



TESTIMONY PROVIDING COMMENTS ON HOUSE BILL 2231 HD1
RELATING TO ISLAND BURIAL COUNCILS

House Committee on Judiciary and Hawaiian Affairs
Hawai'i State Capitol

February 26, 2026

2:00 PM

Room 325

Aloha e Chair Tarnas, Vice Chair Poepoe, and Members of the Committee on Judiciary and Hawaiian Affairs:

The Office of Hawaiian Affairs (OHA) submits testimony providing **COMMENTS** on HB2231 HD1, which transfers the appointment authority for Island Burial Council (IBC) members from the Governor and Senate to the Board of Trustees of OHA.

OHA is the constitutionally established body responsible for protecting and promoting the rights of Native Hawaiians. Haw. Const. Art. XII § 5. In fulfilling this mission, OHA has been deeply involved with protection of iwi kūpuna for decades. Further, under HRS Chapter 6E, OHA is tasked with specific kuleana, including nominating geographic (moku) candidates to serve on the IBCs. See HRS §6E-43.5. Given OHA's longstanding commitment to and expertise in protecting iwi kūpuna within the existing regulatory framework, OHA stands ready and able to assume any appointment duties which the legislature may choose to transfer.

OHA respectfully notes our role in the existing IBC appointment process is limited to recruiting and nominating qualified Native Hawaiian cultural practitioners and experts with knowledge of burial traditions and the cultural practices of their respective moku. OHA's institutional expertise and statutory responsibilities are closely aligned with these moku representative seat, including our capacity and ability to recruit widely in the Native Hawaiian community through our existing communication channels, and OHA fully supports assuming appointment duties for these moku seats. With respect to appointment of large landowner seats, OHA takes no position.

Mahalo for the opportunity to testify.

HB-2231-HD-1

Submitted on: 2/24/2026 12:29:38 PM

Testimony for JHA on 2/26/2026 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Shelby "Pikachu" Billionaire	Kingdom of The Hawaiian Islands & Ohana Unity Party	Support	Remotely Via Zoom

Comments:

****Testimony in STRONG Support of HB2231 HD1****

****Relating to Island Burial Councils****

Aloha Chair and Members of the Committee,

Mahalo for the opportunity to testify in ****STRONG SUPPORT**** of ****HB2231 HD1****. This bill amends HRS §6E-43.5 to transfer the appointment authority for the five Island Burial Councils (IBCs)—Hawai‘i, Maui/Lāna‘i, Moloka‘i, O‘ahu, and Kaua‘i/Ni‘ihau—from the Governor (with Senate consent) to the ****Board of Trustees of the Office of Hawaiian Affairs (OHA)****. It is a critical step toward faster, more culturally grounded, and effective protection of iwi kūpuna.

Key Provisions of HB2231 HD1

- ****Appointment Shift to OHA****: OHA Board appoints members directly from culturally appropriate lists submitted by the public, after public notice and at least one public hearing. OHA may adopt procedures and qualifications to ensure members have deep understanding of Native Hawaiian burial beliefs, customs, history, and practices.
- ****Membership Structure Retained****: 9 members per council (5 for Moloka‘i), with limits on development/large landowner representatives and emphasis on regional Native Hawaiian representatives.
- ****Term & Governance Rules****: 4-year terms (max 8 consecutive years); holdover until replaced; removal for cause after notice/hearing; councils retain all existing duties (determining preservation/relocation of burials, assisting inventories, recommending management/protection, electing chairs, maintaining notification lists).
- ****Transitional Provisions****: Current members continue until OHA reappoints or replaces them; no one holds office beyond the fourth regular legislative session after approval.
- ****Effective Date****:

Upon approval. ### Why This Change Is Urgent and Pono Island Burial Councils are the primary decision-makers under HRS Chapter 6E for treatment of inadvertent discoveries of iwi kūpuna and burials. Yet the current Governor/Senate appointment process has created chronic problems:

- **Vacancy & Delay Statistics**: Multiple councils have operated with vacancies for months or years (e.g., O‘ahu IBC has had persistent shortages; statewide average vacancy rate in recent years has hovered around 20–30% at times). This prevents quorum (majority required for decisions), stalling critical approvals on burial treatment plans during active construction.
- **Real-World Impacts**: Delayed or incomplete decisions lead to rushed relocations, community trauma, and legal challenges. In 2024–2025 alone, several high-profile inadvertent discoveries (e.g., Hale‘iwa, Maui developments) highlighted the need for faster, culturally aligned processes.
- **Cultural Misalignment Risk**: State-led appointments sometimes prioritize political or administrative criteria over deep genealogical/cultural expertise, eroding trust among lineal/cultural descendants and protectors.
- **OHA's Proven Track Record**: OHA already recruits and recommends IBC candidates annually. Formalizing this role reduces bottlenecks, ensures selections reflect Native Hawaiian values, and aligns with OHA’s constitutional mandate (Article XII, §5 & §6) as the principal state agency for Native Hawaiian betterment.

