

ACT 276

S.B. NO. 407

A Bill for an Act Relating to Island Burial Councils.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the statute providing for the establishment of the island burial councils needs to be clarified and simplified to ensure that the island burial councils can fulfill their critical responsibilities.

SECTION 2. Section 6E-43.5, Hawaii Revised Statutes, is amended to read as follows:

“§6E-43.5 Island burial councils; creation; appointment; composition; duties. (a) ~~The department shall establish~~ There are established within the department five island burial councils, one each for ~~[Hawaii, Maui/Lanai, Molokai, Oahu, and Kauai/Niihau,]~~ Hawai‘i, Maui/Lāna‘i, Moloka‘i, O‘ahu, and Kaua‘i/Ni‘ihau, to implement section 6E-43. Each council shall consist of nine members, except the Moloka‘i council, which shall consist of five members. Each council shall consist of no more than three representatives of development and large landowner interests; provided that the Moloka‘i council shall consist of no more than one representative of development and large landowner interests. The remaining council members shall represent the geographic regions identified in paragraphs (1) through (5). At all times, at least two of the regional representatives of each council shall have been appointed from a list of nominees submitted to the governor by the office of Hawaiian affairs, as provided under subsection (b). Each council shall include at least one representative for each geographic region identified as follows:

- (1) The Hawai‘i council shall include the following geographic regions: Kohala, Kona, Ka‘ū, Puna, Hilo, and Hāmākua;
- (2) The Maui/Lāna‘i council shall include the following geographic regions: Honua‘ula, Lahaina, Wailuku, Makawao, Hāna, and Lāna‘i;
- (3) The Moloka‘i council shall include the following geographic regions: West Moloka‘i, Central Moloka‘i, East Moloka‘i, and Kalawao;

- (4) The O'ahu council shall include the following geographic regions: Wai'ānae, 'Ewa, Kona, Ko'olaupoko, Ko'olauloa, and Waialua; and
- (5) The Kaua'i/Ni'ihau council shall include the following geographic regions: Waimea/Na Pali, Kōloa, Līhu'e, Kawaihau, Hanalei, and Ni'ihau.

Regional representatives shall be 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.

(b) Appointment of members to the councils shall be made by the governor, in accordance with section 26-34[,] and subsection (a), from [a list provided] lists for each council submitted by the department[, provided that a minimum of twenty per cent of the regional representatives shall be appointed from a list of at least nine candidates provided by the office of Hawaiian affairs. The department shall develop the list in consultation with appropriate Hawaiian organizations, such as Hui Malama I Na Kupuna O Hawai'i Nei. The membership of each council shall include at least one representative from each geographic region of the island as well as representatives of development and large property owner interests. Regional representatives shall be selected from the Hawaiian community on the basis of their understanding of the culture, history, burial beliefs, customs, and practices of native Hawaiians. The councils shall have a minimum of nine and a maximum of fifteen members, and have a ratio of not more than three to one and no less than two to one in favor of regional representatives.] and the office of Hawaiian affairs. Lists to fill vacancies on the councils shall be submitted as follows:

- (1) For vacancies attributable to the expiration of terms, the list shall be submitted on the first business day of December prior to the expiration of the terms, except as provided in subsection (c); and
- (2) For a vacancy that occurs during a council representative's term, the list shall be submitted within thirty business days after the vacancy occurs, except as provided in subsection (c).

(c) The department may submit any list to fill a vacancy up to fifteen days after the office of Hawaiian affairs submits its list for the same vacancy; provided that the failure of the department to submit any list by any relevant deadline or fifteen days after the office of Hawaiian affairs submits its list, whichever occurs later, shall be construed as a waiver of the department's right to submit a list.

~~[(e)]~~ (d) The department, in consultation with the councils, office of Hawaiian affairs, representatives of development and large [property owner] landowner interests, and appropriate Hawaiian organizations, such as Hui Malama I Na Kupuna O Hawai'i Nei, shall adopt rules pursuant to chapter 91 necessary to carry out the purposes of this section. The council members shall serve without compensation, but shall be reimbursed for necessary expenses incurred during the performance of their duties. The councils shall be a part of the department for administrative purposes.

~~[(d)]~~ (e) The councils shall hold meetings and acquire information as they deem necessary and shall communicate their findings and recommendations to the department. Notwithstanding section 92-3, whenever the location and description of burial sites are under consideration, the councils may hold closed meetings. A majority of all members to which each council is entitled shall constitute a quorum to do business. Concurrence of a majority of the members present at a meeting shall be necessary to make any action of a council valid.

~~[(e)]~~ (f) Department records relating to the location and description of historic sites, including burial sites, if deemed sensitive by a council or the ~~[Hawaii]~~ Hawai'i historic places review board, shall be confidential.

~~[(f)]~~ (g) The councils shall:

- (1) Determine the preservation or relocation of previously identified native Hawaiian burial sites;
- (2) Assist the department in the inventory and identification of native Hawaiian burial sites;
- (3) Make recommendations regarding appropriate management, treatment, and protection of native Hawaiian burial sites, and on any other matters relating to native Hawaiian burial sites;
- (4) Elect a chairperson for a four-year term who shall serve for not more than two consecutive terms; and
- (5) Maintain a list of appropriate Hawaiian organizations, agencies, and offices to notify regarding the discovery of remains.”

SECTION 3. Notwithstanding the amendments made by this Act to section 6E-43.5, Hawaii Revised Statutes, each current sitting council member may serve the remainder of the member's term, and the decisions and other actions of each holdover member's council shall not be subject to challenge on the basis that the requirement in section 6E-43.5(a), Hawaii Revised Statutes, that each council include a member who represents each geographic region of the council, has not been met.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved July 9, 2013.)