

PROPOSED AMENDMENTS  
TO THE  
NATIVE HAWAIIAN GOVERNMENT REORGANIZATION ACT  
(S. 310, as introduced, 110<sup>th</sup> Congress, 1<sup>st</sup> Session)

1. Page 1, line 5, change "2007" to "2009".
2. Page 2, line 9, change "relationship" to "responsibility".
3. Page 3, lines 7 through 18 – I have contacted Bob Freitas at DHHL to see if we need to update the number of Native Hawaiians residing on the home lands and those on the waiting list.
4. Page 6, line 18, insert the word "Hawaiian" before the word "native".
5. Page 6, line 20, capitalize the word "native" and insert after the word "Native", the word "Hawaiian".
6. Page 6, line 22, capitalize the word "native" and insert after the word "Native", the word "Hawaiian".
7. Page 6, line 23, capitalize the word "native" and insert after the word "Native", the word "Hawaiian".
8. Page 7, line 16, following the word "institutions", insert the following words: "in order to ensure that future generations of Native Hawaiians have the ability".
9. Page 11, lines 14 through 19, delete definition of "commission" and insert in lieu thereof a new definition as follows:

“(4) CONSTITUTION. – The term “constitution” means the organic governing documents of the Native Hawaiian governing entity approved by the adult members of the Native Hawaiian community listed on the roll.”

Rationale: Members of Congress and officials of Federal agencies who administer responsibilities of their agencies affecting America's indigenous, Native people (American Indians, Alaska Natives, and Native Hawaiians) are far more familiar with the term "constitution" than the term "organic governing documents", and are less likely to question what is meant by the use of the term "constitution". The term "constitution" has an accepted meaning in the field of Federal-Indian law and is the commonly employed term that is used throughout Federal statutes to refer to the organic governing documents of a Native government.

10. Pages 12 and 13, strike the definition of "Native Hawaiian" and insert in lieu thereof the following:

(9) NATIVE HAWAIIAN. -

(A) IN GENERAL. - Subject to subparagraph (B), for the purpose of establishing the roll authorized under section 7(c)(1) and until the Native Hawaiian governing entity has adopted a constitution, the term "Native Hawaiian" means -

- (i) an individual who is one of the indigenous, native people of Hawaii and who is a direct lineal descendant of the aboriginal, indigenous, native people who resided in the islands that now comprise the State of Hawaii prior to 1778, and who occupied and exercised sovereignty in the Hawaiian archipelago, including the area that now constitutes the State of Hawaii; or
- (ii) an individual who is one of the indigenous, native people of Hawaii and who was eligible in 1921 for the programs authorized by the Hawaiian Homes Commission Act (42 Stat. 108, chapter 42) or a direct lineal descendant of that individual.

(B) NO EFFECT ON OTHER DEFINITIONS. - Nothing in this paragraph affects the definition of the term "Native Hawaiian" under any other Federal or State law (including a regulation.)

[Reasoning: The current language provides that the term "Native Hawaiian" is controlled by the language of the NHGRA until the United States *reaffirms* the special political and legal relationship between the United States and the Native Hawaiian governing entity. The findings in the bill indicate that the relationship already exists. When an Indian tribe organizes a government and adopts a constitution, it is the constitution that establishes the criteria for those who are eligible to be citizens of that government – not Federal law. So to follow the Federal-Indian law model, the adoption of a constitution by the Native Hawaiian governing entity that establishes the criteria for those who are eligible to be citizens of that government – in other words, how that constitution defines "Native Hawaiian" – then the definition of Native Hawaiian should henceforth be governed by the Native Hawaiian governing entity's constitution, and should not have to await any action by the United States *reaffirming* the special political and legal relationship.

The use of the "1778" language follows the other Federal statutes that authorize the Native Hawaiian programs. The "1893" reference was developed after the Republican Administration took a position of opposition to the "1778" definition contained in almost all of the other Federal statutes affecting Native Hawaiians.

11. Page 14, line 22, delete the word "several".

12. Page 16, line 9, before the word "single", strike the word "the" and insert in lieu thereof the word "a".

13. Page 18, lines 6 through 11 – consider this change given the way the current section has been misunderstood in the Native Hawaiian community to mean that the Act would have no application to the Department of Defense, rather than the section having no application to DOD – would you want to make this change?

"(c) DEPARTMENT OF DEFENSE. – The Secretary of Defense may designate 1 or more officials as liaison to the Office."

14. Page 20, lines 1 through 6 – same rationale as above:

“( c) DEPARTMENT OF DEFENSE. – The Secretary of Defense may designate 1 or more officials as liaison to the Interagency Coordinating Group.

15. Page 20, beginning on line 19, strike section 7(b) – the Commission – and renumber following sections.

Rationale: The Commission is a creature of negotiations with the outgoing Administration. No other Federal law requires that a commission certify who is a Native person before a Native group can seek recognition and a government-to-government relationship with the United States. Native Hawaiians are barred from participating in the Federal Acknowledgment Process – a regulatory process within the Department of the Interior that has never been authorized by the Congress. That process does entail a genealogical background assessment on the individual members of Native groups petitioning for Federal recognition. However, Native groups, primarily Indian tribes, that receive recognition through an Act of Congress have not been subject to either a Commission nor a genealogical background investigation. The membership or citizenship of a Native group, primarily an Indian tribe, is established in the constitution of the Native government – it is not a function of, or a requirement of, Federal law. In fact, it is a fundamental tenet of Federal-Indian law that one of the basic rights of a sovereign is the right to determine its own membership or citizenship. In summary, there is no legal precedent in the recognition of a Native government through the enactment of legislation by the Congress for a Commission of this sort. In addition, the opponents of the NHGRA have consistently stated their plan to bring the reorganization of a Native Hawaiian governing entity to a halt by challenging the composition of the Commission in the Federal courts.

16. Page 25, beginning on line 1 – if the Commission section is deleted, then the elements of the “Roll” process need to be revised. Here is one way of accomplishing that:

**“Sec. 7. PROCESS FOR THE REORGANIZATION OF THE NATIVE HAWAIIAN GOVERNING ENTITY AND THE REAFFIRMATION OF THE SPECIAL POLITICAL AND LEGAL RELATIONSHIP BETWEEN THE UNITED STATES AND THE NATIVE HAWAIIAN GOVERNING ENTITY. --**

**(a) RECOGNITION OF THE NATIVE HAWAIIAN GOVERNING ENTITY. -** The right of the Native Hawaiian people to reorganize a single Native Hawaiian governing entity to provide for their common welfare and to adopt a constitution is recognized by the United States.

**(b) PROCESS FOR THE REORGANIZATION OF THE NATIVE HAWAIIAN GOVERNING ENTITY. -**

**(1) ROLL. -** A roll of the adult members of the Native Hawaiian community who elect to participate in the reorganization of the Native Hawaiian governing entity shall be developed and maintained by those adult members of the Native Hawaiian community who have provided documentation that they meet the criteria of the definition of Native Hawaiian as defined in section 3(10) of this Act.