Addressing the “Not a State Agency” Concern

Some may question OHA’s authority by claiming it is “not a state agency.” This is factually incorrect. OHA was **established by the people of Hawai‘i in 1978** through the Constitutional Convention and ratified by voters: - **Article XII, Section 5, Hawai‘i State Constitution**: “There is hereby established an Office of Hawaiian Affairs. The Office of Hawaiian Affairs shall hold title to all the real and personal property now or hereafter set aside or conveyed to it which shall be held in trust for native Hawaiians and Hawaiians. There shall be a board of trustees for the Office of Hawaiian Affairs elected by qualified voters who are Hawaiians, as provided by law.” - OHA is codified in **HRS Chapter 10** as a **semi-autonomous state agency**—the principal state agency responsible for Native Hawaiian programs and resources. - Courts (including U.S. Supreme Court in *Rice v. Cayetano*), the State Auditor, Legislature, and OHA’s own governance all confirm this status.

Transferring IBC appointments to OHA is not delegation to an external body—it is returning kuleana to the very entity created in 1978 to fulfill this role. I have testified in strong support of every OHA 2026 package bill this session (HB2102 historic preservation, HB2101 aquarium collection ban, HB2584 PLT funding, HB2582 Working Group, HB2585 agritourism, etc.). HB2231 HD1 complements HB2104 (quorum/per diem/stipend fixes) by fixing the root administrative barrier: who appoints the guardians of our kūpuna. Pass HB2231 HD1 without amendments that dilute OHA’s role. This is essential for dignity, speed, and justice in protecting iwi kūpuna.

Mahalo nui loa for your kuleana. Imua for our ancestors and future generations!

Respectfully submitted,

Pikachu Shelby “Pikachu” Billionaire HRM Kingdom of The Hawaiian Islands H.I. Ohana Unity Party, Chairman

HB-2231-HD-1

Submitted on: 2/24/2026 3:55:51 PM

Testimony for JHA on 2/26/2026 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Keoni Shizuma	Individual	Support	Written Testimony Only

Comments:

Aloha,

I am testifying in support of HB2231.

As most bones found are of concern as they are Native Hawaiian remains, it makes sense for the Office of Hawaiian Affairs to oversee appointment to the burial councils. They have in the past provided helpful information on burial knowledge, and should be provided funds to provide training for members on the burial council.

Mahalo for your consideration,
Keoni Shizuma

HB-2231-HD-1

Submitted on: 2/25/2026 9:55:34 AM

Testimony for JHA on 2/26/2026 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Dane K. U. Maxwell	Individual	Support	Written Testimony Only

Comments:

Testimony in Support of HB 2231

Aloha Chair, Vice Chair, and Members of the Committee,

My name is Dane Uluwehiokalani Maxwell, and I am testifying in strong support of HB 2231. I am speaking in my personal capacity, informed by my prior service on the Maui/Lāna‘i Island Burial Council and my recent experience reapplying to serve.

My most recent application to return to the Burial Council was submitted through the State’s Boards and Commissions web portal. However, I understand that there are currently multiple pathways through which individuals may apply — including the Boards and Commissions portal, the Office of Hawaiian Affairs, and the Department of Land and Natural Resources. Each pathway appears to carry different procedural weight and may be reviewed through different processes.

This lack of uniformity can create confusion for applicants and uncertainty in how applications are evaluated. For those seeking to serve in the protection of iwi kūpuna, clarity and transparency in the appointment process are essential. Consolidating the application process into a single, clearly defined method would promote consistency, fairness, and administrative efficiency.

The work of the Burial Councils is too important to be hindered by procedural ambiguity. A streamlined and transparent process will strengthen the integrity of appointments and help ensure that qualified applicants are reviewed equitably.

For these reasons, I respectfully urge you to pass HB 2231.

Mahalo for the opportunity to testify.

Dane Uluwehiokalani Maxwell

EVERETT R. DOWLING

COMMENTS ON HB2231, HD1

being heard by the House Committee on Judiciary and Hawaiian Affairs

February 26, 2026 at 2 p.m.

Via Video Conference/Conference Room 325

Aloha Chair Tarnas, Vice Chair Poepoe, and members of the Committee:

My name is Everett Dowling. I have had the honor and privilege to serve on the Maui Burial Council and, thus, I understand the important role that it plays in protecting iwi kupuna in Hawaii. I also understand that for the Burial Council to be able to do its job it must function with integrity, cultural sensitivity, and the full confidence of all residents of Hawaii. Therefore, I join in the comments that Ms. Leimoni Khan submitted during the hearing on HB2231 by the House Committee of Water & Land on February 19, 2026. Ms. Khan stated, inter alia,

“Because burial councils make decisions that affect land use, development, property rights, and cultural access, their actions are often subject to legal scrutiny. If the appointment process is perceived as lacking structural balance or neutrality, there is a risk that council decisions could be more frequently challenged in court, that the protection of iwi kupuna could be delayed by litigation, and that the authority of councils could be undermined.

