
HOUSE CONCURRENT RESOLUTION

REQUESTING THE CREATION OF A JOINT HOUSE AND SENATE INTERIM COMMITTEE TO STUDY THE FEASIBILITY OF ESTABLISHING A TRIBAL HISTORIC PRESERVATION OFFICE WITHIN THE DEPARTMENT OF LAND AND NATURAL RESOURCES AND REQUESTING A PROGRAM AND MANAGEMENT AUDIT OF THE STATE HISTORIC PRESERVATION DIVISION.

1 WHEREAS, the importance of conserving, preserving, and
2 developing historic and cultural objects and places for the
3 public is established in article IX, sections 7 and 9 of the
4 Hawaii Constitution; and

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6 WHEREAS, the importance of protecting historic and cultural
7 property for the education, inspiration, pleasure, and
8 enrichment of all citizens of the State is codified in state law
9 as chapter 6E, Hawaii Revised Statutes (HRS), which expressly
10 established within the Department of Land and Natural Resources
11 (DLNR) a comprehensive historic preservation program to be
12 administered by the State Historic Preservation Division (SHPD);
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15 WHEREAS, in 2002, based upon concerns about the management
16 and operations of SHPD, including delays in processing county,
17 state, and federal project applications and permits, recurrent
18 backlogs in reviewing compliance reports, difficulty in
19 contacting staff for information, and frustrations concerning
20 the burial sites program, the Legislature, by Senate Concurrent
21 Resolution No. 79, S.D. 1, requested the Auditor to conduct a
22 program and financial audit of SHPD; and

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24 WHEREAS, an audit of SHPD was submitted by the Auditor in
25 December 2002, to the Governor and the Legislature; and

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27 WHEREAS, the 2002 audit reflected a number of troubling
28 issues and problems within SHPD and recommended that the
29 Governor intervene to ensure that management of SHPD is improved



1 and that the Chairperson of the Board of Land and Natural
2 Resources (BLNR) and the administrator of SHPD take steps to
3 improve the protections of the State's historic properties and
4 to prevent the misuse, abuse, and theft of SHPD's limited
5 resources; and

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7 WHEREAS, despite the issues and recommendations of the
8 Auditor's report in 2002, complaints continue to be aimed at
9 SHPD for its recent handling of ancient remains and historic
10 sites, raising concern that the State's cultural and historic
11 resources are not being adequately protected and preserved; and
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13 WHEREAS, in the last several years in particular, SHPD's
14 protection of Hawaiian historic sites has been highly criticized
15 for being understaffed and lacking archeological expertise;
16 other complaints have included accusations of neglect in
17 maintaining reports and an inventory of historic sites, the
18 credibility or appropriateness of the credentials of SHPD's
19 previous Administrator, whose management style allegedly
20 resulted in at least 19 qualified employees leaving SHPD before
21 the Administrator resigned under pressure in 2007, based upon
22 issues relating primarily to complaints of mismanagement of
23 native Hawaiian burials and inappropriate treatment of ancestral
24 bones; and
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26 WHEREAS, despite the appointment of a new Administrator in
27 2008, the many complaints about SHPD's mishandling of historic
28 sites and ancient remains, including the recent bulldozing of a
29 heiau; management and staffing issues; and the continuation of
30 stalled projects because of backlogged paper work not completed
31 by SHPD, resulted in a federal assessment of SHPD by the
32 National Park Service (NPS) in July 2009; and
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34 WHEREAS, in response to the federal assessment by NPS, an
35 official of SHPD acknowledged that SHPD lacks qualified staff,
36 in part because it is unable to fill positions due to a hiring
37 freeze imposed by the Governor, and is hampered by defective
38 equipment, including SHPD's Geographical Information System,
39 which has not been updated since 2004, and a broken tracking
40 system; and
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42 WHEREAS, on March 19, 2010, NPS released its final report
43 which found, among other things, that SHPD is deficient in the
44 federal program areas of:



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- (1) Survey and inventory;
- (2) Review and compliance; and
- (3) National Register of Historic Places and Historic Preservation Planning,

largely relating to staffing and availability of information on important sites, giving SHPD two years to comply with NPS' mandated corrective actions, which, if not met, would result in suspension of their annual grant which comprises half of SHPD's budget; and

WHEREAS, a state audit at this time would outline the additional issues at the state level in which SHPD needs assistance, and the Legislature finds that an audit is warranted; and

WHEREAS, in 1992 the U.S. Congress adopted amendments to the National Historic Preservation Act (NHPA) (P.L. 102-575) that allow federally recognized Indian tribes to take on more formal responsibility for the preservation of significant historic properties on tribal lands; and

WHEREAS, Section 101(d)(2) of the NHPA allows tribes to assume any or all of the functions of a State Historic Preservation Officer (SHPO) with respect to tribal land, with the decision to participate or not participate in the program resting with the tribe; and

WHEREAS, a tribe may assume official responsibility for a number of functions aimed at the preservation of significant historic properties and those functions include identifying and maintaining inventories of culturally significant properties, nominating properties to national and tribal registers of historic places, conducting Section 106 reviews of federal agency projects on tribal lands, and conducting educational programs on the importance of preserving historic properties; and

WHEREAS, in accordance with Section 101(d)(2) of the NHPA, the tribes on the NPS' list have formally assumed the responsibilities of the SHPO for purposes of Section 106

