

Calendar No. 568112TH CONGRESS
2^D SESSION**S. 675****[Report No. 112-251]**

To express the policy of the United States regarding the United States relationship with Native Hawaiians and to provide a process for the recognition by the United States of the Native Hawaiian governing entity.

IN THE SENATE OF THE UNITED STATES

MARCH 30, 2011

Mr. AKAKA (for himself, Mr. INOUE, Mr. BEGICH, and Ms. MURKOWSKI) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

DECEMBER 17, 2012

Reported by Mr. AKAKA, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]**A BILL**

To express the policy of the United States regarding the United States relationship with Native Hawaiians and to provide a process for the recognition by the United States of the Native Hawaiian governing entity.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Native Hawaiian Gov-
3 ernment Reorganization Act of 2011”.

4 **SEC. 2. FINDINGS.**

5 Congress finds that—

6 (1) the Constitution vests Congress with the au-
7 thority to address the conditions of the indigenous,
8 native people of the United States and the Supreme
9 Court has held that under the Indian Commerce,
10 Treaty, Supremacy, and Property Clauses, and the
11 War Powers, Congress may exercise that power to
12 rationally promote the welfare of the native peoples
13 of the United States so long as the native people are
14 a “distinctly native community”;

15 (2) Native Hawaiians, the native people of the
16 Hawaiian archipelago that is now part of the United
17 States, are 1 of the indigenous, native peoples of the
18 United States, and the Native Hawaiian people are
19 a distinctly native community;

20 (3) the United States has a special political and
21 legal relationship with, and has long enacted legisla-
22 tion to promote the welfare of, the native peoples of
23 the United States, including the Native Hawaiian
24 people;

25 (4) under the authority of the Constitution, the
26 United States concluded a number of treaties with

1 the Kingdom of Hawaii, and from 1826 until 1893,
2 the United States—

3 (A) recognized the sovereignty of the King-
4 dom of Hawaii as a nation;

5 (B) accorded full diplomatic recognition to
6 the Kingdom of Hawaii; and

7 (C) entered into treaties and conventions
8 of peace, friendship and commerce with the
9 Kingdom of Hawaii to govern trade, commerce,
10 and navigation in 1826, 1842, 1849, 1875, and
11 1887;

12 (5) pursuant to the Hawaiian Homes Commis-
13 sion Act, 1920 (42 Stat. 108, chapter 42), the
14 United States set aside approximately 203,500 acres
15 of land in trust to better address the conditions of
16 Native Hawaiians in the Federal territory that later
17 became the State of Hawaii and in enacting the Ha-
18 waiian Homes Commission Act, 1920, Congress ac-
19 knowledged the Native Hawaiian people as a native
20 people of the United States, as evidenced by the
21 Committee Report, which notes that Congress relied
22 on the Indian affairs power and the War Powers, in-
23 cluding the power to make peace;

24 (6) by setting aside 203,500 acres of land in
25 trust for Native Hawaiian homesteads and farms;

1 the Hawaiian Homes Commission Act, 1920, assists
2 the members of the Native Hawaiian community in
3 maintaining distinctly native communities through-
4 out the State of Hawaii;

5 (7) approximately 9,800 Native Hawaiian fami-
6 lies reside on the Hawaiian Home Lands, and ap-
7 proximately 25,000 Native Hawaiians who are eligi-
8 ble to reside on the Hawaiian Home Lands are on
9 a waiting list to receive assignments of Hawaiian
10 Home Lands;

11 (8)(A) in 1959, as part of the compact with the
12 United States admitting Hawaii into the Union,
13 Congress delegated the authority and responsibility
14 to administer the Hawaiian Homes Commission Act,
15 1920, lands in trust for Native Hawaiians and es-
16 tablished a new public trust (commonly known as
17 the “ceded lands trust”), for 5 purposes, 1 of which
18 is the betterment of the conditions of Native Hawai-
19 ians, and Congress thereby reaffirmed its recogni-
20 tion of the Native Hawaiians as a distinctly native
21 community with a direct lineal and historical succes-
22 sion to the aboriginal, indigenous people of Hawaii;

23 (B) the public trust consists of lands, including
24 submerged lands, natural resources, and the reve-
25 nues derived from the lands; and

1 (C) the assets of this public trust have never
2 been completely inventoried or segregated;

3 (9) Native Hawaiians have continuously sought
4 access to the ceded lands in order to establish and
5 maintain native settlements and distinct native com-
6 munities throughout the State;

7 (10) the Hawaiian Home Lands and other
8 ceded lands provide important native land reserves
9 and resources for the Native Hawaiian community
10 to maintain the practice of Native Hawaiian culture,
11 language, and traditions, and for the continuity, sur-
12 vival, and economic self-sufficiency of the Native
13 Hawaiian people as a distinctly native political com-
14 munity;

15 (11) Native Hawaiians continue to maintain
16 other distinctly native areas in Hawaii, including na-
17 tive lands that date back to the ali'i and kuleana
18 lands reserved under the Kingdom of Hawaii;

19 (12) through the Sovereign Council of Hawaiian
20 Homelands Assembly, Native Hawaiian civic associa-
21 tions, charitable trusts established by the Native Ha-
22 waiian ali'i, nonprofit native service providers and
23 other community associations, the Native Hawaiian
24 people have actively maintained native traditions and
25 customary usages throughout the Native Hawaiian

1 community and the Federal and State courts have
2 continuously recognized the right of the Native Ha-
3 waiian people to engage in certain customary prac-
4 tices and usages on public lands;

5 (13) on November 23, 1993, Public Law 103-
6 150 (107 Stat. 1510) (commonly known as the
7 “Apology Resolution”) was enacted into law, extend-
8 ing an apology on behalf of the United States to the
9 native people of Hawaii for the United States’ role
10 in the overthrow of the Kingdom of Hawaii;

11 (14) the Apology Resolution acknowledges that
12 the overthrow of the Kingdom of Hawaii occurred
13 with the active participation of agents and citizens
14 of the United States, and further acknowledges that
15 the Native Hawaiian people never directly relin-
16 quished to the United States their claims to their in-
17 herent sovereignty as a people over their national
18 lands, either through the Kingdom of Hawaii or
19 through a plebiscite or referendum;

20 (15)(A) the Apology Resolution expresses the
21 commitment of Congress and the President—

22 (i) to acknowledge the ramifications of the
23 overthrow of the Kingdom of Hawaii; and

24 (ii) to support reconciliation efforts be-
25 tween the United States and Native Hawaiians;

1 (B) Congress established the Office of Hawai-
2 ian Relations within the Department of the Interior
3 with 1 of its purposes being to consult with Native
4 Hawaiians on the reconciliation process; and

5 (C) the United States has the duty to reconcile
6 and reaffirm its friendship with the Native Hawaiian
7 people because, among other things, the United
8 States Minister and United States naval forces par-
9 ticipated in the overthrow of the Kingdom of Ha-
10 warii;

11 (16)(A) despite the overthrow of the Govern-
12 ment of the Kingdom of Hawaii, Native Hawaiians
13 have continued to maintain their separate identity as
14 a single distinctly native political community
15 through cultural, social, and political institutions,
16 and to give expression to their rights as native peo-
17 ple to self-determination, self-governance, and eco-
18 nomic self-sufficiency; and

19 (B) there is clear continuity between the ab-
20 original, indigenous, native people of the Kingdom of
21 Hawaii and their successors, the Native Hawaiian
22 people today;

23 (17) Native Hawaiians have also given expres-
24 sion to their rights as native people to self-deter-

1 mination, self-governance, and economic self-suffi-
2 ciency—

3 (A) through the provision of governmental
4 services to Native Hawaiians, including the pro-
5 vision of—

6 (i) health care services;

7 (ii) educational programs;

8 (iii) employment and training pro-
9 grams;

10 (iv) economic development assistance
11 programs;

12 (v) children's services;

13 (vi) conservation programs;

14 (vii) fish and wildlife protection;

15 (viii) agricultural programs;

16 (ix) native language immersion pro-
17 grams;

18 (x) native language immersion schools
19 from kindergarten through high school;

20 (xi) college and master's degree pro-
21 grams in native language immersion in-
22 struction; and

23 (xii) traditional justice programs; and

1 (B) by continuing their efforts to enhance
2 Native Hawaiian self-determination and local
3 control;

4 (18) Native Hawaiian people are actively en-
5 gaged in Native Hawaiian cultural practices, tradi-
6 tional agricultural methods, fishing and subsistence
7 practices, maintenance of cultural use areas and sa-
8 cred sites, protection of burial sites, and the exercise
9 of their traditional rights to gather medicinal plants
10 and herbs, and food sources;