**(2) ORGANIZATION OF THE NATIVE HAWAIIAN INTERIM GOVERNING COUNCIL. -**

**(A) ORGANIZATION. -** The adult members of the Native Hawaiian community listed on the roll may -

- (i)** develop criteria for candidates to be elected to serve on the Native Hawaiian Interim Governing Council;
- (ii)** determine the structure of the Council; and
- (iii)** elect members from individuals on the roll to the Council.

**(B) POWERS. -**

**(i) IN GENERAL. -** The Council -

- (I)** may represent those listed on the roll in the implementation of this Act; and

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

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

(iii) ACTIVITIES. - The Council may -

(I) publish the roll developed under paragraph (1) of this section in newspapers of general circulation.

(II) conduct a referendum among the adult members of the community listed on the roll for the purpose of determining the proposed elements of a constitution of the Native Hawaiian governing entity, including but not limited to -

(aa) the proposed criteria for citizenship of the Native Hawaiian governing entity;

(bb) the proposed powers and authorities to be exercised by the Native Hawaiian governing entity, as well as the proposed privileges and immunities of the Native Hawaiian governing entity;

(cc) the proposed civil rights and protection of the rights of the citizens of the Native Hawaiian governing entity and all persons affected by the exercise of governmental powers and authorities of the Native Hawaiian governing entity; and

(dd) other issued determined appropriate by the Council.

(III) DEVELOPMENT OF CONSTITUTION. - Based on the referendum, the Council may develop a proposed constitution for the Native Hawaiian governing entity.

(IV) DISTRIBUTION. - The Council may distribute to all adult members of the Native Hawaiian community listed on the roll published under this subsection -

(aa) a copy of the proposed constitution, as drafted by the Council; and

(bb) a brief impartial description of the proposed constitution;

(V) ELECTIONS. - The Council may hold elections for the purpose of ratifying the proposed constitution, and upon certification of the constitution of the Native Hawaiian governing entity by the Secretary in accordance with paragraph (4), hold elections of the officers of the Native Hawaiian governing entity pursuant to paragraph (5).

(3) SUBMITTAL OF CONSTITUTION. - Following the reorganization of the Native Hawaiian governing entity and the adoption of a constitution of the Native Hawaiian governing entity, the Council shall submit the constitution of the Native Hawaiian governing entity to the Secretary.

(4) CERTIFICATIONS. -

(A) IN GENERAL. - Within the context of the future negotiations to be conducted under the authority of section 8(b)(1), and the subsequent actions by the Congress and the State of Hawaii to enact legislation to implement the agreements of the 3 governments, not later than 90 days after the date on which the Council submits the constitution of the Native Hawaiian governing entity to the Secretary, the Secretary shall certify that the constitution of the Native Hawaiian governing entity -

(i) establishes the criteria for citizenship in the Native Hawaiian governing entity;

(ii) was adopted by a majority vote of the adult members of the Native Hawaiian community whose names are listed on the roll;

(iii) provides authority for the Native Hawaiian governing entity to negotiate with Federal, State and local governments, and other entities;

(iv) provides for the exercise of governmental authorities by the Native Hawaiian governing entity, including any authorities that may be delegated to the Native Hawaiian governing entity by the United States and the State of Hawaii following negotiations authorized in section 8(b)(1) and the enactment of legislation to implement the agreements of the 3 governments;

(v) prevents the sale, disposition, lease or encumbrance of lands, interests in land, or other assets of the Native Hawaiian governing entity without the consent of the Native Hawaiian governing entity;

(vi) provides for the protection of the civil rights of the citizens of the Native Hawaiian governing entity and all persons affected by the exercise of governmental powers and authorities by the Native Hawaiian governing entity;

and

(vii) is consistent with applicable Federal law and the special political and legal relationship between the United States and the indigenous, native people of the United States.

**(B) RESUBMISSION FOR COMPLIANCE WITH THE REQUIREMENTS OF SUBPARAGRAPH (A). -**

(i) RESUBMISSION BY THE SECRETARY. - If the Secretary determines that the constitution of the Native Hawaiian governing entity, or any part of the constitution, does not meet all of the requirements set forth in subparagraph (A), the Secretary shall resubmit the constitution to the Council, along with a justification for each of the Secretary's findings as to why the provisions are not in full compliance.

(ii) AMENDMENT AND RESUBMISSION OF THE CONSTITUTION. - If the constitution of the Native Hawaiian governing entity is resubmitted to the Council by the Secretary under clause (I), the Council shall -  
(I) amend the constitution to ensure that the constitution meets all the requirements set forth in subparagraph (a); and  
(II) resubmit the amended constitution to the Secretary for certification in accordance with this paragraph.

( C ) CERTIFICATIONS DEEMED MADE. - The certifications under paragraph (4) shall be deemed to have been made if the Secretary has not acted within 90 days after the date on which the Council has submitted the constitution of the Native Hawaiian governing entity to the Secretary.

(5) ELECTIONS. - On completion of the certifications by the Secretary under paragraph (4), the Council may hold elections of the officers of the Native Hawaiian governing entity.

(6) REAFFIRMATION. - Notwithstanding any other provision of law, upon the certifications required under paragraph (4) and the election of the officers of the Native Hawaiian governing entity, the special political and legal relationship between the United States and the Native Hawaiian governing entity is hereby reaffirmed and the United States extends Federal recognition to the Native Hawaiian governing entity as the representative governing body of the Native Hawaiian people."

[Please note - on page 34 of the current bill, in the title of the subsection (B) of section 7( c)(2) on line 16, the reference to SUBPARAGRAPH (a) should be to SUBPARAGRAPH (A)]

17. Page 39, line 20 - "( c ) CLAIMS. -"

In general, the first part of the "CLAIMS" section, subsection "(1) DISCLAIMERS." is fine - because all of the statements contained therein are true - the Act does not create a cause of action against the U.S. or any

other entity or person, does not alter existing law or create obligations that did not exist in any source of Federal law prior to the date of enactment or establish authority for recognition of Native Hawaiian groups other than the single Native Hawaiian governing entity.

The subsection “(2) FEDERAL SOVEREIGN IMMUNITY. – (A) SPECIFIC PURPOSE” is mistitled, because it actually addresses the sovereign immunity not only of the U.S. but of the State of Hawaii. And because the United States has not waived its sovereign immunity in any other statute (unless Native Hawaiians are considered to be an Indian tribe – which is why this language was put in – just in case a court declared that a Native Hawaiian governing entity was an Indian tribe – thus triggering the application of other Federal-Indian statutes) and because this Act does not *authorize* any cause of action against the United States or the State of Hawaii, one could argue that this section is not necessary.

Subsections “(B) ESTABLISHMENT AND RETENTION OF SOVEREIGN IMMUNITY” and “( C) EFFECT” are more problematic. Most attorneys who have looked at this language, including Mark Bennett, agree that these two sections have the effect of rendering *all claims of any kind* against the United States non-justiciable. So, for instance, if a Native Hawaiian is hit by an ambulance from Tripler Medical Center and either seriously injured or killed, he (or she) or his (or her) estate could not bring an action against the United States under the Federal Tort Claims Act. Nor could there be any action against the United States if a Native Hawaiian received medical care at Tripler that might otherwise be found by a court to constitute negligence or medical malpractice.

