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2018 NOV 27 AM 7:46

OFFICE OF THE
COUNTY COUNCIL

November 27, 2018

MEMO TO: PEA-4(2) File

F R O M: Alika Atay, Councilmember 

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:18-262e

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 burial sites 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
4 established as a result of pre-contact Native Hawaiian burial
5 practices or severe declines in native population due to war,
6 pestilence, or a natural disaster, and are not defined or
7 treated as cemeteries 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 as
14 follows:

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

1 vaults or crypt interments; a structure or place with one or
2 more niches, recesses, or other receptacles for the interment of
3 cremated remains, or any combination of one or more thereof. It
4 may also be pre-contact Native Hawaiian burial spaces,
5 containing bones or bone fragments, resulting from a battle or
6 other severe decline in population that caused bodies to remain
7 where they lay."

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

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 Hawaiian burials, there must be a cemetery
19 authority that is a lineal descendant of a Native Hawaiian
20 person interred in a pre-contact burial in the cemetery or a
21 member of an aha moku council, and there may be a cemetery
22 authority that is a member of an island burial council."

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

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 a burial or burials that do not conform to modern burial
12 practices because of pre-contact Native Hawaiian practices and
13 protocols."

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

17 "Perpetual care" by whatever term denominated by a
18 cemetery authority, including but not limited to endowment care,
19 endowment fund care, and free maintenance, means keeping the sod
20 in repair, keeping all places wherein interments have been made
21 [~~in proper order~~], caring for the trees and shrubs, and the
22 general maintenance, care, preservation and embellishment of a

1 cemetery, regularly and continually without limitation as to
2 time."

3 SECTION 6. Section 441-1, Hawaii Revised Statutes, is
4 amended by adding a new definition to be appropriately inserted
5 and to read as follows:

6 "Pre-contact" means the period prior to the arrival of
7 Captain James Cook in Hawaii in 1778 as determined by the state
8 historic preservation division."

9 SECTION 7. Section 441-3, Hawaii Revised Statutes, is
10 amended by amending subsection (b) to read as follows:

11 "(b) The cemetery authority shall also maintain a
12 permanent, accurate record of the identity of each person whose
13 remains are located in the cemetery, together with the
14 corresponding unique identifier that indicates the location of
15 the person's remains within the cemetery[-]; provided that the
16 cemetery authority need not keep records or unique identifiers
17 as already maintained by the state historic preservation
18 division for remains interred within pre-contact Native Hawaiian
19 burials. The records required by this section shall be prepared
20 and maintained in a manner that will enable the cemetery
21 authority to timely respond to inquiries from the public or the

1 department regarding the location of a person's remains within
2 the cemetery.

3 SECTION 8. Section 441-9, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "§441-9 Dedicated property exempt from improvement
6 assessment. All property dedicated to cemetery purposes
7 pursuant to this chapter, including roads, alleys, [and] walks,
8 greenways, and locations designated to be preserved in place,
9 but excluding property on which there are family burial plots,
10 shall be exempt from public improvement assessments."

11 SECTION 9. Section 441-13, Hawaii Revised Statutes, is
12 amended to read as follow:

13 "§441-13 Sale of plots after dedication; sale of
14 encumbered plots prohibited unless encumbrance subordinate to
15 dedication. After property is dedicated pursuant to this
16 chapter, a cemetery authority may sell, transfer, and convey
17 plots, crypts, or niches thereof, which plots, crypts, or niches
18 shall be described by reference to the map or plat, or amended
19 map or plat, filed in accordance with section 441-3 or 441-8.
20 No plot, crypt, or niche shall be sold, transferred, conveyed,
21 or otherwise disposed of, or offered for sale, transfer,
22 conveyance, or other disposition, unless the property on or in

____.B. NO. _____

1 which the plot, crypt, or niche is included has been dedicated
2 pursuant to this chapter, nor shall any plot, crypt, or niche be
3 sold, transferred, conveyed, or otherwise disposed of, or
4 offered for sale, transfer, conveyance, or other disposition,
5 unless the property on or in which the plot, crypt, or niche is
6 included shall either be free and clear of all encumbrances or
7 there has been recorded the written consent of every
8 encumbrancer thereof that the encumbrancer's encumbrance shall
9 be subject and subordinate to the dedication of the property to
10 cemetery purposes and the title of any plot, crypt, or niche
11 owner. Cemeteries consisting of pre-contact Native Hawaiian
12 burials that were created as a result of a battle or other
13 severe decline in population that resulted in bodies remaining
14 where they lay shall not place any plots, crypts, or niches for
15 sale, transfer, conveyance, or other disposition.

16 SECTION 10. Section 441-14, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "§441-14 Dedication to cemetery purposes does not violate
19 laws against perpetuities. Dedication to cemetery purposes
20 pursuant to this chapter is not invalid as violating any laws
21 against perpetuities or the suspension of the power of
22 alienation of title to or use of property, but is expressly

____.B. NO. _____

1 permitted and deemed to be in respect for the dead, recognizing
2 the cultural burial practices and protocols of Native Hawaiians,
3 a provision for the interment of human remains, and a duty to
4 and for the benefit of the general public."

5 SECTION 11. Section 441-15, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "§441-15 **Removal of dedication.** (a) Property dedicated
8 to cemetery purposes shall be held and used exclusively for
9 cemetery purposes unless and until the dedication is removed
10 from all or any part of it by an order and decree of the circuit
11 court of the judicial circuit in which the property is located
12 and the decree is filed in the bureau of conveyances or land
13 court in a proceeding brought by the cemetery authority for that
14 purpose and upon notice of hearing and proof satisfactory to the
15 court:

- 16 (1) That no interments were made in or that all interments
17 have been removed from that portion of the property
18 from which dedication is sought to be removed;
- 19 (2) That the portion of the property from which dedication
20 is sought to be removed is not being used for
21 interment of human remains.

.B. NO.

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

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

5 "**§441-20 License required to act as cemetery or pre-need**
6 **funeral authority.** No person shall act as a cemetery or pre-
7 need funeral authority without a license previously issued by
8 the director in compliance with this chapter and the rules of
9 the director; provided that the director shall exempt any
10 cemetery authority upon its proof satisfactory to the director
11 that it will not make any additional interments[.], except for
12 re-interments of pre-contact Native Hawaiian remains that were
13 previously removed from their burials on the cemetery
14 authority's property."

15 SECTION 13. Statutory material to be deleted is bracketed
16 and in strikethrough. New statutory material is underscored.

17 SECTION 14. This Act shall take effect upon its approval.

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INTRODUCED BY: _____

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