11 (19) the Native Hawaiian people wish to pre-
12 serve, develop, and transmit to future generations of
13 Native Hawaiians their lands and Native Hawaiian
14 political and cultural identity in accordance with
15 their traditions, beliefs, customs and practices, lan-
16 guage, and social and political institutions, to con-
17 trol and manage their own lands, including ceded
18 lands, and to achieve greater self-determination over
19 their own affairs;

20 (20) this Act provides a process within the
21 framework of Federal law for the Native Hawaiian
22 people to exercise their inherent rights as a distinct,
23 indigenous, native community to reorganize a single
24 unified Native Hawaiian governing entity for the

1 purpose of giving expression to their rights as a na-
2 tive people to self-determination and self-governance;

3 (21) Congress—

4 (A) has declared that the United States
5 has a special political and legal relationship for
6 the welfare of the native peoples of the United
7 States, including Native Hawaiians;

8 (B) has identified Native Hawaiians as an
9 indigenous, distinctly native people of the
10 United States within the scope of its authority
11 under the Constitution, and has enacted scores
12 of statutes on their behalf; and

13 (C) has delegated broad authority to the
14 State of Hawaii to administer some of the
15 United States' responsibilities as they relate to
16 the Native Hawaiian people and their lands;

17 (22) the United States has recognized and re-
18 affirmed the special political and legal relationship
19 with the Native Hawaiian people through the enact-
20 ment of the Act entitled, "An Act to provide for the
21 admission of the State of Hawaii into the Union",
22 approved March 18, 1959 (Public Law 86-3, 73
23 Stat. 4), by—

24 (A) ceding to the State of Hawaii title to
25 the public lands formerly held by the United

1 States, and mandating that those lands be held
2 as a public trust for 5 purposes, 1 of which is
3 for the betterment of the conditions of Native
4 Hawaiians; and

5 (B) transferring the United States respon-
6 sibility for the administration of the Hawaiian
7 Home Lands to the State of Hawaii, but retain-
8 ing the exclusive right of the United States to
9 consent to any actions affecting the lands in-
10 cluded in the trust and any amendments to the
11 Hawaiian Homes Commission Act, 1920 (42
12 Stat. 108, chapter 42), that are enacted by the
13 legislature of the State of Hawaii affecting the
14 beneficiaries under the Act;

15 ~~(23)~~ the United States has continually recog-
16 nized and reaffirmed that—

17 (A) Native Hawaiians have a direct genea-
18 logical, cultural, historic, and land-based con-
19 nection to their forebears, the aboriginal, indig-
20 enous, native people who exercised original sov-
21 ereignty over the Hawaiian Islands;

22 (B) Native Hawaiians have never relin-
23 quished their claims to sovereignty or their sov-
24 ereign lands;

1 (C) the United States extends services to
2 Native Hawaiians because of their unique sta-
3 tus as the native people of a prior-sovereign na-
4 tion with whom the United States has a special
5 political and legal relationship; and

6 (D) the special relationship of American
7 Indians, Alaska Natives, and Native Hawaiians
8 to the United States arises out of their status
9 as aboriginal, indigenous, native people of the
10 United States; and

11 (24) the State of Hawaii supports the reaffir-
12 mation of the special political and legal relationship
13 between the Native Hawaiian governing entity and
14 the United States, as evidenced by 2 unanimous res-
15 olutions enacted by the Hawaii State Legislature in
16 the 2000 and 2001 sessions of the Legislature and
17 by the testimony of the Governor of the State of Ha-
18 waii before the Committee on Indian Affairs of the
19 Senate on February 25, 2003, and March 1, 2005.

20 **SEC. 3. DEFINITIONS.**

21 In this Act:

22 (1) **ABORIGINAL, INDIGENOUS, NATIVE PEO-**
23 **PLE.**—The term “aboriginal, indigenous, native peo-
24 ple” means a people whom Congress has recognized
25 as the original inhabitants of the lands that later be-

1 came part of the United States and who exercised
2 sovereignty in the areas that later became part of
3 the United States.

4 (2) APOLOGY RESOLUTION.—The term “Apol-
5 ogy Resolution” means Public Law 103–150 (107
6 Stat. 1510), a Joint Resolution extending an apol-
7 ogy to Native Hawaiians on behalf of the United
8 States for the participation of agents of the United
9 States in the January 17, 1893, overthrow of the
10 Kingdom of Hawaii.

11 (3) COMMISSION.—The term “Commission”
12 means the Commission established under section
13 8(b).

14 (4) COUNCIL.—The term “Council” means the
15 Native Hawaiian Interim Governing Council estab-
16 lished under section 8(c)(2).

17 (5) INDIAN PROGRAM OR SERVICE.—

18 (A) IN GENERAL.—The term “Indian pro-
19 gram or service” means any federally funded or
20 authorized program or service provided to an
21 Indian tribe (or member of an Indian tribe) be-
22 cause of the status of the members of the In-
23 dian tribe as Indians.

24 (B) INCLUSIONS.—The term “Indian pro-
25 gram or service” includes a program or service

1 provided by the Bureau of Indian Affairs, the
2 Indian Health Service, or any other Federal
3 agency.

4 (6) INDIAN TRIBE.—The term “Indian tribe”
5 has the meaning given the term in section 4 of the
6 Indian Self-Determination and Education Assistance
7 Act (25 U.S.C. 450b).

8 (7) INDIGENOUS, NATIVE PEOPLE.—The term
9 “indigenous, native people” means the lineal de-
10 scendants of the aboriginal, indigenous, native peo-
11 ple of the United States.

12 (8) INTERAGENCY COORDINATING GROUP.—The
13 term “Interagency Coordinating Group” means the
14 Native Hawaiian Interagency Coordinating Group
15 established under section 6.

16 (9) NATIVE HAWAIIAN GOVERNING ENTITY.—
17 The term “Native Hawaiian governing entity”
18 means the governing entity organized pursuant to
19 this Act by the qualified Native Hawaiian constitu-
20 ents.

21 (10) NATIVE HAWAIIAN MEMBERSHIP ORGANI-
22 ZATION.—The term “Native Hawaiian Membership
23 Organization” means an organization that—

24 (A) serves and represents the interests of
25 Native Hawaiians, has as a primary and stated

1 purpose the provision of services to Native Ha-
2 waiians, and has expertise in Native Hawaiian
3 affairs;

4 (B) has leaders who are elected democrat-
5 ically, or selected through traditional Native
6 leadership practices, by members of the Native
7 Hawaiian community;

8 (C) advances the cause of Native Hawai-
9 ians culturally, socially, economically, or politi-
10 cally;

11 (D) is a membership organization or asso-
12 ciation; and

13 (E) has an accurate and reliable list of Na-
14 tive Hawaiian members.

15 (11) OFFICE.—The term “Office” means the
16 United States Office for Native Hawaiian Relations
17 established by section 5(a).

18 (12) QUALIFIED NATIVE HAWAIIAN CON-
19 STITUENT.—For the purposes of establishing the
20 roll authorized under section 8, and prior to the rec-
21 ognition by the United States of the Native Hawai-
22 ian governing entity, the term “qualified Native Ha-
23 waiian constituent” means an individual who the
24 Commission determines has satisfied the following

1 criteria and who makes a written statement certi-
 2 fying that he or she—

3 (A) is—

4 (i) an individual who is ~~1~~ of the indig-
 5 enous, native people of Hawaii and who is
 6 a direct lineal descendant of the aboriginal,
 7 indigenous, native people who—

8 (I) resided in the islands that
 9 now comprise the State of Hawaii on
 10 or before January 1, 1893; and

11 (II) occupied and exercised sov-
 12 ereignty in the Hawaiian archipelago,
 13 including the area that now con-
 14 stitutes the State of Hawaii; or

15 (ii) an individual who is ~~1~~ of the in-
 16 digenous, native people of Hawaii and who
 17 was eligible in 1921 for the programs au-
 18 thorized by the Hawaiian Homes Commis-
 19 sion Act, 1920 (42 Stat. 108, chapter 42);
 20 or a direct lineal descendant of that indi-
 21 vidual;

22 (B) wishes to participate in the reorganiza-
 23 tion of the Native Hawaiian governing entity;

24 (C) is 18 years of age or older;

25 (D) is a citizen of the United States; and

1 (E) maintains a significant cultural, social,
2 or civic connection to the Native Hawaiian com-
3 munity, as evidenced by satisfying 2 or more of
4 the following 10 criteria:

5 (i) Resides in the State of Hawaii.