So the inclusion of this language in this Act, arguably strips Native Hawaiians of a right that they would otherwise have under Federal law as a citizen of the United States. The language is over-broad and over-reaching. The Justice Department attorneys accomplished, through negotiating this language, something that the government could not otherwise hope to achieve – a violation of the Constitution’s guarantee of the equal protection of the laws – and in this case, on the basis of race or ethnicity (because without regard to a Native Hawaiian’s status as a citizen

of a Native Hawaiian government, a Native Hawaiian still has the same rights as any other American citizen under the Constitution – but for this language).

The second sentence of subsection (B) basically provides that waivers of sovereign immunity applicable to Indian tribal governments do not apply to the Native Hawaiian government. Again, the DOJ lawyers were trying to anticipate that a Federal court might conclude that a Native Hawaiian government was comparable to an Indian tribal government, and thus statutes enacted to address conditions in Indian country, apply with equal force to a Native Hawaiian government.

If there is a desire to protect the government against the possible application of these Federal statutes which waive the United States' sovereign immunity for actions brought by Indian tribes, the more straightforward (and less subject to mischief ) way of accomplishing that end, is to spell out those waivers and provide that they do not apply to the Native Hawaiian governing entity.

As to subsection ( C), this section is *so* unclear, that even those who negotiated it can't fully articulate its meaning or effect. That fact alone suggests that it should be stricken from the bill.

Subsection "(3) STATE SOVEREIGN IMMUNITY" basically preserves the status quo *ante* – it only provides that nothing in the bill (the Act) changes current law with regard to the State's sovereign immunity as it existed prior to the date of enactment of the Act, and doesn't waive the State's sovereign immunity under the 11<sup>th</sup> Amendment to the Constitution. The U.S. Supreme Court has already held that the Congress can't waive a State's 11<sup>th</sup> Amendment immunity as the Congress attempted to do in the Indian Gaming Regulatory Act. So while the subsection (B) of subsection (3) is thus redundant of what the Supreme Court has already held, it doesn't attempt to create new law – as the Federal sovereign immunity sections of the bill would do.

18. Page 43, line 4, " ( c) REAL PROPERTY TRANSFERS." This section could end at the end of the first sentence. All the rest of the language is

more appropriately contained in committee report language. The first sentence says all that needs to be said.

110TH CONGRESS  
1ST SESSION

# S. 310

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.

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## IN THE SENATE OF THE UNITED STATES

JANUARY 17, 2007

Mr. AKAKA (for himself, Mr. INOUE, Mr. DORGAN, Ms. CANTWELL, Mr. COLEMAN, Mr. STEVENS, Ms. MURKOWSKI, Mr. SMITH, and Mr. DODD) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

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## 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,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Native Hawaiian Gov-  
5       ernment Reorganization Act of 2007”.

6       **SEC. 2. FINDINGS.**

7       Congress finds that—

1           (1) the Constitution vests Congress with the au-  
2           thority to address the conditions of the indigenous,  
3           native people of the United States;

4           (2) Native Hawaiians, the native people of the  
5           Hawaiian archipelago that is now part of the United  
6           States, are indigenous, native people of the United  
7           States;

8           (3) the United States has a special political and  
9           legal relationship to promote the welfare of the na-  
10          tive people of the United States, including Native  
11          Hawaiians;

12          (4) under the treaty making power of the  
13          United States, Congress exercised its constitutional  
14          authority to confirm treaties between the United  
15          States and the Kingdom of Hawaii, and from 1826  
16          until 1893, the United States—

17                 (A) recognized the sovereignty of the King-  
18                 dom of Hawaii;

19                 (B) accorded full diplomatic recognition to  
20                 the Kingdom of Hawaii; and

21                 (C) entered into treaties and conventions  
22                 with the Kingdom of Hawaii to govern com-  
23                 merce and navigation in 1826, 1842, 1849,  
24                 1875, and 1887;

1           (5) pursuant to the Hawaiian Homes Commis-  
2 sion Act, 1920 (42 Stat. 108, chapter 42), the  
3 United States set aside approximately 203,500 acres  
4 of land to address the conditions of Native Hawai-  
5 ians in the Federal territory that later became the  
6 State of Hawaii;

7           (6) by setting aside 203,500 acres of land for  
8 Native Hawaiian homesteads and farms, the Hawai-  
9 ian Homes Commission Act assists the members of  
10 the Native Hawaiian community in maintaining dis-  
11 tinct native settlements throughout the State of Ha-  
12 waii;

13           (7) approximately 6,800 Native Hawaiian fami-  
14 lies reside on the Hawaiian Home Lands and ap-  
15 proximately 18,000 Native Hawaiians who are eligi-  
16 ble to reside on the Hawaiian Home Lands are on  
17 a waiting list to receive assignments of Hawaiian  
18 Home Lands;

19           (8)(A) in 1959, as part of the compact with the  
20 United States admitting Hawaii into the Union,  
21 Congress established a public trust (commonly  
22 known as the “ceded lands trust”), for 5 purposes,  
23 1 of which is the betterment of the conditions of Na-  
24 tive Hawaiians;

1 (B) the public trust consists of lands, including  
2 submerged lands, natural resources, and the reve-  
3 nues derived from the lands; and

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

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

10 (10) the Hawaiian Home Lands and other  
11 ceded lands provide an important foundation for the  
12 ability of the Native Hawaiian community to main-  
13 tain the practice of Native Hawaiian culture, lan-  
14 guage, and traditions, and for the survival and eco-  
15 nomic self-sufficiency of the Native Hawaiian people;

16 (11) Native Hawaiians continue to maintain  
17 other distinctly native areas in Hawaii;

18 (12) on November 23, 1993, Public Law 103-  
19 150 (107 Stat. 1510) (commonly known as the  
20 “Apology Resolution”) was enacted into law, extend-  
21 ing an apology on behalf of the United States to the  
22 native people of Hawaii for the United States’ role  
23 in the overthrow of the Kingdom of Hawaii;

24 (13) the Apology Resolution acknowledges that  
25 the overthrow of the Kingdom of Hawaii occurred

1 with the active participation of agents and citizens  
2 of the United States and further acknowledges that  
3 the Native Hawaiian people never directly relin-  
4 quished to the United States their claims to their in-  
5 herent sovereignty as a people over their national  
6 lands, either through the Kingdom of Hawaii or  
7 through a plebiscite or referendum;

8 (14) the Apology Resolution expresses the com-  
9 mitment of Congress and the President—

10 (A) to acknowledge the ramifications of the  
11 overthrow of the Kingdom of Hawaii;

12 (B) to support reconciliation efforts be-  
13 tween the United States and Native Hawaiians;  
14 and

15 (C) to consult with Native Hawaiians on  
16 the reconciliation process as called for in the  
17 Apology Resolution;

18 (15) despite the overthrow of the government of  
19 the Kingdom of Hawaii, Native Hawaiians have con-  
20 tinued to maintain their separate identity as a single  
21 distinct native community through cultural, social,  
22 and political institutions, and to give expression to  
23 their rights as native people to self-determination,  
24 self-governance, and economic self-sufficiency;

