of Hawaiian
40 Affairs, Branch Chief of the History and Culture Branch of the
41 State Historic Preservation Division, and Chairperson of each
42 Island Burial Council.