6 (ii) Resides outside the State of Ha-
7 wahi and—

8 (I)(aa) currently serves or served
9 as (or has a parent or spouse who
10 currently serves or served as) a mem-
11 ber of the Armed Forces or as an em-
12 ployee of the Federal Government;
13 and

14 (bb) resided in the State of Ha-
15 wahi prior to the time he or she (or
16 such parent or spouse) left the State
17 of Hawaii to serve as a member of the
18 Armed Forces or as an employee of
19 the Federal Government; or

20 (II)(aa) currently is or was en-
21 rolled (or has a parent or spouse who
22 currently is or was enrolled) in an ac-
23 credited institution of higher edu-
24 cation outside the State of Hawaii;
25 and

1 (bb) resided in the State of Ha-
2 waii prior to the time he or she (or
3 such parent or spouse) left the State
4 of Hawaii to attend such institution.

5 (iii)(I) Is or was eligible to be a bene-
6 ficiary of the programs authorized by the
7 Hawaiian Homes Commission Act, 1920
8 (42 Stat. 108, chapter 42), and resides or
9 resided on land set aside as "Hawaiian
10 home lands", as defined in such Act; or

11 (II) Is a child or grandchild of an in-
12 dividual who is or was eligible to be a ben-
13 eficiary of the programs authorized by
14 such Act and who resides or resided on
15 land set aside as "Hawaiian home lands",
16 as defined in such Act.

17 (iv) Is or was eligible to be a bene-
18 ficiary of the programs authorized by the
19 Hawaiian Homes Commission Act, 1920
20 (42 Stat. 108, chapter 42).

21 (v) Is a child or grandchild of an indi-
22 vidual who is or was eligible to be a bene-
23 ficiary of the programs authorized by the
24 Hawaiian Homes Commission Act, 1920
25 (42 Stat. 108, chapter 42).

1 (vi) Resides on or has an ownership
2 interest in, or has a parent or grandparent
3 who resides on or has an ownership inter-
4 est in, “kuleana land” that is owned in
5 whole or in part by a person who, accord-
6 ing to a genealogy verification by the Of-
7 fice of Hawaiian Affairs or by court order,
8 is a lineal descendant of the person or per-
9 sons who received the original title to such
10 “kuleana land”, defined as lands granted
11 to native tenants pursuant to Haw. L.
12 1850, p. 202, entitled “An Act Confirming
13 Certain Resolutions of the King and Privy
14 Council Passed on the 21st day of Decem-
15 ber, A.D. 1849, Granting to the Common
16 People Allodial Titles for Their Own Lands
17 and House Lots, and Certain Other Privi-
18 leges”, as amended by Haw. L. 1851, p.
19 98, entitled “An Act to Amend An Act
20 Granting to the Common People Allodial
21 Titles for Their Own Lands and House
22 Lots, and Certain Other Privileges” and as
23 further amended by any subsequent legis-
24 lation.

1 (vii) Is, or is the child or grandchild
2 of, an individual who has been or was a
3 student for at least 1 school year at a
4 school or program taught through the me-
5 dium of the Hawaiian language under sec-
6 tion 302H-6, Hawaii Revised Statutes, or
7 at a school founded and operated primarily
8 or exclusively for the benefit of Native Ha-
9 waiians.

10 (viii) Has been a member since Sep-
11 tember 30, 2009, of at least 1 Native Ha-
12 waiian Membership Organization.

13 (ix) Has been a member since Sep-
14 tember 30, 2009, of at least 2 Native Ha-
15 waiian Membership Organizations.

16 (x) Is regarded as a Native Hawaiian
17 and whose mother or father is (or if de-
18 ceased, was) regarded as Native Hawaiian
19 by the Native Hawaiian community, as evi-
20 denced by sworn affidavits from two or
21 more qualified Native Hawaiian constitu-
22 ents certified by the Commission as pos-
23 sessed expertise in the social, cultural,
24 and civic affairs of the Native Hawaiian
25 community.

1 (13) SECRETARY.—The term “Secretary”
2 means the Secretary of the Interior.

3 (14) SPECIAL POLITICAL AND LEGAL RELA-
4 TIONSHIP.—The term “special political and legal re-
5 lationship” shall refer, except where differences are
6 specifically indicated elsewhere in the Act, to the
7 type of and nature of relationship the United States
8 has with the several federally recognized Indian
9 tribes.

10 **SEC. 4. UNITED STATES POLICY AND PURPOSE.**

11 (a) POLICY.—The United States reaffirms that—

12 (1) Native Hawaiians are a unique and distinct,
13 indigenous, native people with whom the United
14 States has a special political and legal relationship;

15 (2) the United States has a special political and
16 legal relationship with the Native Hawaiian people,
17 which includes promoting the welfare of Native Ha-
18 waiians;

19 (3)(A) Congress possesses and hereby exercises
20 the authority under the Constitution, including but
21 not limited to article I, section 8, clause 3, to enact
22 legislation to better the conditions of Native Hawai-
23 ians and has exercised this authority through the en-
24 actment of—

1 (i) the Hawaiian Homes Commission Act,
2 1920 (42 Stat. 108, chapter 42);

3 (ii) the Act entitled “An Act to provide for
4 the admission of the State of Hawaii into the
5 Union”, approved March 18, 1959 (Public Law
6 86-3; 73 Stat. 4); and

7 (iii) more than 150 other Federal laws ad-
8 dressing the conditions of Native Hawaiians;

9 (B) other sources of authority under the Con-
10 stitution for legislation on behalf of the indigenous,
11 native peoples of the United States, including Native
12 Hawaiians, include but are not limited to the Prop-
13 erty, Treaty, and Supremacy Clauses, War Powers,
14 and the Fourteenth Amendment, and Congress here-
15 by relies on those powers in enacting this legislation;
16 and

17 (C) the Constitution’s original Apportionment
18 Clause and the 14th Amendment Citizenship and
19 amended Apportionment Clauses also acknowledge
20 the propriety of legislation on behalf of the native
21 peoples of the United States, including Native Ha-
22 waiians;

23 (4) Native Hawaiians have—

24 (A) an inherent right to autonomy in their
25 internal affairs;

1 (2) upon the reaffirmation of the government-
2 to-government relationship between the single Native
3 Hawaiian governing entity and the United States;
4 effectuate and coordinate the special political and
5 legal relationship between the Native Hawaiian gov-
6 erning entity and the United States through the
7 Secretary, and with all other Federal agencies;

8 (3) provide timely notice to, and consult with,
9 the Native Hawaiian governing entity before taking
10 any actions that may have the potential to signifi-
11 cantly affect Native Hawaiian resources, rights, or
12 lands;

13 (4) work with the Interagency Coordinating
14 Group, other Federal agencies, and the State of Ha-
15 waii on policies, practices, and proposed actions af-
16 fecting Native Hawaiian resources, rights, or lands;
17 and

18 (5) prepare and submit to the Committee on
19 Indian Affairs and the Committee on Energy and
20 Natural Resources of the Senate and the Committee
21 on Natural Resources of the House of Representa-
22 tives an annual report detailing the activities of the
23 Interagency Coordinating Group that are under-
24 taken with respect to the continuing process of rec-
25 onciliation and to effect meaningful consultation

1 with the Native Hawaiian governing entity and may
 2 provide recommendations for any necessary changes
 3 to Federal law or regulations promulgated under the
 4 authority of Federal law.

5 (e) APPLICABILITY TO DEPARTMENT OF DE-
 6 FENSE.—This section shall have no applicability to the
 7 Department of Defense or to any agency or component
 8 of the Department of Defense, but the Secretary of De-
 9 fense may designate 1 or more officials as liaison to the
 10 Office.

11 **SEC. 6. NATIVE HAWAIIAN INTERAGENCY COORDINATING**
 12 **GROUP.**

13 (a) ESTABLISHMENT.—In recognition that Federal
 14 programs authorized to address the conditions of Native
 15 Hawaiians are largely administered by Federal agencies
 16 other than the Department of the Interior, there is estab-
 17 lished an interagency coordinating group, to be known as
 18 the “Native Hawaiian Interagency Coordinating Group”.

19 (b) COMPOSITION.—The Interagency Coordinating
 20 Group shall be composed of officials, to be designated by
 21 the President, from—

22 (1) each Federal agency whose actions may sig-
 23 nificantly or uniquely impact Native Hawaiian pro-
 24 grams, resources, rights, or lands; and

25 (2) the Office.