1           (16) Native Hawaiians have also given expres-  
2 sion to their rights as native people to self-deter-  
3 mination, self-governance, and economic self-suffi-  
4 ciency—

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

8                   (i) health care services;

9                   (ii) educational programs;

10                  (iii) employment and training pro-  
11 grams;

12                  (iv) economic development assistance  
13 programs;

14                  (v) children's services;

15                  (vi) conservation programs;

16                  (vii) fish and wildlife protection;

17                  (viii) agricultural programs;

18                  (ix) native language immersion pro-  
19 grams;

20                  (x) native language immersion schools  
21 from kindergarten through high school;

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

25                  (xii) traditional justice programs, and

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

4           (17) Native Hawaiians are actively engaged in  
5           Native Hawaiian cultural practices, traditional agri-  
6           cultural methods, fishing and subsistence practices,  
7           maintenance of cultural use areas and sacred sites,  
8           protection of burial sites, and the exercise of their  
9           traditional rights to gather medicinal plants and  
10          herbs, and food sources;

11          (18) 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          (19) 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          Native Hawaiian governing entity for the purpose of

1 giving expression to their rights as native people to  
2 self-determination and self-governance;

3 (20) 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 a  
9 distinct group of indigenous, native people of  
10 the United States within the scope of its au-  
11 thority under the Constitution, and has enacted  
12 scores 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 (21) 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 (22) the United States has continually recog-  
16 nized and reaffirmed that—

17 (A) Native Hawaiians have a cultural, his-  
18 toric, and land-based link to the aboriginal, in-  
19 digenous, native people who exercised sov-  
20 ereignty over the Hawaiian Islands;

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

24 (C) the United States extends services to  
25 Native Hawaiians because of their unique sta-

1           tus as the indigenous, native people of a once-  
2           sovereign nation with whom the United States  
3           has a special political and legal relationship;  
4           and

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

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

19 **SEC. 3. DEFINITIONS.**

20          In this Act:

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

1 sovereignty in the areas that later became part of  
2 the United States.

3 (2) ADULT MEMBER.—The term “adult mem-  
4 ber” means a Native Hawaiian who has attained the  
5 age of 18 and who elects to participate in the reor-  
6 ganization of the Native Hawaiian governing entity.

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

14 (4) COMMISSION.—The term “commission”  
15 means the Commission established under section  
16 7(b) to provide for the certification that those adult  
17 members of the Native Hawaiian community listed  
18 on the roll meet the definition of Native Hawaiian  
19 set forth in paragraph (10).

20 (5) COUNCIL.—The term “council” means the  
21 Native Hawaiian Interim Governing Council estab-  
22 lished under section 7(c)(2).

23 (6) INDIAN PROGRAM OR SERVICE.—

24 (A) IN GENERAL.—The term “Indian pro-  
25 gram or service” means any federally funded or

1 authorized program or service provided to an  
2 Indian tribe (or member of an Indian tribe) be-  
3 cause of the status of the members of the In-  
4 dian tribe as Indians.

5 (B) INCLUSIONS.—The term “Indian pro-  
6 gram or service” includes a program or service  
7 provided by the Bureau of Indian Affairs, the  
8 Indian Health Service, or any other Federal  
9 agency.

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

14 (8) INDIGENOUS, NATIVE PEOPLE.—The term  
15 “indigenous, native people” means the lineal de-  
16 scendants of the aboriginal, indigenous, native peo-  
17 ple of the United States.

18 (9) INTERAGENCY COORDINATING GROUP.—The  
19 term “Interagency Coordinating Group” means the  
20 Native Hawaiian Interagency Coordinating Group  
21 established under section 6.

22 (10) NATIVE HAWAIIAN.—

23 (A) IN GENERAL.—Subject to subpara-  
24 graph (B), for the purpose of establishing the  
25 roll authorized under section 7(c)(1) and before

1 the reaffirmation of the special political and  
 2 legal relationship between the United States  
 3 and the Native Hawaiian governing entity, the  
 4 term “Native Hawaiian” means—

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

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

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

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

22 (B) NO EFFECT ON OTHER DEFINI-  
 23 TIONS.—Nothing in this paragraph affects the  
 24 definition of the term “Native Hawaiian” under

1 any other Federal or State law (including a reg-  
2 ulation).

3 (11) NATIVE HAWAIIAN GOVERNING ENTITY.—  
4 The term “Native Hawaiian Governing Entity”  
5 means the governing entity organized by the Native  
6 Hawaiian people pursuant to this Act.

7 (12) NATIVE HAWAIIAN PROGRAM OR SERV-  
8 ICE.—The term “Native Hawaiian program or serv-  
9 ice” means any program or service provided to Na-  
10 tive Hawaiians because of their status as Native Ha-  
11 waiians.

12 (13) OFFICE.—The term “Office” means the  
13 United States Office for Native Hawaiian Relations  
14 established by section 5(a).

15 (14) SECRETARY.—The term “Secretary”  
16 means the Secretary of the Interior.

17 (15) SPECIAL POLITICAL AND LEGAL RELA-  
18 TIONSHIP.—The term “special political and legal re-  
19 lationship” shall refer, except where differences are  
20 specifically indicated elsewhere in the Act, to the  
21 type of and nature of relationship the United States  
22 has with the several federally recognized Indian  
23 tribes.

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

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

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

4 (2) the United States has a special political and  
5 legal relationship with the Native Hawaiian people  
6 which includes promoting the welfare of Native Ha-  
7 waiians;

8 (3) Congress possesses the authority under the  
9 Constitution, including but not limited to Article I,  
10 section 8, clause 3, to enact legislation to address  
11 the conditions of Native Hawaiians and has exer-  
12 cised this authority through the enactment of—

13 (A) the Hawaiian Homes Commission Act,  
14 1920 (42 Stat. 108, chapter 42);

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

19 (C) more than 150 other Federal laws ad-  
20 dressing the conditions of Native Hawaiians;

21 (4) Native Hawaiians have—

22 (A) an inherent right to autonomy in their  
23 internal affairs;

24 (B) an inherent right of self-determination  
25 and self-governance;

1 (C) the right to reorganize a Native Ha-  
2 waiian governing entity; and

3 (D) the right to become economically self-  
4 sufficient; and

5 (5) the United States shall continue to engage  
6 in a process of reconciliation and political relations  
7 with the Native Hawaiian people.

8 (b) PURPOSE.—The purpose of this Act is to provide  
9 a process for the reorganization of the single Native Ha-  
10 waiian governing entity and the reaffirmation of the spe-  
11 cial political and legal relationship between the United  
12 States and that Native Hawaiian governing entity for pur-  
13 poses of continuing a government-to-government relation-  
14 ship.

15 **SEC. 5. UNITED STATES OFFICE FOR NATIVE HAWAIIAN RE-**  
16 **LATIONS.**

17 (a) ESTABLISHMENT.—There is established within  
18 the Office of the Secretary, the United States Office for  
19 Native Hawaiian Relations.

