

STAND. COM. REP. NO. 1449

Honolulu, Hawaii

**MAR 30 2021**

RE: S.R. No. 171  
S.D. 1

Honorable Ronald D. Kouchi  
President of the Senate  
Thirty-First State Legislature  
Regular Session of 2021  
State of Hawaii

Sir:

Your Committees on Hawaiian Affairs and Water and Land, to which was referred S.R. No. 171 entitled:

"SENATE RESOLUTION REQUESTING THE WILLIAM S. RICHARDSON SCHOOL OF LAW TO ESTABLISH THE BURIAL SITES WORKING GROUP TO EXAMINE THE BURIAL SITES PROGRAM UNDER THE DEPARTMENT OF LAND AND NATURAL RESOURCES' STATE HISTORIC PRESERVATION DIVISION,"

beg leave to report as follows:

The purpose and intent of this measure is to request the William S. Richardson School of Law to establish the burial sites working group to examine the burial sites program under the Department of Land and Natural Resources' (DLNR) State Historic Preservation Division (SHPD).

Your Committees received testimony in support of this measure from Huliaupa'a and two individuals. Your Committee received comments on this measure from the Department of Land and Natural Resources, University of Hawai'i System, and one individual.

Your Committees find that chapter 6E, Hawaii Revised Statutes, provides that the State must provide leadership in preserving historic and cultural property in the spirit of stewardship and trusteeship for future generations and conduct activities, plans, and programs in a manner consistent with the preservation and enhancement of historic and cultural property. SHPD is entrusted with protecting Hawaii's unique and cultural



historic resources. The Island Burial Councils seek to augment current procedures relating to the proper care and protection of native Hawaiian burial sites found in the State by avoiding future disputes arising from the discovery of human skeletal remains, and providing additional protection for native Hawaiian burial sites of high preservation value.

For generations, native Hawaiians have cared for loved ones upon their passing by protecting iwi kūpuna. The relationship between the deceased and descendants is an ongoing connection, and when this connection is disrupted through disturbance, damages, or destruction of iwi kūpuna via development, vandalism, or other circumstances, there are direct spiritual implications to native Hawaiian descendants today.

Your Committees also find that historically, state audits of SHPD have revealed chronic leadership dysfunction, employee discord, a significant backlog of project reviews that has substantially undermined the historic preservation review process, particularly with respect to the protection of burial sites throughout the State; and refusal to comply with chapter 6E, Hawaii Revised Statutes, and chapter 13-300, Hawaii Administrative Rules, in fulfilling SHPD's public trust responsibilities to beneficiaries. Recently, the chairpersons of the Island Burial Councils alleged that systemic and chronic mismanagement by SHPD has effectively undermined their ability to provide protection and cultural care to unmarked Hawaiian burial sites. DLNR does not agree with these assertions. This mismanagement continues to undermine the ability of the councils to exercise their legally established authorities, rights, and responsibilities to the significant detriment of Hawaiian burial sites and cherished cultural properties.

Your Committees further find that DLNR disputes the claims of mismanagement and their testimony provides that:

- (1) The Hawaii, Maui/Lanai, and Oahu Burial Councils are supported by two Burial Sites Specialists each;
- (2) The History and Culture Branch Chief is available by phone as necessary when no in attendance at Island Burial Council meetings;



- (3) All staff are properly trained in relevant Hawaii Revised Statutes and Hawaii Administrative Rules affecting proceedings;
- (4) SHPD and the Deputy Attorney Generals (DAGs) assigned to SHPD are working on training materials concerning Sunshine Law and ethics matters for presentation at the May or June 2021 Island Burial Council meetings;
- (5) DAGs assigned to the Island Burial Council meetings regularly provide support by phone when they cannot be physically in attendance at a meeting and provide guidance and advice on specific matters on which the Island Burial Councils need legal advice;
- (6) Every allegation of burial disturbance reported to SHPD is investigated by staff and allegations are forwarded to DLNR's Division of Conservation and Resources Enforcement (DOCARE) for investigation and DAGs; and
- (7) SHPD has a burial sites inventory, including all burials identified during archaeological inventories and surveys, identified by descendants, and those inadvertently discovered. SHPD does not have the resources to carry on an active survey to identify burial sites throughout the State and there is a cultural belief that burials should not be identified, thereby making it difficult to implement a systematic survey effort.

Your Committees believe that the burial sites working group may bring clarity to the issues surrounding the allegations of systemic and chronic mismanagement of the Island Burial Councils by SHPD and the lack of consistent and independent legal representation by the Office of the Attorney General. The working group is requested to solicit community input from the Society of Hawaiian Archaeology, cultural resource management firms, lineal and cultural descendants, including groups, such as Kia'i Kaua'ula, Mālama Kakanilua, Ka Lāhui Hawai'i whose members are actively involved in protecting iwi kūpuna, burial, and repatriation efforts.

Your Committees have amended this measure by:



- (1) Replacing the University of Hawaii William S. Richardson School of Law with the Office of Hawaiian Affairs as the convenor of the burial sites working group;
- (2) Including the University of Hawaii William S. Richardson School of Law as a member of the burial sites working group;
- (3) Amending its title in accordance with its amended purpose; and
- (4) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the records of votes of the members of your Committees on Hawaiian Affairs and Water and Land that are attached to this report, your Committees concur with the intent and purpose of S.R. No. 171, as amended herein, and recommend its adoption in the form attached hereto as S.R. No. 171, S.D. 1.

Respectfully submitted on  
behalf of the members of the  
Committees on Hawaiian Affairs  
and Water and Land,

  
LORRAINE R. INOUE, Chair

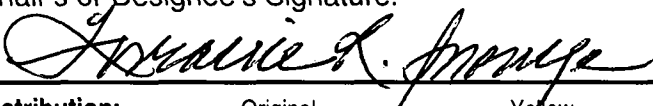
  
MAILE S.L. SHIMABUKURO, Chair





The Senate  
 Thirty-First Legislature  
 State of Hawai'i

**Record of Votes**  
**Committee on Water and Land**  
**WTL**

Bill / Resolution No.:* <i>SR 171</i>	Committee Referral: <i>HWR/WTL</i>	Date: <i>3-30-2021</i>		
<input checked="" type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: <i>Pass with amendments</i>				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
INOUE, Lorraine R. (C)	✓			
KEITH-AGARAN, Gilbert S.C. (VC)				✓
MISALUCHA, Bennette E.	✓			
RIVIERE, Gil				✓
FEVELLA, Kurt	✓			✓ <i>WFA</i>
<b>TOTAL</b>	<i>3</i>			<i>2</i>
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: 				
<b>Distribution:</b> Original    Yellow    Pink    Goldenrod File with Committee Report    Clerk's Office    Drafting Agency    Committee File Copy				

\*Only one measure per Record of Votes



The Senate  
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**Record of Votes**  
**Committee on Water and Land**  
**WTL**

Bill / Resolution No.:* <b>SR 171</b>	Committee Referral: <b>MWN/WTL</b>	Date: <b>3/23/21</b>
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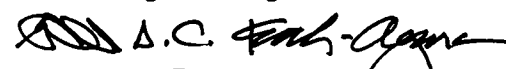
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Members	Aye	Aye (WR)	Nay	Excused
INOUYE, Lorraine R. (C)	X			
KEITH-AGARAN, Gilbert S.C. (VC)	X			
MISALUCHA, Bennette E.	X			
RIVIERE, Gil	X			
FEVELLA, Kurt				X
<b>TOTAL</b>	<b>4</b>			<b>1</b>

Recommendation:    
 Adopted    
 Not Adopted

Chair's or Designee's Signature:  


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