1 (c) LEAD AGENCY.—

2 (1) IN GENERAL.—The Department of the Inte-
3 rior and the White House Office of Intergovern-
4 mental Affairs shall serve as the leaders of the
5 Interagency Coordinating Group.

6 (2) MEETINGS.—The Secretary shall convene
7 meetings of the Interagency Coordinating Group.

8 (d) DUTIES.—The Interagency Coordinating Group
9 shall—

10 (1) coordinate Federal programs and policies
11 that affect Native Hawaiians or actions by any agen-
12 cy or agencies of the Federal Government that may
13 significantly or uniquely affect Native Hawaiian re-
14 sources, rights, or lands;

15 (2) consult with the Native Hawaiian governing
16 entity, through the coordination referred to in para-
17 graph (1), but the consultation obligation established
18 in this provision shall apply only after the satisfac-
19 tion of all of the conditions referred to in section
20 8(e)(8); and

21 (3) ensure the participation of each Federal
22 agency in the development of the report to Congress
23 authorized in section 5(b)(5).

24 (e) APPLICABILITY TO DEPARTMENT OF DE-
25 FENSE.—This section shall have no applicability to the

1 Department of Defense or to any agency or component
 2 of the Department of Defense, but the Secretary of De-
 3 fense may designate 1 or more officials as liaison to the
 4 Interagency Coordinating Group.

5 **SEC. 7. DESIGNATION OF DEPARTMENT OF JUSTICE REP-**
 6 **RESENTATIVE.**

7 The Attorney General shall designate an appropriate
 8 official within the Department of Justice to assist the Of-
 9 fice in the implementation and protection of the rights of
 10 Native Hawaiians and their political and legal relationship
 11 with the United States, and upon the recognition of the
 12 Native Hawaiian governing entity as provided for in sec-
 13 tion 8, in the implementation and protection of the rights
 14 of the Native Hawaiian governing entity and its political
 15 and legal relationship with the United States.

16 **SEC. 8. PROCESS FOR REORGANIZATION OF NATIVE HA-**
 17 **WAIIAN GOVERNING ENTITY AND REAFFIR-**
 18 **MATION OF SPECIAL POLITICAL AND LEGAL**
 19 **RELATIONSHIP BETWEEN UNITED STATES**
 20 **AND NATIVE HAWAIIAN GOVERNING ENTITY.**

21 (a) **RECOGNITION OF NATIVE HAWAIIAN GOVERNING**
 22 **ENTITY.**—The right of the qualified Native Hawaiian con-
 23 stituents to reorganize the single Native Hawaiian gov-
 24 erning entity to provide for their common welfare and to

1 adopt appropriate organic governing documents is recog-
2 nized by the United States.

3 (b) COMMISSION.—

4 (1) IN GENERAL.—There is authorized to be es-
5 tablished a Commission to be composed of 9 mem-
6 bers for the purposes of—

7 (A) preparing and maintaining a roll of
8 qualified Native Hawaiian constituents; and

9 (B) certifying that the individuals on the
10 roll of qualified Native Hawaiian constituents
11 meet the definition of qualified Native Hawai-
12 ian constituent set forth in section 3.

13 (2) MEMBERSHIP.—

14 (A) APPOINTMENT.—

15 (i) IN GENERAL.—Not later than 180
16 days after the date of enactment of this
17 Act, the Secretary shall appoint the mem-
18 bers of the Commission in accordance with
19 subparagraph (B).

20 (ii) CONSIDERATION.—In making an
21 appointment under clause (i), the Sec-
22 retary may take into consideration a rec-
23 ommendation made by any Native Hawai-
24 ian Membership Organization.

1 (B) REQUIREMENTS.—Each member of
2 the Commission shall demonstrate, as deter-
3 mined by the Secretary—

4 (i) not less than 10 years of experi-
5 ence in the study and determination of Na-
6 tive Hawaiian genealogy (traditional cul-
7 tural experience shall be given due consid-
8 eration); and

9 (ii) an ability to read and translate
10 into English documents written in the Ha-
11 waiian language.

12 (C) VACANCIES.—A vacancy on the Com-
13 mission—

14 (i) shall not affect the powers of the
15 Commission; and

16 (ii) shall be filled in the same manner
17 as the original appointment.

18 (3) EXPENSES.—Each member of the Commis-
19 sion shall be allowed travel expenses, including per
20 diem in lieu of subsistence, at rates authorized for
21 employees of agencies under subchapter I of chapter
22 57 of title 5, United States Code, while away from
23 their homes or regular places of business in the per-
24 formance of services for the Commission.

25 (4) DUTIES.—The Commission shall—

1 (A) prepare and maintain a roll of quali-
2 fied Native Hawaiian constituents as set forth
3 in subsection (c); and

4 (B) certify that the individuals on the roll
5 of qualified Native Hawaiian constituents meet
6 the definition of that term as set forth in sec-
7 tion 3.

8 (5) STAFF.—

9 (A) IN GENERAL.—The Commission may,
10 without regard to the civil service laws (includ-
11 ing regulations), appoint and terminate an execu-
12 tive director and such other additional per-
13 sonnel as are necessary to enable the Commis-
14 sion to perform the duties of the Commission.

15 (B) COMPENSATION.—

16 (i) IN GENERAL.—Except as provided
17 in clause (ii), the Commission may fix the
18 compensation of the executive director and
19 other personnel without regard to the pro-
20 visions of chapter 51 and subchapter III of
21 chapter 53 of title 5, United States Code,
22 relating to classification of positions and
23 General Schedule pay rates.

24 (ii) MAXIMUM RATE OF PAY.—The
25 rate of pay for the executive director and

1 other personnel shall not exceed the rate
2 payable for level V of the Executive Sched-
3 ule under section 5316 of title 5, United
4 States Code.

5 (6) ~~DETAIL OF FEDERAL GOVERNMENT EM-~~
6 ~~PLOYEES.—~~

7 (A) ~~IN GENERAL.—~~An employee of the
8 Federal Government may be detailed to the
9 Commission without reimbursement.

10 (B) ~~CIVIL SERVICE STATUS.—~~The detail of
11 the employee shall be without interruption or
12 loss of civil service status or privilege.

13 (7) ~~PROCUREMENT OF TEMPORARY AND INTER-~~
14 ~~MITTENT SERVICES.—~~The Commission may procure
15 temporary and intermittent services in accordance
16 with section 3109(b) of title 5, United States Code,
17 at rates for individuals that do not exceed the daily
18 equivalent of the annual rate of basic pay prescribed
19 for level V of the Executive Schedule under section
20 5316 of that title.

21 (8) ~~EXPIRATION.—~~The Secretary shall dissolve
22 the Commission upon the reaffirmation of the spe-
23 cial political and legal relationship between the Na-
24 tive Hawaiian governing entity and the United
25 States.

1 (e) PROCESS FOR REORGANIZATION OF NATIVE HA-
2 WAHIAN GOVERNING ENTITY.—

3 (1) ROLL.—

4 (A) CONTENTS.—The roll shall include the
5 names of the qualified Native Hawaiian con-
6 stituents who are certified by the Commission
7 to be qualified Native Hawaiian constituents, as
8 defined in section 3.

9 (B) FORMATION OF ROLL.—Each indi-
10 vidual claiming to be a qualified Native Hawai-
11 ian constituent shall submit to the Commission
12 documentation in the form established by the
13 Commission that is sufficient to enable the
14 Commission to determine whether the individual
15 meets the definition set forth in section 3; *Pro-*
16 *vided*, That an individual presenting evidence
17 that he or she satisfies the definition in section
18 2 of Public Law 103–150 shall be presumed to
19 meet the requirement of section 3(12)(A)(i).

20 (C) DOCUMENTATION.—The Commission
21 shall—

22 (i)(I) identify the types of documenta-
23 tion that may be submitted to the Commis-
24 sion that would enable the Commission to
25 determine whether an individual meets the

1 definition of qualified Native Hawaiian
2 constituent set forth in section 3;

3 (II) recognize an individual's identi-
4 fication of lineal ancestors on the 1890
5 Census by the Kingdom of Hawaii as a re-
6 liable indicia of lineal descent from the ab-
7 original, indigenous, native people who re-
8 sided in the islands that now comprise the
9 State of Hawaii on or before January 1,
10 1893; and

11 (III) permit elderly Native Hawaiians
12 and other Native Hawaiians lacking birth
13 certificates or other documentation due to
14 birth on Hawaiian Home Lands or other
15 similar circumstances to establish lineal de-
16 scent by sworn affidavits from 2 or more
17 qualified Native Hawaiian constituents;

18 (ii) establish a standard format for
19 the submission of documentation and a
20 process to ensure veracity; and

21 (iii) publish information related to
22 clauses (i) and (ii) in the Federal Register.

