

JAN 18 2008

A BILL FOR AN ACT

RELATING TO BURIAL SITES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 6E-2, Hawaii Revised Statutes, is
2 amended by adding three new definitions to be appropriately
3 inserted and to read as follows:

4 "Inadvertent discovery" means the unanticipated finding of
5 human skeletal remains and any burial goods resulting from
6 unintentional disturbance, erosion, or other ground disturbing
7 activity.

8 "Prehistoric" means the period prior to and including the
9 year 1778.

10 "Previously identified" means burial sites containing human
11 skeletal remains and any burial goods identified during
12 archaeological inventory survey and data recovery of possible
13 burial sites, or known through oral or written testimony."

14 SECTION 2. Section 6E-43, Hawaii Revised Statutes, is
15 amended by amending subsection (b) to read as follows:

16 "(b) All burial sites are significant and shall be
17 preserved in place until compliance with this section is met[-



1 ~~except as provided in section 6E-43.6~~. The appropriate island
2 burial council shall determine whether preservation in place or
3 relocation of previously identified or inadvertently discovered
4 native Hawaiian burial sites is warranted~~[,]~~ by following
5 established and adopted criteria ~~[which]~~.

6 The criteria used shall include recognition that burial
7 sites of high preservation value, such as ~~[areas]~~:

8 (1) Areas with a concentration of skeletal remains ~~[, or~~
9 ~~prehistoric]~~;

10 (2) Prehistoric or historic burials associated with
11 important individuals and events ~~[, or areas]~~;

12 (3) Areas that are within a context of historic
13 properties~~[,]~~; or

14 (4) Areas that have known lineal descendants,
15 shall receive greater consideration for preservation in place.

16 The criteria shall be developed by the department in
17 consultation with the councils, office of Hawaiian affairs,
18 representatives of development and large property owner
19 interests, and appropriate Hawaiian organizations ~~[, such as Hui~~
20 ~~Malama I Na Kupuna O Hawai'i Nei,]~~ through rules adopted pursuant
21 to chapter 91.



1 A council's determination shall be rendered within [~~forty-~~
2 ~~five]~~ sixty days of referral by the department unless otherwise
3 extended by agreement between the landowner and the department.
4 If the appropriate council is unable to render a determination
5 within sixty days, the matter shall be referred to the state
6 historic preservation officer who shall have no longer than
7 thirty days to render a determination based on previous
8 recommendations and preliminary findings by the department."

9 SECTION 3. Section 6E-43.5, Hawaii Revised Statutes, is
10 amended as follows:

11 1. By amending subsections (b) and (c) to read:

12 "(b) Appointment of members to the councils shall be made
13 by the governor, in accordance with section 26-34, from a list
14 provided by the department, provided that a minimum of twenty
15 per cent of the regional representatives shall be appointed from
16 a list of at least nine candidates provided by the office of
17 Hawaiian affairs. The department shall develop the list in
18 consultation with appropriate Hawaiian organizations [~~, such as~~
19 ~~Hui Malama I Na Kupuna O Hawai'i Nei]~~. The membership of each
20 council shall include at least one representative from each
21 geographic region of the island as well as representatives of
22 development and large property owner interests. Regional



1 representatives shall be selected from the Hawaiian community on
2 the basis of their understanding of the culture, history, burial
3 beliefs, customs, and practices of native Hawaiians. The
4 councils shall have a minimum of nine and a maximum of fifteen
5 members, and have a ratio of not more than three to one and no
6 less than two to one in favor of regional representatives.

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

17 2. By amending subsection (f) to read:

18 "(f) The councils shall:

19 (1) Determine the preservation or relocation of previously
20 identified and inadvertently discovered native
21 Hawaiian burial sites;



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

12 SECTION 4. Section 6E-43.6, Hawaii Revised Statutes, is
13 amended as follows:

14 1. By amending subsection (c) to read:

15 "(c) After notification of the discovery of multiple
16 skeletons, the following shall be done within [~~two~~] five working
17 days, if on Oahu, and [~~three~~] seven working days, if in other
18 council jurisdictions:

- 19 (1) A representative of the medical examiner or coroner's
- 20 office and a qualified archaeologist shall examine the
- 21 remains to determine jurisdiction. If the remains are
- 22 the responsibility of the medical examiner or coroner,



1 the department's involvement shall end. If the
2 remains are historic or prehistoric burials, then the
3 remainder of this section shall apply;

- 4 (2) The department shall gather sufficient information,
5 including oral tradition, to document the nature of
6 the burial context and determine appropriate treatment
7 of the remains. If the site appears to be an
8 inadvertently discovered native Hawaiian burial site,
9 then the site shall be referred to the appropriate
10 island burial council to determine whether
11 preservation in place or relocation of the remains are
12 warranted, pursuant to section 6E-43. Members of the
13 appropriate council shall be allowed to oversee the
14 on-site examination and, if warranted, removal; and
- 15 (3) If removal of the non-native Hawaiian remains is
16 warranted, based on criteria developed by the
17 department [~~, in consultation with the councils, office~~
18 ~~of Hawaiian affairs, representatives of development~~
19 ~~and large property owner interests, and appropriate~~
20 ~~Hawaiian organizations, such as Hui Malama I Na Kupuna~~
21 ~~o Hawai'i Nei,]~~ through rules adopted pursuant to
22 chapter 91, the removal of the remains shall be



1 overseen by a qualified archaeologist and a mitigation
2 plan shall be prepared by [~~the department~~] or with the
3 concurrence of the department."

4 2. By amending subsection (f) to read:

5 "(f) In cases where remains are archaeologically removed,
6 the department shall determine the place of relocation, after
7 consultation with the [~~appropriate council,~~] affected property
8 owners, representatives of the relevant ethnic group, and any
9 identified lineal descendants, as appropriate. Relocation shall
10 conform with requirements imposed by the department of health,
11 and may be accompanied by traditional ceremonies, as determined
12 by the lineal descendants, or, if no lineal descendants are
13 identified, the [~~appropriate council or~~] representatives of the
14 relevant ethnic group that the department deems appropriate.
15 Specific or special reinterment requests from lineal or cultural
16 descendants may be accommodated provided that the additional
17 expenses incurred are paid by the affected descendants."

18 SECTION 5. This Act does not affect rights and duties that
19 matured, penalties that were incurred, and proceedings that were
20 begun, before its effective date.

21 SECTION 6. Statutory material to be repealed is bracketed
22 and stricken. New statutory material is underscored.



1 SECTION 7. This Act shall take effect upon its approval.

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INTRODUCED BY:

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Report Title:

Burial Sites; Burial Councils; Inadvertent Discovery

Description:

Transfers jurisdiction of inadvertently discovered native Hawaiian burial sites from the department of land and natural resources to the appropriate island burial council. Provides sixty days for burial council to make a determination on burial site treatment or removal. Allows state historic preservation officer to make a determination if council is unable after sixty days.

