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# SENATE 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  
5

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  
26

27           WHEREAS, the amendments made to section 6E-43 also included  
28 language stating that "all burial sites are significant and  
29 shall be preserved in place until compliance with this section  
30 is met"; and  
31

32           WHEREAS, chapter 10H, Hawaii Revised Statutes, formally  
33 recognizes Native Hawaiians as the "only indigenous, aboriginal,



1 maoli people of Hawaii" and facilitates and furthers Native  
2 Hawaiian self-governance; and

3  
4 WHEREAS, the United Nations Declaration on the Rights of  
5 Indigenous Peoples states that "[i]ndigenous peoples have the  
6 right to self-determination", the "right to maintain, protect,  
7 and have access...to their religious and cultural sites", and  
8 "repatriation of their human remains"; and

9  
10 WHEREAS, the State and Legislature recognize that the  
11 Office of Hawaiian Affairs was constitutionally established as a  
12 trust vehicle to act on behalf of Native Hawaiians until a  
13 Native Hawaiian governing entity could be reestablished; and

14  
15 WHEREAS, the State Historic Preservation Division of the  
16 Department of Land and Natural Resources was established to  
17 administer a comprehensive historic preservation program  
18 pursuant to chapter 6E, Hawaii Revised Statutes; and

19  
20 WHEREAS, the State Historic Preservation Division is tasked  
21 with the identification and protection of historic burial sites,  
22 and, with respect to Native Hawaiian burial sites, is tasked  
23 with sharing decision-making over relocation or preservation in  
24 place, transfer, or other disposition of previously identified  
25 Native Hawaiian burial sites, with the State's island burial  
26 councils that were established pursuant to section 6E-43.5,  
27 Hawaii Revised Statutes; and

28  
29 WHEREAS, pursuant to H.R. No. 113, HD1 (2021), and S.R.  
30 No. 171, SD1 (2021), the Office of Hawaiian Affairs convened a  
31 Burial Sites Working Group in 2022 to investigate the matter of  
32 burial site treatment and to offer recommendations for  
33 improvements; and

34  
35 WHEREAS, the Burial Site Working Group took extensive  
36 community testimony as part of its fact-finding mandate and in  
37 its final report dated February 2023, made three key findings:

38  
39 (1) The State had failed to adequately manage its burial  
40 law responsibilities, including a failure to provide,  
41 or advocate for the provision of, adequate resources  
42 to administer burial laws and a failure to adequately



1 administer laws intended to protect Native Hawaiian  
2 burial sites;

3  
4 (2) The State has demonstrated a lack of will to fulfill  
5 its burial law responsibilities; and

6  
7 (3) There are fundamental inadequacies in the laws  
8 affecting burial sites; and

9  
10 WHEREAS, an opinion editorial entitled "Place the Kuleana  
11 with OHA", authored by Dr. Kēhaulani Abad and Edward Halealoha  
12 Ayau, a burial site expert and one of three authors of the 1990  
13 amendments made to chapter 6E, Hawaii Revised Statutes, that  
14 established the island burial councils, was published in the  
15 June 1 issue of *Ka Wai Ola* and opined that the most effective  
16 manner by which to improve the care and protection of unmarked  
17 burial sites over fifty years old and the Hawaiian human remains  
18 inadvertently discovered is to transfer the burial site program  
19 from the State Historic Preservation Division to the Office of  
20 Hawaiian Affairs; and

21  
22 WHEREAS, section 10-3(3), Hawaii Revised Statutes, requires  
23 that the Office of Hawaiian Affairs serve as "the principal  
24 public agency in this State responsible for the performance,  
25 development, and coordination of programs and activities  
26 relating to native Hawaiians and Hawaiians"; and

27  
28 WHEREAS, section 10-3(4), Hawaii Revised Statutes, requires  
29 that the Office of Hawaiian Affairs advance the betterment of  
30 Native Hawaiians by assessing the effects of policies and  
31 practices of other state agencies on Native Hawaiians; and

32  
33 WHEREAS, the State Historic Preservation Division and  
34 Office of Hawaiian Affairs have identified several reoccurring  
35 challenges regarding both the Burial Sites Program and the  
36 Island Burial Councils; and

37  
38 WHEREAS, occasionally, the State Historic Preservation  
39 Division faces potential conflicts of interest, or the  
40 appearance of conflicts of interest, resulting from historic  
41 preservation reviews, inadvertent discoveries, descendency



1 claims, and making recommendations to the Island Burial  
2 Councils; and

3  
4 WHEREAS, these potential conflicts of interest may be  
5 resolved by transferring parts of the Burial Sites Program to  
6 another agency; now, therefore,

7  
8 BE IT RESOLVED by the Senate of the Thirty-third  
9 Legislature of the State of Hawaii, Regular Session of 2025,  
10 that the Office of Hawaiian Affairs is requested to convene a  
11 working group to examine and consider the transfer of Native  
12 Hawaiian burial site management under chapter 6E, Hawaii Revised  
13 Statutes, from the State Historic Preservation Division to the  
14 Office of Hawaiian Affairs; and

15  
16 BE IT FURTHER RESOLVED that the working group is requested  
17 to:

- 18  
19 (1) Identify and determine which duties and  
20 responsibilities of the State Historic Preservation  
21 Division regarding the protection of Native Hawaiian  
22 burial sites and administration of the Island Burial  
23 Councils under chapter 6E, Hawaii Revised Statutes,  
24 may be shared with or assumed by the Office of  
25 Hawaiian Affairs;  
26  
27 (2) Consider the staff and financial resources of the  
28 Office of Hawaiian Affairs, legal requirements,  
29 technological needs, and other relevant factors, in  
30 determining whether it is feasible for the Office of  
31 Hawaiian Affairs to assume these duties and  
32 responsibilities;  
33  
34 (3) Develop and recommend an implementation plan and  
35 associated timeline for the transfer of any duties,  
36 including any necessary statutory and administrative  
37 amendments to effectuate the transfer;  
38  
39 (4) Consider in its discussions whether implementing the  
40 recommendations made in the final report of the Burial  
41 Sites Working Group may improve the operation of the



1 burial sites program and protection of Native Hawaiian  
2 burial sites; and

- 3
- 4 (5) Submit a report of its findings and recommendations,
- 5 including any proposed legislation, to the Legislature
- 6 no later than twenty days prior to the convening of
- 7 the Regular Session of 2027; and
- 8

9 BE IT FURTHER RESOLVED that the working group is requested  
10 to comprise the following members:

- 11
- 12 (1) Two members representing the State Historic
- 13 Preservation Division;
- 14
- 15 (2) Two members representing the Office of Hawaiian
- 16 Affairs;
- 17
- 18 (3) One member from each Island Burial Council, to be
- 19 selected by a majority vote of its respective members;
- 20 and
- 21
- 22 (4) One member representing Hua Iwi Kaumo'o, the leading
- 23 repatriation and reburial advocacy organization; and
- 24

25 BE IT FURTHER RESOLVED that certified copies of this  
26 Resolution be transmitted to the Governor, Attorney General,  
27 Chief Executive Officer of the Office of Hawaiian Affairs,  
28 Branch Chief of the History and Culture Branch of the State  
29 Historic Preservation Division, Chairperson of each Island  
30 Burial Council, and Executive Director of Hua Iwi Kaumo'o.

31  
32  
33 OFFERED BY: \_\_\_\_\_