23 (D) CONSULTATION.—In making deter-
24 minations that each individual proposed for in-
25 clusion on the roll of qualified Native Hawaiian

1 constituents meets the definition of qualified
 2 Native Hawaiian constituent in section 3, the
 3 Commission may consult with Native Hawaiian
 4 Membership Organizations, agencies of the
 5 State of Hawaii including but not limited to the
 6 Department of Hawaiian Home Lands, the Of-
 7 fice of Hawaiian Affairs, and the State Depart-
 8 ment of Health, and other entities with exper-
 9 tise and experience in the determination of Na-
 10 tive Hawaiian ancestry and lineal descendancy.

11 (E) NOTIFICATION.—The Commission
 12 shall—

13 (i) inform an individual whether they
 14 have been deemed by the Commission a
 15 qualified Native Hawaiian constituent; and

16 (ii) inform an individual of a right to
 17 appeal the decision if deemed not to be a
 18 qualified Native Hawaiian constituent.

19 (F) CERTIFICATION AND SUBMITTAL OF
 20 ROLL TO SECRETARY.—The Commission
 21 shall—

22 (i) submit the roll containing the
 23 names of those individuals who meet the
 24 definition of qualified Native Hawaiian
 25 constituent in section 3 to the Secretary

1 within 2 years from the date on which the
2 Commission is fully composed; and

3 (ii) certify to the Secretary that each
4 of the qualified Native Hawaiian constitu-
5 ents proposed for inclusion on the roll
6 meets the definition set forth in section 3.

7 (G) PUBLICATION.—Upon certification by
8 the Commission to the Secretary that those list-
9 ed on the roll meet the definition of qualified
10 Native Hawaiian constituent set forth in section
11 3, the Commission shall publish the notice of
12 the certification of the roll in the Federal Reg-
13 ister, notwithstanding pending appeals pursuant
14 to subparagraph (H).

15 (H) APPEAL.—The Secretary, in consulta-
16 tion with the Commission, shall establish a
17 mechanism for an administrative appeal for any
18 person whose name is excluded from the roll
19 who claims to meet the definition of qualified
20 Native Hawaiian constituent in section 3.

21 (I) PUBLICATION; UPDATE.—The Commis-
22 sion shall—

23 (i) publish the notice of the certifi-
24 cation of the roll regardless of whether ap-
25 peals are pending;

1 (ii) update the roll and provide notice
2 of the updated roll on the final disposition
3 of any appeal;

4 (iii) update the roll to include any
5 person who has been certified by the Com-
6 mission as meeting the definition of quali-
7 fied Native Hawaiian constituent in section
8 3 after the initial publication of the roll or
9 after any subsequent publications of the
10 roll; and

11 (iv) provide a copy of the roll and any
12 updated rolls to the Council.

13 ~~(J) EFFECT OF PUBLICATION.—~~The publi-
14 cation of the initial and updated roll shall serve
15 as the basis for the eligibility of qualified Na-
16 tive Hawaiian constituents whose names are
17 listed on those rolls to participate in the reorga-
18 nization of the Native Hawaiian governing enti-
19 ty.

20 ~~(2) ORGANIZATION OF COUNCIL.—~~

21 ~~(A) ORGANIZATION.—~~The Commission, in
22 consultation with the Secretary, shall hold a
23 minimum of 3 meetings and each meeting shall
24 be at least 2 working days of the qualified Na-

1 tive Hawaiian constituents listed on the roll es-
2 tablished under this section—

3 (i) to develop criteria for candidates
4 to be elected to serve on the Council;

5 (ii) to determine the structure of the
6 Council, including the number of Council
7 members; and

8 (iii) to elect members from individuals
9 listed on the roll established under this
10 subsection to the Council.

11 (B) POWERS.—

12 (i) IN GENERAL.—The Council—

13 (I) shall represent those listed on
14 the roll established under this section
15 in the implementation of this Act; and

16 (II) shall have no powers other
17 than powers given to the Council
18 under this Act.

19 (ii) FUNDING.—The Council may
20 enter into a contract with, or obtain a
21 grant from, any Federal or State agency to
22 carry out clause (iii).

23 (iii) ACTIVITIES.—

24 (I) IN GENERAL.—The Council
25 shall conduct, among the qualified

1 Native Hawaiian constituents listed
2 on the roll established under this sub-
3 section; a referendum for the purpose
4 of determining the proposed elements
5 of the organic governing documents of
6 the Native Hawaiian governing entity;
7 including but not limited to—

8 (aa) the proposed criteria
9 for future membership in the Na-
10 tive Hawaiian governing entity;

11 (bb) the proposed powers
12 and authorities to be exercised by
13 the Native Hawaiian governing
14 entity, as well as the proposed
15 privileges and immunities of the
16 Native Hawaiian governing enti-
17 ty;

18 (cc) the proposed civil rights
19 and protection of the rights of
20 the citizens of the Native Hawai-
21 ian governing entity and all per-
22 sons affected by the exercise of
23 governmental powers and au-
24 thorities of the Native Hawaiian
25 governing entity; and

1 (dd) other issues determined
2 appropriate by the Council.

3 (II) DEVELOPMENT OF ORGANIC
4 GOVERNING DOCUMENTS.—Based on
5 the referendum, the Council shall de-
6 velop proposed organic governing doc-
7 uments for the Native Hawaiian gov-
8 erning entity and may seek technical
9 assistance from the Secretary on the
10 draft organic governing documents to
11 ensure that the draft organic gov-
12 erning documents comply with this
13 Act and other Federal law.

14 (III) DISTRIBUTION.—The Coun-
15 cil shall publish to all qualified Native
16 Hawaiian constituents of the Native
17 Hawaiian governing entity listed on
18 the roll published under this sub-
19 section notice of the availability of—

20 (aa) a copy of the proposed
21 organic governing documents, as
22 drafted by the Council; and

23 (bb) a brief impartial de-
24 scription of the proposed organic
25 governing documents;

1 (IV) ELECTIONS.—

2 (aa) IN GENERAL.—Not
3 sooner than 180 days after the
4 proposed organic governing docu-
5 ments are drafted and distrib-
6 uted, the Council, with the assist-
7 ance of the Secretary, shall hold
8 elections for the purpose of rati-
9 fying the proposed organic gov-
10 erning documents.

11 (bb) PURPOSE.—The Coun-
12 cil, with the assistance of the
13 Secretary, shall hold the election
14 for the purpose of ratifying the
15 proposed organic governing docu-
16 ments 60 days after publishing
17 notice of an election.

18 (cc) OFFICERS.—On certifi-
19 cation of the organic governing
20 documents by the Secretary in
21 accordance with paragraph (4),
22 the Council, with the assistance
23 of the Secretary, shall hold elec-
24 tions of the officers of the Native

1 Hawaiian governing entity pursu-
2 ant to paragraph (5).

3 ~~(3) SUBMITTAL OF ORGANIC GOVERNING DOCU-~~
4 ~~MENTS.—~~Following the reorganization of the Native
5 Hawaiian governing entity and the adoption of or-
6 ganic governing documents, the Council shall submit
7 the organic governing documents of the Native Ha-
8 waiian governing entity to the Secretary.

9 ~~(4) CERTIFICATIONS.—~~

10 ~~(A) IN GENERAL.—~~Within the context of
11 the future negotiations to be conducted under
12 the authority of section 9(b)(1), and the subse-
13 quent actions by the Congress and the State of
14 Hawaii to enact legislation to implement the
15 agreements of the 3 governments, not later
16 than 180 days, which may be extended an addi-
17 tional 90 days if the Secretary deems necessary,
18 after the date on which the Council submits the
19 organic governing documents to the Secretary,
20 the Secretary shall certify or decline to certify
21 that the organic governing documents—

22 (i) establish the criteria for member-
23 ship in the Native Hawaiian governing en-
24 tity;

1 (ii) were adopted by a majority vote of
2 those qualified Native Hawaiian constitu-
3 ents whose names are listed on the roll
4 published by the Secretary and who voted
5 in the election;

6 (iii) provide authority for the Native
7 Hawaiian governing entity to negotiate
8 with Federal, State, and local govern-
9 ments, and other entities;

10 (iv) provide for the exercise of inher-
11 ent and other appropriate governmental
12 authorities by the Native Hawaiian gov-
13 erning entity;

14 (v) prevent the sale, disposition, lease,
15 or encumbrance of lands, interests in
16 lands, or other assets of the Native Hawai-
17 ian governing entity without the consent of
18 the Native Hawaiian governing entity;

19 (vi) provide for the protection of the
20 civil rights of the citizens of the Native
21 Hawaiian governing entity and all persons
22 affected by the exercise of governmental
23 powers and authorities by the Native Ha-
24 waiian governing entity; and

1 (vii) are consistent with applicable
2 Federal law.