20 (b) DUTIES.—The Office shall—

21 (1) continue the process of reconciliation with  
22 the Native Hawaiian people in furtherance of the  
23 Apology Resolution;

24 (2) upon the reaffirmation of the special polit-  
25 ical and legal relationship between the single Native

1 Hawaiian governing entity and the United States,  
2 effectuate and coordinate the special political and  
3 legal relationship between the Native Hawaiian gov-  
4 erning entity and the United States through the  
5 Secretary, and with all other Federal agencies;

6 (3) fully integrate the principle and practice of  
7 meaningful, regular, and appropriate consultation  
8 with the Native Hawaiian governing entity by pro-  
9 viding timely notice to, and consulting with, the Na-  
10 tive Hawaiian people and the Native Hawaiian gov-  
11 erning entity before taking any actions that may  
12 have the potential to significantly affect Native Ha-  
13 waiian resources, rights, or lands;

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

19 (5) prepare and submit to the Committee on  
20 Indian Affairs and the Committee on Energy and  
21 Natural Resources of the Senate and the Committee  
22 on Resources of the House of Representatives an an-  
23 nual report detailing the activities of the Interagency  
24 Coordinating Group that are undertaken with re-  
25 spect to the continuing process of reconciliation and

1 to effect meaningful consultation with the Native  
 2 Hawaiian governing entity and providing rec-  
 3 ommendations for any necessary changes to Federal  
 4 law or regulations promulgated under the authority  
 5 of Federal law.

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

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

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

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

23 (1) each Federal agency that administers Na-  
 24 tive Hawaiian programs, establishes or implements  
 25 policies that affect Native Hawaiians, or whose ac-

1 tions may significantly or uniquely impact Native  
2 Hawaiian resources, rights, or lands; and

3 (2) the Office.

4 (c) LEAD AGENCY.—

5 (1) IN GENERAL.—The Department of the Inte-  
6 rior shall serve as the lead agency of the Interagency  
7 Coordinating Group.

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

10 (d) DUTIES.—The Interagency Coordinating Group  
11 shall—

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

17 (2) consult with the Native Hawaiian governing  
18 entity, through the coordination referred to in sec-  
19 tion 6(d)(1), but the consultation obligation estab-  
20 lished in this provision shall apply only after the sat-  
21 isfaction of all of the conditions referred to in sec-  
22 tion 7(e)(6); and

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

1       (e) **APPLICABILITY TO DEPARTMENT OF DE-**  
 2 **FENSE.**—This section shall have no applicability to the  
 3 Department of Defense or to any agency or component  
 4 of the Department of Defense, but the Secretary of De-  
 5 fense may designate 1 or more officials as liaison to the  
 6 Interagency Coordinating Group.

7 **SEC. 7. PROCESS FOR THE REORGANIZATION OF THE NA-**  
 8 **TIVE HAWAIIAN GOVERNING ENTITY AND**  
 9 **THE REAFFIRMATION OF THE SPECIAL PO-**  
 10 **LITICAL AND LEGAL RELATIONSHIP BE-**  
 11 **TWEEN THE UNITED STATES AND THE NA-**  
 12 **TIVE HAWAIIAN GOVERNING ENTITY.**

13       (a) **RECOGNITION OF THE NATIVE HAWAIIAN GOV-**  
 14 **ERNING ENTITY.**—The right of the Native Hawaiian peo-  
 15 ple to reorganize the single Native Hawaiian governing en-  
 16 tity to provide for their common welfare and to adopt ap-  
 17 propriate organic governing documents is recognized by  
 18 the United States.

19       (b) **COMMISSION.**—

20           (1) **IN GENERAL.**—There is authorized to be es-  
 21 tablished a Commission to be composed of 9 mem-  
 22 bers for the purposes of—

23               (A) preparing and maintaining a roll of the  
 24 adult members of the Native Hawaiian commu-  
 25 nity who elect to participate in the reorganiza-

1 tion of the single Native Hawaiian governing  
2 entity; and

3 (B) certifying that the adult members of  
4 the Native Hawaiian community proposed for  
5 inclusion on the roll meet the definition of Na-  
6 tive Hawaiian in section 3(10).

7 (2) MEMBERSHIP.—

8 (A) APPOINTMENT.—

9 (i) IN GENERAL.—Not later than 180  
10 days after the date of enactment of this  
11 Act, the Secretary shall appoint the mem-  
12 bers of the Commission in accordance with  
13 subparagraph (B).

14 (ii) CONSIDERATION.—In making an  
15 appointment under clause (i), the Sec-  
16 retary may take into consideration a rec-  
17 ommendation made by any Native Hawai-  
18 ian organization.

19 (B) REQUIREMENTS.—Each member of  
20 the Commission shall demonstrate, as deter-  
21 mined by the Secretary—

22 (i) not less than 10 years of experi-  
23 ence in the study and determination of Na-  
24 tive Hawaiian genealogy; and

1                   (ii) an ability to read and translate  
2                   into English documents written in the Ha-  
3                   waiian language.

4                   (C) VACANCIES.—A vacancy on the Com-  
5                   mission—

6                   (i) shall not affect the powers of the  
7                   Commission; and

8                   (ii) shall be filled in the same manner  
9                   as the original appointment.

10                  (3) EXPENSES.—Each member of the Commis-  
11                  sion shall be allowed travel expenses, including per  
12                  diem in lieu of subsistence, at rates authorized for  
13                  employees of agencies under subchapter I of chapter  
14                  57 of title 5, United States Code, while away from  
15                  their homes or regular places of business in the per-  
16                  formance of services for the Commission.

17                  (4) DUTIES.—The Commission shall—

18                         (A) prepare and maintain a roll of the  
19                         adult members of the Native Hawaiian commu-  
20                         nity who elect to participate in the reorganiza-  
21                         tion of the Native Hawaiian governing entity;  
22                         and

23                         (B) certify that each of the adult members  
24                         of the Native Hawaiian community proposed for

1 inclusion on the roll meets the definition of Na-  
2 tive Hawaiian in section 3(10).

3 (5) STAFF.—

4 (A) IN GENERAL.—The Commission may,  
5 without regard to the civil service laws (includ-  
6 ing regulations), appoint and terminate an exec-  
7 utive director and such other additional per-  
8 sonnel as are necessary to enable the Commis-  
9 sion to perform the duties of the Commission.

10 (B) COMPENSATION.—

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

19 (ii) MAXIMUM RATE OF PAY.—The  
20 rate of pay for the executive director and  
21 other personnel shall not exceed the rate  
22 payable for level V of the Executive Sched-  
23 ule under section 5316 of title 5, United  
24 States Code.

1           (6) DETAIL OF FEDERAL GOVERNMENT EM-  
2 PLOYEES.—

3           (A) IN GENERAL.—An employee of the  
4 Federal Government may be detailed to the  
5 Commission without reimbursement.

6           (B) CIVIL SERVICE STATUS.—The detail of  
7 the employee shall be without interruption or  
8 loss of civil service status or privilege.

