

MAR 07 2025

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

18
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



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

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

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

- (1) Two members representing the State Historic
Preservation Division;
- (2) Two members representing the Office of Hawaiian
Affairs;
- (3) One member from each Island Burial Council, to be
selected by a majority vote of its respective members;
and
- (4) One member representing Hua Iwi Kaumo'o, the leading
repatriation and reburial advocacy organization; and

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

OFFERED BY: _____