3 ~~(B) RESUBMISSION IN CASE OF NON-~~
4 ~~COMPLIANCE.—~~

5 (i) RESUBMISSION BY THE SEC-
6 RETARY.—If the Secretary determines that
7 the organic governing documents, or any
8 part of the documents, do not meet all of
9 the requirements set forth in subparagraph
10 (A), the Secretary shall resubmit the or-
11 ganic governing documents to the Council,
12 along with a justification for each of the
13 Secretary's findings as to why the provi-
14 sions are not in full compliance.

15 (ii) AMENDMENT AND RESUBMISSION
16 OF ORGANIC GOVERNING DOCUMENTS.—If
17 the organic governing documents are re-
18 submitted to the Council by the Secretary
19 under clause (i), the Council shall—

20 (I) amend the organic governing
21 documents to ensure that the docu-
22 ments meet all the requirements set
23 forth in subparagraph (A); and

24 (II) resubmit the amended or-
25 ganic governing documents to the Sec-

1 retary for certification in accordance
2 with this paragraph.

3 (C) CERTIFICATIONS DEEMED MADE.—

4 The certifications under this paragraph shall be
5 deemed to have been made if the Secretary has
6 not acted within 180 days after the date on
7 which the Council has submitted the organic
8 governing documents of the Native Hawaiian
9 governing entity to the Secretary.

10 (5) ELECTIONS.—On completion of the certifi-
11 cations by the Secretary under paragraph (4), the
12 Council, with the assistance of the Secretary, shall
13 hold elections of the officers of the Native Hawaiian
14 governing entity.

15 (6) PROVISION OF ROLL.—The Council shall
16 provide a copy of the roll of qualified Native Hawai-
17 ian constituents to the governing body of the Native
18 Hawaiian governing entity.

19 (7) TERMINATION.—The Council shall cease to
20 exist and shall have no power or authority under
21 this Act after the officers of the governing body who
22 are elected as provided in paragraph (5) are in-
23 stalled.

24 (8) REAFFIRMATION.—Notwithstanding any
25 other provision of law, the special political and legal

1 relationship between the United States and the Na-
 2 tive Hawaiian people is hereby reaffirmed and the
 3 United States extends Federal recognition to the
 4 Native Hawaiian governing entity as the representa-
 5 tive sovereign governing body of the Native Hawai-
 6 ian people after—

7 (A) the approval of the organic governing
 8 documents by the Secretary under subpara-
 9 graph (A) or (C) of paragraph (4); and

10 (B) the officers of the Native Hawaiian
 11 governing entity elected under paragraph (5)
 12 have been installed.

13 **SEC. 9. REAFFIRMATION OF DELEGATION OF FEDERAL AU-**
 14 **THORITY TO STATE OF HAWAII; NEGOTIA-**
 15 **TIONS; CLAIMS.**

16 (a) REAFFIRMATION.—The delegation by the United
 17 States of authority to the State of Hawaii to address the
 18 conditions of the indigenous, native people of Hawaii con-
 19 tained in the Act entitled “An Act to provide for the ad-
 20 mission of the State of Hawaii into the Union”, approved
 21 March 18, 1959 (Public Law 86-3; 73 Stat. 4), is re-
 22 affirmed.

23 (b) NEGOTIATIONS.—

24 (1) IN GENERAL.—Upon the reaffirmation of
 25 the special political and legal relationship between

1 the United States and the Native Hawaiian gov-
2 erning entity, the United States and the State of
3 Hawaii may enter into negotiations with the Native
4 Hawaiian governing entity designed to lead to an
5 agreement or agreements addressing such matters
6 as—

7 (A) the transfer of State of Hawaii lands
8 and surplus Federal lands, natural resources,
9 and other assets, and the protection of existing
10 rights related to such lands or resources;

11 (B) the exercise of governmental authority
12 over any transferred lands, natural resources,
13 and other assets, including land use;

14 (C) the exercise of civil and criminal juris-
15 diction;

16 (D) the exercise of other powers and au-
17 thorities that are recognized by the United
18 States as powers and authorities typically exer-
19 cised by governments representing indigenous,
20 native people of the United States;

21 (E) any residual responsibilities of the
22 United States and the State of Hawaii; and

23 (F) grievances regarding assertions of his-
24 torical wrongs committed against Native Ha-

1 waiians by the United States or by the State of
2 Hawaii.

3 (2) AMENDMENTS TO EXISTING LAWS.—Upon
4 agreement on any matter or matters negotiated with
5 the United States or the State of Hawaii, and the
6 Native Hawaiian governing entity, the parties may
7 submit—

8 (A) to the Committee on Indian Affairs of
9 the Senate, the Committee on Energy and Nat-
10 ural Resources of the Senate, and the Com-
11 mittee on Natural Resources of the House of
12 Representatives recommendations for proposed
13 amendments to Federal law that will enable the
14 implementation of agreements reached between
15 the governments; and

16 (B) to the Governor and the legislature of
17 the State of Hawaii, recommendations for pro-
18 posed amendments to State law that will enable
19 the implementation of agreements reached be-
20 tween the governments.

21 (3) GOVERNMENTAL AUTHORITY AND
22 POWER.—The Native Hawaiian governing entity
23 shall be vested with the inherent powers and privi-
24 leges of self-government of a native government
25 under existing law, except as set forth in section

1 10(a). Said powers and privileges may be modified
2 by agreement between the Native Hawaiian gov-
3 erning entity, the United States, and the State pur-
4 suant to paragraph (1), subject to the limit de-
5 scribed by section 10(a). Unless so agreed, nothing
6 in this Act shall preempt Federal or State authority
7 over Native Hawaiians or their property under exist-
8 ing law or authorize the State to tax or regulate the
9 Native Hawaiian governing entity.

10 (4) MEMBERSHIP.—Once the United States ex-
11 tends Federal recognition to the Native Hawaiian
12 governing entity, the United States will recognize
13 and affirm the Native Hawaiian governing entity’s
14 inherent power and authority to determine its own
15 membership criteria, to determine its own member-
16 ship, and to grant, deny, revoke, or qualify member-
17 ship without regard to whether any person was or
18 was not deemed to be a qualified Native Hawaiian
19 constituent under this Act.

20 (c) CLAIMS.—Nothing in this Act—

21 (1) alters existing law, including case law, re-
22 garding obligations of the United States or the State
23 of Hawaii relating to events or actions that occurred
24 prior to recognition of the Native Hawaiian gov-
25 erning entity;

1 (2) creates, enlarges, revives, modifies, dimin-
 2 ishes, extinguishes, waives, or otherwise alters any
 3 claim or cause of action against the United States
 4 or its officers or the State of Hawaii or its officers,
 5 or any defense (including the defense of statute of
 6 limitations) to any such claim or cause of action; or

7 (3) amends section 2409a of title 28, United
 8 States Code (commonly known as the “Quiet Title
 9 Act”), chapter 171 of title 28, United States Code
 10 (commonly known as the “Federal Tort Claims
 11 Act”), section 1491 of title 28, United States Code
 12 (commonly known as the “Tucker Act”), section
 13 1505 of title 28, United States Code (commonly
 14 known as the “Indian Tucker Act”), the Hawaii Or-
 15 ganic Act (31 Stat. 141), or any other Federal stat-
 16 ute, except as expressly amended by this Act.

17 **SEC. 10. APPLICABILITY OF CERTAIN FEDERAL LAWS.**

18 (a) **INDIAN GAMING REGULATORY ACT.**—

19 (1) **IN GENERAL.**—The Native Hawaiian gov-
 20 erning entity and Native Hawaiians may not con-
 21 duct gaming activities as a matter of claimed inher-
 22 ent authority or under the authority of any Federal
 23 law, including the Indian Gaming Regulatory Act
 24 (25 U.S.C. 2701 et seq.) or under any regulations

1 thereunder promulgated by the Secretary or the Na-
2 tional Indian Gaming Commission.

3 (2) ~~APPLICABILITY.~~—The prohibition contained
4 in paragraph (1) regarding the use of Indian Gam-
5 ing Regulatory Act (25 U.S.C. 2701 et seq.) and in-
6 herent authority to game applies regardless of
7 whether gaming by Native Hawaiians or the Native
8 Hawaiian governing entity would be located on land
9 within the State of Hawaii or within any other State
10 or territory of the United States.