1 compliance on their tribal lands and they have designated Tribal
2 Historic Preservation Officers (THPOs) with whom Federal
3 agencies consult in lieu of the SHPO for undertakings occurring
4 on, or affecting historic properties on, tribal lands; and
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6 WHEREAS, a number of tribes have designated THPOs to
7 address tribal concerns for the preservation, maintenance, and
8 revitalization of the culture and traditions of native peoples,
9 as of April 2008, seventy-six THPOs had been designated in
10 twenty-four different states; and
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12 WHEREAS, as a basic principle, THPOs understand the need
13 for the inherent right of Indian Nations to self-government; and
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15 WHEREAS, the National Association of Tribal Historic
16 Preservation Officers recognizes that the cultural and heritage
17 preservation interests of Indian Nations and their peoples often
18 extend beyond the boundaries of present day reservations and
19 therefore assists in activities relating to cultural and
20 environmental issues that extend onto non-tribal lands; and
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22 WHEREAS, pursuant to the NHPA, as amended, it is the policy
23 of the federal government, in partnership with the states, local
24 governments, Indian tribes, and private organizations and
25 individuals to assist state and local governments, Indian tribes
26 and native Hawaiian organizations, and the National Trust for
27 Historic Preservation in the United States to expand and
28 accelerate their historic preservation programs and activities;
29 and
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31 WHEREAS, for tribes that have not formally assumed the
32 responsibilities of the SHPO, the federal agency must consult a
33 designated representative of the tribe in addition to the SHPO
34 during review of projects occurring on, or affecting historic
35 properties on, their tribal lands; and
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37 WHEREAS, in Act 340, Session Laws of Hawaii 1993, the
38 Legislature placed the island of Kahoolawe, a place of
39 extraordinary cultural significance, into the public land trust
40 with the condition that the State would eventually transfer
41 management and control of Kahoolawe to a future sovereign native
42 Hawaiian entity upon its recognition by the United States and
43 the State; and
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1 WHEREAS, Act 340, Session Laws of Hawaii 1993, is an
2 acknowledgement by the State of the native Hawaiian people,
3 their history, culture, and their inherent right of sovereignty;
4 and

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6 WHEREAS, the Native Hawaiian Government Reorganization Act
7 of 2009 (Akaka Bill) is making its way through the U.S. Congress
8 and appears likely to be approved by Congress in the near
9 future; and

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11 WHEREAS, the Akaka Bill authorizes a process to extend
12 federal recognition to Hawaii's indigenous people for the
13 purposes of a government-to-government relationship with the
14 United States and a formal process to address many unresolved
15 issues confronting the State and its residents; and

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17 WHEREAS, there are obstacles for the native Hawaiian
18 people, including dependence on the State and the federal
19 government, which prevent the native Hawaiian people from
20 developing their full potential as a sovereign nation; and

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22 WHEREAS, the Legislature finds that it is necessary to
23 address the concerns raised by the NPS and to address historic
24 preservation issues related to native Hawaiian historic,
25 religious, and cultural properties; now, therefore,

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27 BE IT RESOLVED by the House of Representatives of the
28 Twenty-fifth Legislature of the State of Hawaii, Regular Session
29 of 2010, the Senate concurring, that the Auditor is requested to
30 conduct a program and management audit of the State Historic
31 Preservation Division; and

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33 BE IT FURTHER RESOLVED that the Auditor is requested to
34 submit a report to the Legislature no later than twenty days
35 prior to the convening of the Regular Session of 2011; and

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37 BE IT FURTHER RESOLVED that the Legislature is requested to
38 create a Joint House and Senate Interim Committee to study the
39 feasibility of establishing a Tribal Historic Preservation
40 Office within the Department of Land and Natural Resources; and

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42 BE IT FURTHER RESOLVED that the Joint House and Senate
43 Interim Committee is requested to be comprised of the current
44 chairs and vice-chairs of the House Committee on Hawaiian



1 Affairs and Senate Committee on Water, Land, Agriculture, and
2 Hawaiian Affairs; and

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4 BE IT FURTHER RESOLVED that the Joint House and Senate
5 Interim Committee is requested to:

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7 (1) Lead and encourage open discussions about establishing
8 by state law a Tribal Historic Preservation Office
9 within the DLNR for the purpose of assuming all
10 functions of the SHPD with respect to tribal lands
11 returned to the sovereign native Hawaiian entity upon
12 its recognition;
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14 (2) Follow and report on the status of the Akaka Bill and
15 its potential impact on existing state laws and
16 programs regarding the preservation of significant
17 historic properties on lands given special status by
18 the Akaka Bill; and
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20 (3) Seek input and comment from stakeholder organizations
21 including SHPD, the Office of Hawaiian Affairs, the
22 Native Hawaiian Legal Corporation, the Hawaii Historic
23 Foundation, the Department of Hawaiian Home Lands, and
24 any other organizations deemed appropriate by the
25 Joint House and Senate Interim Committee; and
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27 BE IT FURTHER RESOLVED that the Joint House and Senate
28 Interim Committee is requested to report its findings to the
29 Speaker of the House of Representatives and the Senate President
30 no later than twenty days prior to the convening of the Regular
31 Session of 2011; and
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33 BE IT FURTHER RESOLVED that certified copies of this
34 Resolution be transmitted to the Governor, the Speaker of the
35 House of Representatives, the Senate President, the Chairperson
36 of the Board of Land and Natural Resources, the Chairperson of
37 the Board of Trustees of the Office of Hawaiian Affairs, the
38 Chairperson of the Hawaiian Home Commission, the Administrator
39 of the State Historic Preservation Division, the Executive
40 Director of the Historic Hawaii Foundation, and the Executive
41 Director of the Native Hawaiian Legal Corporation.

