

PEA-4(2) ✓

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MEMO TO: PEA-4(2) File

F R O M: Alike Atay, Councilmember

Alike Atay

SUBJECT: **TRANSMITTAL OF LEGISLATIVE PROPOSAL RELATING TO
2019 MAUI COUNTY LEGISLATIVE PACKAGE** (PAF 18-262)

The attached legislative proposal pertains to Item 4(2) on the Committee's agenda.

paf:jgk:18-262c

Attachment

Resolution

No. _____

APPROVING FOR INCLUSION IN THE
2019 MAUI COUNTY LEGISLATIVE PACKAGE A
STATE BILL TO ALLOW PRE-CONTACT NATIVE
HAWAIIAN BURIAL SITES TO BE DEDICATED
AS CEMETERIES

WHEREAS, while pre-contact Native Hawaiian burial practices do not conform to modern-era burial practices, all human remains should be honored and respected; and

WHEREAS, the State law does not recognize Native Hawaiian burial sites as cemeteries, and does not grant them the same level of benefits and treatment as modern cemeteries; and

WHEREAS, to protect, respect, and honor the ancestral remains of Native Hawaiians, the State Legislature should amend Chapter 441, Hawaii Revised Statutes, to allow pre-contact Native Hawaiian burials to be dedicated as cemeteries; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That the proposed State bill, attached as Exhibit "A," to allow pre-contact Native Hawaiian burials to be dedicated as modern cemeteries, is approved for inclusion in the 2019 Maui County Legislative Package; and
2. That certified copies of this resolution be transmitted to the Mayor, County of Maui; the Governor, State of Hawaii; the Senate President, State of Hawaii; and the Speaker of the House of Representatives, State of Hawaii.

A BILL FOR AN ACT

RELATING TO CEMETERIES.

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

1 SECTION 1. The legislature finds that current legislation
2 does not define nor address Native Hawaiian burial areas that
3 should be considered cemeteries. These may have been established
4 as a result of pre-contact Native Hawaiian burial practices or
5 severe declines in native population due to war, pestilence, or
6 a natural disaster, and are not defined or treated as cemeteries
7 under current State law.

8 Accordingly, the purposes of this Act are to define the
9 burial sites of pre-contact Native Hawaiians as cemeteries and
10 to allow these sites to be dedicated as cemeteries under State
11 law.

12 SECTION 2. Section 441-1, Hawaii Revised Statutes, is
13 amended by amending the definition of "cemetery" to read:

14 "Cemetery" means any property, or part interest therein,
15 dedicated to and used or intended to be used for the permanent
16 interment of human remains. It may be a burial park with one or
17 more plots, for earth interment; a mausoleum with one or more
18 vaults or crypt interments; a structure or place with one or

1 more niches, recesses, or other receptacles for the interment of
2 cremated remains, or any combination of one or more thereof. It
3 may also be pre-contact Native Hawaiian burial spaces that
4 contain bones or bone fragments which may have been a
5 traditional burial area or created by a battle or other severe
6 decline in population that resulted in bodies remaining where
7 they laid."

8 SECTION 3. Section 441-1, Hawaii Revised Statutes, is
9 amended by amending the definition of "cemetery authority" to
10 read:

11 "Cemetery authority" means any person who undertakes to
12 establish, maintain, manage, operate, improve, or conduct a
13 cemetery to inter human remains; or offers perpetual care of the
14 cemetery; or sells or holds money in trust for pre-need
15 interment services, whether or not the person undertakes such
16 activity for profit; provided that this shall not apply to the
17 designated trustee of the funds. For cemeteries consisting of
18 pre-contact Native Hawaii burials, the cemetery authority shall
19 be a lineal descendant of a Native Hawaiian person interred in a
20 pre-contact burial in the cemetery or a member of an aha moku
21 council."

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1 SECTION 4. Section 441-1, Hawaii Revised Statutes, is
2 amended by amending the definition of "cemetery property" to
3 read:

4 "Cemetery property" means any property, or part or
5 interest therein, dedicated to, used or intended to be used for,
6 the permanent interment of human remains. It may be a plot or
7 plots in a burial park for earth interment; a place or places in
8 a mausoleum for vault or crypt interment; one or more niches,
9 recesses, or other receptacles for the interment of cremated
10 remains; or any combination of one or more thereof. It may also
11 be burials that do not conform to modern burial practices due to
12 pre-contact Native Hawaiian practices and protocols."

13 SECTION 5. Section 441-1, Hawaii Revised Statutes, is
14 amended by amending the definition of "perpetual care" to read:

15 "Perpetual care" by whatever term denominated by a
16 cemetery authority, including but not limited to endowment care,
17 endowment fund care, and free maintenance, means keeping the sod
18 in repair, keeping all places wherein interments have been made
19 [~~in proper order~~], caring for the trees and shrubs, and the
20 general maintenance, care, preservation and embellishment of a
21 cemetery, regularly and continually without limitation as to
22 time."