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

17           (8) EXPIRATION.—The Secretary shall dissolve  
18 the Commission upon the reaffirmation of the spe-  
19 cial political and legal relationship between the Na-  
20 tive Hawaiian governing entity and the United  
21 States.

22           (c) PROCESS FOR THE REORGANIZATION OF THE NA-  
23 TIVE HAWAIIAN GOVERNING ENTITY.—

24           (1) ROLL.—

1           (A) CONTENTS.—The roll shall include the  
2 names of the adult members of the Native Ha-  
3 waiian community who elect to participate in  
4 the reorganization of the Native Hawaiian gov-  
5 erning entity and are certified to be Native Ha-  
6 waiian as defined in section 3(10) by the Com-  
7 mission.

8           (B) FORMATION OF ROLL.—Each adult  
9 member of the Native Hawaiian community  
10 who elects to participate in the reorganization  
11 of the Native Hawaiian governing entity shall  
12 submit to the Commission documentation in the  
13 form established by the Commission that is suf-  
14 ficient to enable the Commission to determine  
15 whether the individual meets the definition of  
16 Native Hawaiian in section 3(10).

17           (C) DOCUMENTATION.—The Commission  
18 shall—

19           (i) identify the types of documentation  
20 that may be submitted to the Commission  
21 that would enable the Commission to de-  
22 termine whether an individual meets the  
23 definition of Native Hawaiian in section  
24 3(10);

1 (ii) establish a standard format for  
2 the submission of documentation; and

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

5 (D) CONSULTATION.—In making deter-  
6 minations that each of the adult members of  
7 the Native Hawaiian community proposed for  
8 inclusion on the roll meets the definition of Na-  
9 tive Hawaiian in section 3(10), the Commission  
10 may consult with Native Hawaiian organiza-  
11 tions, agencies of the State of Hawaii including  
12 but not limited to the Department of Hawaiian  
13 Home Lands, the Office of Hawaiian Affairs,  
14 and the State Department of Health, and other  
15 entities with expertise and experience in the de-  
16 termination of Native Hawaiian ancestry and  
17 lincal descendancy.

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

21 (i) submit the roll containing the  
22 names of the adult members of the Native  
23 Hawaiian community who meet the defini-  
24 tion of Native Hawaiian in section 3(10) to  
25 the Secretary within two years from the

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

3 (ii) certify to the Secretary that each  
4 of the adult members of the Native Hawai-  
5 ian community proposed for inclusion on  
6 the roll meets the definition of Native Ha-  
7 waiian in section 3(10).

8 (F) PUBLICATION.—Upon certification by  
9 the Commission to the Secretary that those list-  
10 ed on the roll meet the definition of Native Ha-  
11 waiian in section 3(10), the Secretary shall pub-  
12 lish the roll in the Federal Register.

13 (G) APPEAL.—The Secretary may estab-  
14 lish a mechanism for an appeal for any person  
15 whose name is excluded from the roll who  
16 claims to meet the definition of Native Hawai-  
17 ian in section 3(10) and to be 18 years of age  
18 or older.

19 (H) PUBLICATION; UPDATE.—The Sec-  
20 retary shall—

21 (i) publish the roll regardless of  
22 whether appeals are pending;

23 (ii) update the roll and the publication  
24 of the roll on the final disposition of any  
25 appeal; and

1 (iii) update the roll to include any Na-  
2 tive Hawaiian who has attained the age of  
3 18 and who has been certified by the Com-  
4 mission as meeting the definition of Native  
5 Hawaiian in section 3(10) after the initial  
6 publication of the roll or after any subse-  
7 quent publications of the roll.

8 (I) FAILURE TO ACT.—If the Secretary  
9 fails to publish the roll, not later than 90 days  
10 after the date on which the roll is submitted to  
11 the Secretary, the Commission shall publish the  
12 roll notwithstanding any order or directive  
13 issued by the Secretary or any other official of  
14 the Department of the Interior to the contrary.

15 (J) EFFECT OF PUBLICATION.—The publi-  
16 cation of the initial and updated roll shall serve  
17 as the basis for the eligibility of adult members  
18 of the Native Hawaiian community whose  
19 names are listed on those rolls to participate in  
20 the reorganization of the Native Hawaiian gov-  
21 erning entity.

22 (2) ORGANIZATION OF THE NATIVE HAWAIIAN  
23 INTERIM GOVERNING COUNCIL.—

1 (A) ORGANIZATION.—The adult members  
2 of the Native Hawaiian community listed on the  
3 roll published under this section may—

4 (i) develop criteria for candidates to  
5 be elected to serve on the Native Hawaiian  
6 Interim Governing Council;

7 (ii) determine the structure of the  
8 Council; and

9 (iii) elect members from individuals  
10 listed on the roll published under this sub-  
11 section to the Council.

12 (B) POWERS.—

13 (i) IN GENERAL.—The Council—

14 (I) may represent those listed on  
15 the roll published under this section in  
16 the implementation of this Act; and

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

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

24 (iii) ACTIVITIES.—

1 (I) IN GENERAL.—The Council  
2 may conduct a referendum among the  
3 adult members of the Native Hawai-  
4 ian community listed on the roll pub-  
5 lished under this subsection for the  
6 purpose of determining the proposed  
7 elements of the organic governing doc-  
8 uments of the Native Hawaiian gov-  
9 erning entity, including but not lim-  
10 ited to—

11 (aa) the proposed criteria  
12 for citizenship of the Native Ha-  
13 waiian governing entity;

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

21 (cc) the proposed civil rights  
22 and protection of the rights of  
23 the citizens of the Native Hawai-  
24 ian governing entity and all per-  
25 sons affected by the exercise of

1 governmental powers and au-  
2 thorities of the Native Hawaiian  
3 governing entity; and

4 (dd) other issues determined  
5 appropriate by the Council.

6 (II) DEVELOPMENT OF ORGANIC  
7 GOVERNING DOCUMENTS.—Based on  
8 the referendum, the Council may de-  
9 velop proposed organic governing doc-  
10 uments for the Native Hawaiian gov-  
11 erning entity.

12 (III) DISTRIBUTION.—The Coun-  
13 cil may distribute to all adult mem-  
14 bers of the Native Hawaiian commu-  
15 nity listed on the roll published under  
16 this subsection—

17 (aa) a copy of the proposed  
18 organic governing documents, as  
19 drafted by the Council; and

20 (bb) a brief impartial de-  
21 scription of the proposed organic  
22 governing documents;

23 (IV) ELECTIONS.—The Council  
24 may hold elections for the purpose of  
25 ratifying the proposed organic gov-

1                   erning documents, and on certification  
2                   of the organic governing documents  
3                   by the Secretary in accordance with  
4                   paragraph (4), hold elections of the  
5                   officers of the Native Hawaiian gov-  
6                   erning entity pursuant to paragraph  
7                   (5).

8                   (3) SUBMITTAL OF ORGANIC GOVERNING DOCU-  
9                   MENTS.—Following the reorganization of the Native  
10                  Hawaiian governing entity and the adoption of or-  
11                  ganic governing documents, the Council shall submit  
12                  the organic governing documents of the Native Ha-  
13                  waiian governing entity to the Secretary.