11 (b) ~~SINGLE GOVERNING ENTITY.~~—This Act will re-
12 sult in the recognition of the single Native Hawaiian gov-
13 erning entity. Additional Native Hawaiian groups shall not
14 be eligible for acknowledgment pursuant to the Federal
15 Acknowledgment Process set forth in part 83 of title 25,
16 Code of Federal Regulations, or any other administrative
17 acknowledgment or recognition process.

18 (c) ~~INDIAN CIVIL RIGHTS ACT OF 1968.~~—The Coun-
19 cil and the subsequent governing entity recognized under
20 this Act shall be an Indian tribe, as defined in section 201
21 of the Indian Civil Rights Act of 1968 (25 U.S.C. 1301)
22 for purposes of sections 201 through 203 of that Act (25
23 U.S.C. 1301–1303).

24 (d) ~~INDIAN PROGRAMS, SERVICES, AND LAWS.~~—

1 (1) IN GENERAL.—Notwithstanding any other
2 provision of this Act, nothing in this Act extends eli-
3 gibility for any Indian program or service to the Na-
4 tive Hawaiian governing entity or its members un-
5 less a statute governing such a program or service
6 expressly provides that Native Hawaiians or the Na-
7 tive Hawaiian governing entity is eligible for such
8 program or service. Nothing in this Act affects the
9 eligibility of any person for any program or service
10 under any statute or law in effect before the date of
11 enactment of this Act.

12 (2) APPLICABILITY OF OTHER TERMS.—In Fed-
13 eral statutes or regulations in force prior to the
14 United States' recognition of the Native Hawaiian
15 governing entity, the terms "Indian" and "Native
16 American", and references to Indian tribes, bands,
17 nations, pueblos, villages, or other organized groups
18 or communities, shall not apply to the Native Ha-
19 waiian governing entity or its members, unless the
20 Federal statute or regulation expressly applies to
21 Native Hawaiians or the Native Hawaiian governing
22 entity.

23 (e) REAL PROPERTY TRANSFERS.—Section 2116 of
24 the Revised Statutes (commonly known as the "Indian
25 Trade and Intercourse Act") (25 U.S.C. 177) does not

1 apply to any purchase, grant, lease, or other conveyance
2 of lands, or of any title or claim thereto, from Native Ha-
3 waiians, Native Hawaiian entities, or the Kingdom of Ha-
4 waii that occurred prior to the date of the United States
5 recognition of the Native Hawaiian governing entity.

6 **SEC. 11. SEVERABILITY.**

7 If any section or provision of this Act is held invalid,
8 it is the intent of Congress that the remaining sections
9 or provisions shall continue in full force and effect.

10 **SEC. 12. AUTHORIZATION OF APPROPRIATIONS.**

11 There are authorized to be appropriated such sums
12 as are necessary to carry out this Act.

13 **SECTION 1. SHORT TITLE.**

14 *This Act may be cited as the “Native Hawaiian Gov-*
15 *ernment Reorganization Act of 2012”.*

16 **SEC. 2. FINDINGS.**

17 *Congress finds that—*

18 *(1) the United States has continually recognized*
19 *and reaffirmed that—*

20 *(A) the Native Hawaiian people today are*
21 *the political successors to the indigenous, native*
22 *people who exercised original sovereignty over*
23 *the Hawaiian Islands;*

1 (B) the Native Hawaiian people have never
2 relinquished their claims to sovereignty or their
3 sovereign lands;

4 (C) the special political and legal relation-
5 ship of American Indians, Alaska Natives, and
6 Native Hawaiians to the United States arises
7 out of their status as indigenous, native peoples
8 of the United States; and

9 (D) the Native Hawaiian people are a dis-
10 tinctly native community and one of the indige-
11 nous, native peoples of the United States;

12 (2) the Constitution vests Congress with the au-
13 thority to address the conditions of the indigenous,
14 native peoples of the United States under provisions
15 including—

16 (A) clause 3 of section 8 of article I, the
17 Property, Treaty, and Supremacy clauses, and
18 the War Powers clause; and

19 (B) the original Apportionment clause and
20 the Fourteenth Amendment Citizenship and
21 amended Apportionment clauses;

22 (3) Congress has exercised constitutional author-
23 ity to address the conditions of the Native Hawaiian
24 people through the enactment of—

1 (A) *the Hawaiian Homes Commission Act,*
2 *1920 (42 Stat. 108, chapter 42);*

3 (B) *the Act entitled “An Act to provide for*
4 *the admission of the State of Hawaii into the*
5 *Union”, approved March 18, 1959 (Public Law*
6 *86–3; 73 Stat. 4); and*

7 (C) *more than 150 other Federal laws ad-*
8 *ressing the conditions of the Native Hawaiian*
9 *people;*

10 (4) *the United States has recognized and re-*
11 *affirmed the special political and legal relationship*
12 *between the United States and the Native Hawaiian*
13 *people through the enactment of the Act entitled “An*
14 *Act to provide for the admission of the State of Ha-*
15 *waii into the Union”, approved March 18, 1959*
16 *(Public Law 86–3; 73 Stat. 4), by—*

17 (A) *delegating broad authority to the State*
18 *of Hawaii to administer some of the responsibil-*
19 *ities of the United States, as those responsibil-*
20 *ities relate to the Native Hawaiian people and*
21 *their lands;*

22 (B) *ceding to the State of Hawaii title to*
23 *the public land formerly held by the United*
24 *States, and mandating that those lands be held*
25 *as a public trust for 5 purposes, 1 of which is*

1 *the betterment of the conditions of the Native*
2 *Hawaiian people; and*

3 (C) *transferring the responsibility of the*
4 *United States for the administration of the Ha-*
5 *waiian Home Lands to the State of Hawaii, but*
6 *retaining the exclusive right to consent to any*
7 *actions affecting the lands included in the trust*
8 *and any amendments to the Hawaiian Homes*
9 *Commission Act, 1920 (42 Stat. 108, chapter*
10 *42), that are enacted by the legislature of the*
11 *State of Hawaii affecting the beneficiaries under*
12 *that Act;*

13 (5) *on November 23, 1993, the Joint Resolution*
14 *of November 23, 1993 (Public Law 103–150; 107*
15 *Stat. 1510) (commonly known as the “Apology Reso-*
16 *lution”), was enacted into law, extending an apology*
17 *on behalf of the United States to the Native Hawaiian*
18 *people for the role of the United States in the over-*
19 *throw of the Kingdom of Hawaii, and acknowledging*
20 *that the Native Hawaiian people never directly relin-*
21 *quished to the United States their claims to their in-*
22 *herent sovereignty as a people over their national*
23 *lands, either through the Kingdom of Hawaii or*
24 *through a plebiscite or referendum;*

1 (6) pursuant to Public Law 103–150, on October
2 23, 2000, the Department of Justice and the Depart-
3 ment of the Interior released a report entitled “From
4 Mauka to Makai: The River of Justice Must Flow
5 Freely”, recommending that Congress enact legisla-
6 tion “to create a framework for recognizing a govern-
7 ment-to-government relationship with a representative
8 Native Hawaiian governing body”;

9 (7) on December 16, 2010, the United States an-
10 nounced its support for the United Nations Declara-
11 tion on the Rights of Indigenous Peoples (Resolution
12 61/295, adopted September 13, 2007), which includes
13 the Native Hawaiian people and states that indige-
14 nous peoples possess—

15 (A) the right to self-determination and to
16 freely determine their political status and freely
17 pursue their economic, social, and cultural devel-
18 opment; and

19 (B) the right to autonomy or self-govern-
20 ment in matters relating to their internal and
21 local affairs; and

22 (8) the State of Hawaii has long supported the
23 Federal reaffirmation of the special political and
24 legal relationship with the Native Hawaiian people
25 and a recognition of the Native Hawaiian governing

1 *entity by the United States, as evidenced by numer-*
2 *ous actions, including through the enactment of Act*
3 *195 (2011), which—*

4 *(A) recognizes the Native Hawaiian people*
5 *as the only indigenous, native people of Hawaii;*

6 *(B) urges Federal recognition of the Native*
7 *Hawaiian people and the Native Hawaiian gov-*
8 *erning entity; and*

9 *(C) creates the Native Hawaiian Roll Com-*
10 *mission to develop a roll of qualified Native Ha-*
11 *waiians to facilitate the reorganization of a Na-*
12 *tive Hawaiian governing entity.*