Transferring appointment authority may unintentionally increase the legal exposure and institutional liability of the Office of Hawaiian Affairs, as the appointing authority could be drawn into disputes over council composition or decisions. This could divert time and resources away from OHA’s core mission on behalf of Native Hawaiian beneficiaries.

*The protection of Native Hawaiian burial sites is a constitutional obligation of the State of Hawai‘i. There is an important legal distinction between the State’s public trust responsibility to protect burial for the benefit of all people of Hawai‘i and the fiduciary responsibility of the Office of Hawaiian Affairs to Native Hawaiian beneficiaries. **If the appointment authority is transferred entirely to OHA, opponents may argue – regardless of intent – that burial protection is being reframed as a Native Hawaiian-only function rather than a statewide constitutional responsibility. Such arguments could expose burial protection actions to additional legal challenge. This concern is offered not to diminish OHA’s vital role, but to ensure that both the State and OHA are protected and that the legal foundation for burial protections remain strong.**”¹*

I share Ms. Khan’s concerns.

If the Committee is inclined to move this bill forward, I would recommend that the Office of Hawaiian Affairs only be given the authority to appoint the Regional representative members which they currently only provide nominees to the Governor to appoint. Per the

¹ Italics added. A copy of Ms. Khan complete testimony is attached.

statute, these members are “selected from the Hawaiian community on the basis of the representatives’ understanding of the culture, history, burial beliefs, customs, and practices of native Hawaiians in the region they each represent.”² The Governor should retain the authority to appoint the remaining members.

Thank you for the opportunity to provide comments.

Everett R. Dowling

² Currently HRS 6E-43.5 requires that at least 2 of the regional representatives on the Council shall be appointed from a list of nominees submitted by OHA. The Department of Land and Natural Resources submits a list of nominees for the remaining seats. The Council can have no more than 3 representatives of development and large landowner interests (For Molokai its no more than one.) Additionally, the Council shall include at least one representative for each geographic region identified in the Statute.

HB-2231

Submitted on: 2/17/2026 10:58:24 AM

Testimony for WAL on 2/19/2026 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Leimomi Khan	Individual	Comments	Written Testimony Only

Comments:

Mahalo for the opportunity to provide testimony on this measure.

I submit comments only since I have concerns with the provisions of this bill and with deep respect for the sacred kuleana we share to protect iwi kūpuna and to ensure that the Island Burial Councils continue to function with integrity, cultural grounding, and the full confidence of our communities.

The Island Burial Councils were established to elevate the voices of lineal descendants and island communities in decisions affecting ancestral burials. Their effectiveness depends not only on statutory authority, but on the trust and credibility they hold in the eyes of the public.

Because burial councils make decisions that affect land use, development, property rights, and cultural access, their actions are often subject to legal scrutiny. If the appointment process is perceived as lacking structural balance or neutrality, there is a risk that council decisions could be more frequently challenged in court, that the protection of iwi kūpuna could be delayed by litigation, and that the authority of the councils could be undermined.

Transferring appointment authority may unintentionally increase the legal exposure and institutional liability of the Office of Hawaiian Affairs, as the appointing authority could be drawn into disputes over council composition or decisions. This could divert time and resources away from OHA's core mission on behalf of Native Hawaiian beneficiaries.

The protection of Native Hawaiian burial sites is a constitutional obligation of the State of Hawai'i. There is an important legal distinction between the State's public trust responsibility to protect burials for the benefit of all the people of Hawai'i and the fiduciary responsibility of the Office of Hawaiian Affairs to Native Hawaiian beneficiaries. **If appointment authority is transferred entirely to OHA, opponents may argue — regardless of intent — that burial protection is being reframed as a Native Hawaiian-only function rather than a statewide constitutional responsibility. Such arguments could expose burial protection actions to additional legal challenge. This concern is offered not to diminish OHA's vital role, but to ensure that both the State and OHA are protected and that the legal foundation for burial protection remains strong.**

If this responsibility is transferred, **it is also important to ensure that adequate funding, staffing, and clear procedures are provided so that this kuleana does not become an unfunded mandate.**

The selection process should continue to reflect direct input from island communities and should prioritize lineal descendant representation. Clear qualifications, an open nomination process, and a transparent timeline are essential to maintaining public trust.

Should the Legislature choose to move forward with this proposal, I **respectfully recommend:**

Retaining a shared or consultative appointment structure that preserves balance;
Providing dedicated resources for any new responsibilities assigned;
Requiring an island-based nomination process;
Establishing clear conflict-of-interest safeguards; and
Affirming in the measure that burial protection remains a constitutional responsibility of the State of Hawai'i.

On a separate note, the proposed legislation identifies delays in filling vacancies and the inability at times to secure a quorum. The legislature may wish to consider, if legally permissible, a lower threshold for determining quorum and allowing for the appointment of a certain number of "intermittent" members who would be called upon to serve in the absence of a permanent member.

In the end, this discussion is not only about who appoints, but about how we best protect iwi kūpuna in a way that is culturally grounded, legally durable, and trusted by our communities and the broader public

Mahalo for the opportunity to offer these thoughts.

Respectfully submitted,
Leimomi Khan