14                  (4) CERTIFICATIONS.—

15                  (A) IN GENERAL.—Within the context of  
16                  the future negotiations to be conducted under  
17                  the authority of section 8(b)(1), and the subse-  
18                  quent actions by the Congress and the State of  
19                  Hawaii to enact legislation to implement the  
20                  agreements of the 3 governments, not later  
21                  than 90 days after the date on which the Coun-  
22                  cil submits the organic governing documents to  
23                  the Secretary, the Secretary shall certify that  
24                  the organic governing documents—

1 (i) establish the criteria for citizenship  
2 in the Native Hawaiian governing entity;

3 (ii) were adopted by a majority vote of  
4 the adult members of the Native Hawaiian  
5 community whose names are listed on the  
6 roll published by the Secretary;

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

11 (iv) provide for the exercise of govern-  
12 mental authorities by the Native Hawaiian  
13 governing entity, including any authorities  
14 that may be delegated to the Native Ha-  
15 waiian governing entity by the United  
16 States and the State of Hawaii following  
17 negotiations authorized in section 8(b)(1)  
18 and the enactment of legislation to imple-  
19 ment the agreements of the 3 governments;

20 (v) prevent the sale, disposition, lease,  
21 or encumbrance of lands, interests in  
22 lands, or other assets of the Native Hawai-  
23 ian governing entity without the consent of  
24 the Native Hawaiian governing entity;

1 (vi) provide for the protection of the  
2 civil rights of the citizens of the Native  
3 Hawaiian governing entity and all persons  
4 affected by the exercise of governmental  
5 powers and authorities by the Native Ha-  
6 waiian governing entity; and

7 (vii) are consistent with applicable  
8 Federal law and the special political and  
9 legal relationship between the United  
10 States and the indigenous, native people of  
11 the United States; provided that the provi-  
12 sions of Public Law 103-454, 25 U.S.C.  
13 479a, shall not apply.

14 (B) RESUBMISSION IN CASE OF NON-  
15 COMPLIANCE WITH THE REQUIREMENTS OF  
16 SUBPARAGRAPH (a).—

17 (i) RESUBMISSION BY THE SEC-  
18 RETARY.—If the Secretary determines that  
19 the organic governing documents, or any  
20 part of the documents, do not meet all of  
21 the requirements set forth in subparagraph  
22 (A), the Secretary shall resubmit the or-  
23 ganic governing documents to the Council,  
24 along with a justification for each of the

1 Secretary's findings as to why the provi-  
2 sions are not in full compliance.

3 (ii) AMENDMENT AND RESUBMISSION  
4 OF ORGANIC GOVERNING DOCUMENTS.—If  
5 the organic governing documents are re-  
6 submitted to the Council by the Secretary  
7 under clause (i), the Council shall—

8 (I) amend the organic governing  
9 documents to ensure that the docu-  
10 ments meet all the requirements set  
11 forth in subparagraph (A); and

12 (II) resubmit the amended or-  
13 ganic governing documents to the Sec-  
14 retary for certification in accordance  
15 with this paragraph.

16 (C) CERTIFICATIONS DEEMED MADE.—  
17 The certifications under paragraph (4) shall be  
18 deemed to have been made if the Secretary has  
19 not acted within 90 days after the date on  
20 which the Council has submitted the organic  
21 governing documents of the Native Hawaiian  
22 governing entity to the Secretary.

23 (5) ELECTIONS.—On completion of the certifi-  
24 cations by the Secretary under paragraph (4), the

1 Council may hold elections of the officers of the Na-  
 2 tive Hawaiian governing entity.

3 (6) REAFFIRMATION.—Notwithstanding any  
 4 other provision of law, upon the certifications re-  
 5 quired under paragraph (4) and the election of the  
 6 officers of the Native Hawaiian governing entity, the  
 7 special political and legal relationship between the  
 8 United States and the Native Hawaiian governing  
 9 entity is hereby reaffirmed and the United States ex-  
 10 tends Federal recognition to the Native Hawaiian  
 11 governing entity as the representative governing  
 12 body of the Native Hawaiian people.

13 **SEC. 8. REAFFIRMATION OF DELEGATION OF FEDERAL AU-**  
 14 **THORITY; NEGOTIATIONS; CLAIMS.**

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

22 (b) NEGOTIATIONS.—

23 (1) IN GENERAL.—Upon the reaffirmation of  
 24 the special political and legal relationship between  
 25 the United States and the Native Hawaiian gov-

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

5               (A) the transfer of lands, natural re-  
6               sources, and other assets, and the protection of  
7               existing rights related to such lands or re-  
8               sources;

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

12             (C) the exercise of civil and criminal juris-  
13             diction;

14             (D) the delegation of governmental powers  
15             and authorities to the Native Hawaiian gov-  
16             erning entity by the United States and the  
17             State of Hawaii;

18             (E) any residual responsibilities of the  
19             United States and the State of Hawaii; and

20             (F) grievances regarding assertions of his-  
21             torical wrongs committed against Native Ha-  
22             waiians by the United States or by the State of  
23             Hawaii.

24             (2) AMENDMENTS TO EXISTING LAWS.—Upon  
25             agreement on any matter or matters negotiated with

1 the United States, the State of Hawaii, and the Na-  
 2 tive Hawaiian governing entity, the parties are au-  
 3 thorized to submit—

4 (A) to the Committee on Indian Affairs of  
 5 the Senate, the Committee on Energy and Nat-  
 6 ural Resources of the Senate, and the Com-  
 7 mittee on Resources of the House of Represent-  
 8 atives, recommendations for proposed amend-  
 9 ments to Federal law that will enable the imple-  
 10 mentation of agreements reached between the 3  
 11 governments; and

12 (B) to the Governor and the legislature of  
 13 the State of Hawaii, recommendations for pro-  
 14 posed amendments to State law that will enable  
 15 the implementation of agreements reached be-  
 16 tween the 3 governments.

17 (3) GOVERNMENTAL AUTHORITY AND  
 18 POWER.—Any governmental authority or power to  
 19 be exercised by the Native Hawaiian governing enti-  
 20 ty which is currently exercised by the State or Fed-  
 21 eral Governments shall be exercised by the Native  
 22 Hawaiian governing entity only as agreed to in nego-  
 23 tiations pursuant to section 8(b)(1) of this Act and  
 24 beginning on the date on which legislation to imple-  
 25 ment such agreement has been enacted by the

1 United States Congress, when applicable, and by the  
2 State of Hawaii, when applicable. This includes any  
3 required modifications to the Hawaii State Constitu-  
4 tion in accordance with the Hawaii Revised Statutes.

5 (c) CLAIMS.—

6 (1) DISCLAIMERS.—Nothing in this Act—

7 (A) creates a cause of action against the  
8 United States or any other entity or person;

9 (B) alters existing law, including existing  
10 case law, regarding obligations on the part of  
11 the United States or the State of Hawaii with  
12 regard to Native Hawaiians or any Native Ha-  
13 waiian entity;

14 (C) creates obligations that did not exist in  
15 any source of Federal law prior to the date of  
16 enactment of this Act; or

17 (D) establishes authority for the recogni-  
18 tion of Native Hawaiian groups other than the  
19 single Native Hawaiian Governing Entity.