13 **SEC. 3. DEFINITIONS.**

14 *In this Act:*

15 *(1) COUNCIL.—The term “Council” means the*
16 *Interim Governing Council established under section*
17 *5(c).*

18 *(2) INDIGENOUS, NATIVE PEOPLE.—The term*
19 *“indigenous, native people” means any of the peoples*
20 *referred to in the Constitution as “Indians” and*
21 *“Tribes” that are the original inhabitants who exer-*
22 *cised sovereignty over any area that later became part*
23 *of the United States, including their lineal descend-*
24 *ants.*

1 (3) *NATIVE HAWAIIAN GOVERNING ENTITY.*—*The*
2 *term “Native Hawaiian governing entity” means the*
3 *representative sovereign governing body of the Native*
4 *Hawaiian people reorganized under section 5.*

5 (4) *NATIVE HAWAIIAN ROLL COMMISSION.*—*The*
6 *term “Native Hawaiian Roll Commission” means the*
7 *Commission established by the State of Hawaii under*
8 *Act 195 (2011).*

9 (5) *SECRETARY.*—*The term “Secretary” means*
10 *the Secretary of the Interior.*

11 (6) *SPECIAL POLITICAL AND LEGAL RELATION-*
12 *SHIP.*—*The term “special political and legal relation-*
13 *ship” means the nature of the relationship between*
14 *the United States and federally recognized Indian*
15 *tribes.*

16 **SEC. 4. POLICY AND PURPOSE.**

17 (a) *POLICY.*—*It is the policy of the United States*
18 *that—*

19 (1) *Congress possesses and exercises the constitu-*
20 *tional authority to address the conditions of the Na-*
21 *tive Hawaiian people;*

22 (2) *the Native Hawaiian people have—*

23 (A) *an inherent right to autonomy in inter-*
24 *nal affairs;*

1 (B) an inherent right of self-determination
2 and self-governance;

3 (C) the right to reorganize a Native Hawai-
4 ian governing entity; and

5 (D) the right to become economically self-
6 sufficient;

7 (3) notwithstanding any other provision of law,
8 the United States—

9 (A) reaffirms the special political and legal
10 relationship between the United States and the
11 Native Hawaiian people, which includes pro-
12 moting the welfare of the Native Hawaiian peo-
13 ple; and

14 (B) reaffirms the authority delegated to the
15 State of Hawaii by the United States to address
16 the conditions of the Native Hawaiian people in
17 the Act entitled “An Act to provide for the ad-
18 mission of the State of Hawaii into the Union”,
19 approved March 18, 1959 (Public Law 86–3; 73
20 Stat. 4);

21 (4) the United States ensures parity in policy
22 and treatment among all indigenous groups with
23 which the United States has a special political and
24 legal relationship; and

1 (b) *MEMBERS.*—*The individuals listed on the roll com-*
2 *piled and certified by the Native Hawaiian Roll Commis-*
3 *sion shall be considered members of the Native Hawaiian*
4 *people for the purposes of reorganization of a Native Ha-*
5 *waiian governing entity, provided that the roll is published,*
6 *available for inspection, and compiled in accordance with*
7 *applicable due process principles.*

8 (c) *INTERIM GOVERNING COUNCIL.*—

9 (1) *ESTABLISHMENT.*—*The members included on*
10 *the roll described in subsection (b), in consultation*
11 *with the Secretary, shall establish a council, to be*
12 *known as the “Interim Governing Council”, by—*

13 (A) *developing criteria based on which can-*
14 *didates included on the roll may be elected to*
15 *serve on the Council;*

16 (B) *determining the structure of the Coun-*
17 *cil, including the number of Council members;*
18 *and*

19 (C) *electing Council members.*

20 (2) *POWERS.*—*The Council—*

21 (A) *shall represent the members included on*
22 *the membership roll in the implementation of*
23 *this Act;*

24 (B) *shall have no powers other than the*
25 *powers provided to the Council by this Act; and*

1 (C) may enter into a contract with, or ob-
2 tain a grant from, any Federal, State, or local
3 government agency or any private nonprofit or
4 entity to carry out the duties of the Council
5 under paragraph (3).

6 (3) DUTIES.—Not later than 2 years after the
7 date on which all members of the Council are elected,
8 the Council shall—

9 (A) secure appropriate input from members
10 included on the roll, through consultation,
11 referenda, or other means, regarding the pro-
12 posed elements of the constitution and bylaws for
13 the Native Hawaiian governing entity;

14 (B) develop a proposed constitution and by-
15 laws for the Native Hawaiian governing entity;

16 (C) provide to all members the proposed
17 constitution and bylaws, as drafted by the Coun-
18 cil, including a brief, objective description of
19 each such provision;

20 (D) not earlier than 90 days after the date
21 of completion of the requirements of subpara-
22 graph (C), submit to the Secretary a request to
23 hold an election to ratify the proposed constitu-
24 tion and bylaws; and

1 (E) on ratification, submit to the Secretary
 2 the constitution and bylaws for approval under
 3 section 16 of the Act of June 18, 1934 (25 U.S.C.
 4 476).

5 (4) *ELECTIONS.*—The Council, with the assist-
 6 ance of the Secretary, shall hold elections of the offi-
 7 cers of the Native Hawaiian governing entity identi-
 8 fied in the approved constitution and bylaws.

9 (5) *TERMINATION.*—The Council shall cease to
 10 exist and shall have no power or authority under this
 11 Act after the date on which all officers of the Native
 12 Hawaiian governing entity elected under paragraph
 13 (4) are installed.

14 **SEC. 6. APPLICABILITY OF OTHER FEDERAL LAWS.**

15 (a) *GOVERNMENTAL AUTHORITY AND POWER.*—The
 16 Native Hawaiian governing entity shall—

17 (1) have the inherent powers and privileges of
 18 self-government of an Indian tribe under applicable
 19 Federal law, including the inherent power and au-
 20 thority—

21 (A) to determine membership in, and mem-
 22 bership criteria for, the Native Hawaiian people;
 23 and

24 (B) to grant, deny, revoke, or qualify mem-
 25 bership without regard to whether any indi-

1 *vidual is considered to be a member of the Native*
2 *Hawaiian people under this Act; and*

3 *(2) be considered to be an Indian tribe for pur-*
4 *poses of section 104 of the Federally Recognized In-*
5 *Indian Tribe List Act of 1994 (25 U.S.C. 479a-1).*

6 ***(b) INDIAN GAMING REGULATORY ACT.—The Native***
7 ***Hawaiian governing entity—***

8 *(1) is subject to the Indian Gaming Regulatory*
9 *Act (25 U.S.C. 2701 et seq.) (including regulations*
10 *promulgated pursuant to that Act by the Secretary or*
11 *the National Indian Gaming Commission); and*

12 *(2) may not conduct gaming activities (within*
13 *the meaning of section 4 of that Act (25 U.S.C.*
14 *2703)) unless the State of Hawaii permits such an*
15 *activity for any purpose by an individual, organiza-*
16 *tion, or entity.*

17 ***(c) INDIAN REORGANIZATION ACT.—***

18 *(1) IN GENERAL.—The Secretary may consider*
19 *the Native Hawaiian governing entity to be an In-*
20 *Indian tribe for purposes of carrying out any activity*
21 *authorized under the Act of June 18, 1934 (commonly*
22 *known as the “Indian Reorganization Act”) (25*
23 *U.S.C. 461 et seq.).*

24 ***(2) RATIFICATION AND CONFIRMATION OF AC-***
25 ***TIONS.—Any action taken by the Secretary pursuant***

1 *to the Act of June 18, 1934 (commonly known as the*
2 *“Indian Reorganization Act”) (25 U.S.C. 461 et seq.)*
3 *for the Native Hawaiian governing entity is ratified*
4 *and confirmed to the extent that the action is chal-*
5 *lenged based on the question of whether the Native*
6 *Hawaiian governing entity was federally recognized*
7 *or under Federal jurisdiction on June 18, 1934.*

8 **SEC. 7. SEVERABILITY.**

9 *If any provision of this Act is held invalid, it is the*
10 *intent of Congress that the remaining provisions shall con-*
11 *tinue in full force and effect.*

12 **SEC. 8. AUTHORIZATION OF APPROPRIATIONS.**

13 *There are authorized to be appropriated such sums as*
14 *are necessary to carry out this Act.*

Calendar No. 568

112TH CONGRESS
2^D SESSION

S. 675

[Report No. 112-251]

A BILL

To express the policy of the United States regarding the United States relationship with Native Hawaiians and to provide a process for the recognition by the United States of the Native Hawaiian governing entity.

DECEMBER 17, 2012

Reported with an amendment