1 SECTION 6. Section 441-3, Hawaii Revised Statutes, is
2 amended by amending subsection (b) to read as follows:

3 "(b) The cemetery authority shall also maintain a
4 permanent, accurate record of the identity of each person whose
5 remains are located in the cemetery, together with the
6 corresponding unique identifier that indicates the location of
7 the person's remains within the cemetery[-]; provided that no
8 such record need be kept for remains interred within pre-contact
9 Native Hawaiian burials. The records required by this section
10 shall be prepared and maintained in a manner that will enable
11 the cemetery authority to timely respond to inquiries from the
12 public or the department regarding the location of a person's
13 remains within the cemetery.

14 SECTION 7. Section 441-9, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "**§441-9 Dedicated property exempt from improvement**
17 **assessment.** All property dedicated to cemetery purposes pursuant
18 to this chapter, including roads, alleys, [~~and~~] walks,
19 greenways, and locations designated to be preserved in place,
20 but excluding property on which there are family burial plots,
21 shall be exempt from public improvement assessments."

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1 SECTION 8. Section 441-13, Hawaii Revised Statutes, is
2 amended to read as follow:
3 **"§441-13 Sale of plots after dedication; sale of**
4 **encumbered plots prohibited unless encumbrance subordinate to**
5 **dedication.** After property is dedicated pursuant to this
6 chapter, a cemetery authority may sell, transfer, and convey
7 plots, crypts, or niches thereof, which plots, crypts, or niches
8 shall be described by reference to the map or plat, or amended
9 map or plat, filed in accordance with section 441-3 or 441-8. No
10 plot, crypt, or niche shall be sold, transferred, conveyed, or
11 otherwise disposed of, or offered for sale, transfer,
12 conveyance, or other disposition, unless the property on or in
13 which the plot, crypt, or niche is included has been dedicated
14 pursuant to this chapter, nor shall any plot, crypt, or niche be
15 sold, transferred, conveyed, or otherwise disposed of, or
16 offered for sale, transfer, conveyance, or other disposition,
17 unless the property on or in which the plot, crypt, or niche is
18 included shall either be free and clear of all encumbrances or
19 there has been recorded the written consent of every
20 encumbrancer thereof that the encumbrancer's encumbrance shall
21 be subject and subordinate to the dedication of the property to
22 cemetery purposes and the title of any plot, crypt, or niche

1 owner. Cemeteries consisting of pre-contact Native Hawaiian
2 burials shall not place any plots, crypts, or niches for sale,
3 transfer, conveyance, or other disposition.

4 SECTION 9. Section 441-14, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "§441-14 **Dedication to cemetery purposes does not violate**
7 **laws against perpetuities.** Dedication to cemetery purposes
8 pursuant to this chapter is not invalid as violating any laws
9 against perpetuities or the suspension of the power of
10 alienation of title to or use of property, but is expressly
11 permitted and deemed to be in respect for the dead, recognizing
12 the cultural burial practices and protocols of Native Hawaiians,
13 a provision for the interment of human remains, and a duty to
14 and for the benefit of the general public."

15 SECTION 10. Section 441-15, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "§441-15 **Removal of dedication.** (a) Property dedicated
18 to cemetery purposes shall be held and used exclusively for
19 cemetery purposes unless and until the dedication is removed
20 from all or any part of it by an order and decree of the circuit
21 court of the judicial circuit in which the property is located
22 and the decree is filed in the bureau of conveyances or land

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1 court in a proceeding brought by the cemetery authority for that
2 purpose and upon notice of hearing and proof satisfactory to the
3 court:

4 (1) That no interments were made in or that all interments
5 have been removed from that portion of the property
6 from which dedication is sought to be removed;

7 (2) That the portion of the property from which dedication
8 is sought to be removed is not being used for
9 interment of human remains.

10 (b) Dedicated cemeteries consisting of pre-contact Native
11 Hawaiian burials shall not be eligible for dedication removal."

12 SECTION 11. Section 441-20, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "§441-20 License required to act as cemetery or pre-need
15 funeral authority. No person shall act as a cemetery or pre-need
16 funeral authority without a license previously issued by the
17 director in compliance with this chapter and the rules of the
18 director; provided that the director shall exempt any cemetery
19 authority upon its proof satisfactory to the director that it
20 will not make any additional interments, except for re-
21 interments of pre-contact Native Hawaiian remains that were

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1 previously removed from their burials on the cemetery
2 authority's property."

3 SECTION 12. Statutory material to be deleted is bracketed
4 and in strikethrough. New statutory material is underscored.

5 SECTION 13. This Act shall take effect upon its approval.

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INTRODUCED BY: _____

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