20 (2) FEDERAL SOVEREIGN IMMUNITY.—

21 (A) SPECIFIC PURPOSE.—Nothing in this  
22 Act is intended to create or allow to be main-  
23 tained in any court any potential breach-of-  
24 trust actions, land claims, resource-protection  
25 or resource-management claims, or similar

1 types of claims brought by or on behalf of Na-  
2 tive Hawaiians or the Native Hawaiian gov-  
3 erning entity for equitable, monetary, or Ad-  
4 ministrative Procedure Act-based relief against  
5 the United States or the State of Hawaii,  
6 whether or not such claims specifically assert  
7 an alleged breach of trust, call for an account-  
8 ing, seek declaratory relief, or seek the recovery  
9 of or compensation for lands once held by Na-  
10 tive Hawaiians.

11 (B) ESTABLISHMENT AND RETENTION OF  
12 SOVEREIGN IMMUNITY.—To effectuate the ends  
13 expressed in section 8(c)(1) and 8(c)(2)(A), and  
14 notwithstanding any other provision of Federal  
15 law, the United States retains its sovereign im-  
16 munity to any claim that existed prior to the  
17 enactment of this Act (including, but not lim-  
18 ited to, any claim based in whole or in part on  
19 past events), and which could be brought by  
20 Native Hawaiians or any Native Hawaiian gov-  
21 erning entity. Nor shall any preexisting waiver  
22 of sovereign immunity (including, but not lin-  
23 ited to, waivers set forth in chapter 7 of part  
24 I of title 5, United States Code, and sections  
25 1505 and 2409a of title 28, United States

1 Code) be applicable to any such claims. This  
2 complete retention or reclaiming of sovereign  
3 immunity also applies to every claim that might  
4 attempt to rely on this Act for support, without  
5 regard to the source of law under which any  
6 such claim might be asserted.

7 (C) EFFECT.—It is the general effect of  
8 section 8(c)(2)(B) that any claims that may al-  
9 ready have accrued and might be brought  
10 against the United States, including any claims  
11 of the types specifically referred to in section  
12 8(c)(2)(A), along with both claims of a similar  
13 nature and claims arising out of the same nu-  
14 cleus of operative facts as could give rise to  
15 claims of the specific types referred to in sec-  
16 tion 8(c)(2)(A), be rendered nonjusticiable in  
17 suits brought by plaintiffs other than the Fed-  
18 eral Government.

19 (3) STATE SOVEREIGNTY IMMUNITY.—

20 (A) Notwithstanding any other provision of  
21 Federal law, the State retains its sovereign im-  
22 munity, unless waived in accord with State law,  
23 to any claim, established under any source of  
24 law, regarding Native Hawaiians, that existed  
25 prior to the enactment of this Act.

1           (B) Nothing in this Act shall be construed  
2           to constitute an override pursuant to section 5  
3           of the Fourteenth Amendment of State sov-  
4           ereign immunity held under the Eleventh  
5           Amendment.

6 **SEC. 9. APPLICABILITY OF CERTAIN FEDERAL LAWS.**

7           (a) INDIAN GAMING REGULATORY ACT.—

8           (1) The Native Hawaiian governing entity and  
9           Native Hawaiians may not conduct gaming activities  
10          as a matter of claimed inherent authority or under  
11          the authority of any Federal law, including the In-  
12          dian Gaming Regulatory Act (25 U.S.C. 2701 et  
13          seq.) or under any regulations thereunder promul-  
14          gated by the Secretary or the National Indian Gam-  
15          ing Commission.

16          (2) The foregoing prohibition in section 9(a)(1)  
17          on the use of Indian Gaming Regulatory Act and in-  
18          herent authority to game apply regardless of wheth-  
19          er gaming by Native Hawaiians or the Native Ha-  
20          waiian governing entity would be located on land  
21          within the State of Hawaii or within any other State  
22          or Territory of the United States.

23           (b) TAKING LAND INTO TRUST.—Notwithstanding  
24          any other provision of law, including but not limited to  
25          part 151 of title 25, Code of Federal Regulations, the Sec-

1 retary shall not take land into trust on behalf of individ-  
2 uals or groups claiming to be Native Hawaiian or on be-  
3 half of the native Hawaiian governing entity.

4 (c) REAL PROPERTY TRANSFERS.—The Indian  
5 Trade and Intercourse Act (25 U.S.C. 177), does not, has  
6 never, and will not apply after enactment to lands or lands  
7 transfers present, past, or future, in the State of Hawaii.  
8 If despite the expression of this intent herein, a court were  
9 to construe the Trade and Intercourse Act to apply to  
10 lands or land transfers in Hawaii before the date of enact-  
11 ment of this Act, then any transfer of land or natural re-  
12 sources located within the State of Hawaii prior to the  
13 date of enactment of this Act, by or on behalf of the Na-  
14 tive Hawaiian people, or individual Native Hawaiians,  
15 shall be deemed to have been made in accordance with  
16 the Indian Trade and Intercourse Act and any other provi-  
17 sion of Federal law that specifically applies to transfers  
18 of land or natural resources from, by, or on behalf of an  
19 Indian tribe, Native Hawaiians, or Native Hawaiian enti-  
20 ties.

21 (d) SINGLE GOVERNING ENTITY.—This Act will re-  
22 sult in the recognition of the single Native Hawaiian gov-  
23 erning entity. Additional Native Hawaiian groups shall not  
24 be eligible for acknowledgment pursuant to the Federal  
25 Acknowledgment Process set forth in part 83 of title 25

1 of the Code of Federal Regulations or any other adminis-  
2 trative acknowledgment or recognition process.

3 (e) JURISDICTION.—Nothing in this Act alters the  
4 civil or criminal jurisdiction of the United States or the  
5 State of Hawaii over lands and persons within the State  
6 of Hawaii. The status quo of Federal and State jurisdic-  
7 tion can change only as a result of further legislation, if  
8 any, enacted after the conclusion, in relevant part, of the  
9 negotiation process established in section 8(b).

10 (f) INDIAN PROGRAMS AND SERVICES.—Notwith-  
11 standing section 7(c)(6), because of the eligibility of the  
12 Native Hawaiian governing entity and its citizens for Na-  
13 tive Hawaiian programs and services in accordance with  
14 subsection (g), nothing in this Act provides an authoriza-  
15 tion for eligibility to participate in any Indian program  
16 or service to any individual or entity not otherwise eligible  
17 for the program or service under applicable Federal law.

18 (g) NATIVE HAWAIIAN PROGRAMS AND SERVICES.—  
19 The Native Hawaiian governing entity and its citizens  
20 shall be eligible for Native Hawaiian programs and serv-  
21 ices to the extent and in the manner provided by other  
22 applicable laws.

1 **SEC. 10. SEVERABILITY.**

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

5 **SEC. 11. AUTHORIZATION OF APPROPRIATIONS.**

6       There are authorized to be appropriated such sums  
7 as are necessary to carry out this Act.

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