

Daniel Kahikina Akaka, U.S. Senator for Hawaii

Substitute Amendment to S. 1011

December 18, 2009

Purpose: In the nature of a substitute.

S. 1011

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.

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

Amendment In the Nature of a Substitute intended to be proposed by Mr. Akaka

Viz:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Native Hawaiian Government Reorganization Act of 2009".

SEC. 2. FINDINGS.

Congress finds that-

(1) the Constitution vests Congress with the authority to address the conditions of the indigenous, native people of the United States and the Supreme Court has held that under the Indian Commerce, Treaty, Supremacy, and Property Clauses, and the War Powers, Congress may exercise that power to rationally promote the welfare of the native peoples of the United States so long as the native people are a "distinctly native community";

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

(3) the United States has a special political and legal relationship with, and has long enacted legislation to promote the welfare of, the native peoples of the United States, including the Native Hawaiian people;

(4) under the authority of the Constitution, the United States concluded a number of treaties with the Kingdom of Hawaii, and from 1826 until 1893, the United States-

(A) recognized the sovereignty of the Kingdom of Hawaii as a nation;

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

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

(5) pursuant to the Hawaiian Homes Commission Act, 1920 (42 Stat. 108, chapter 42), the United States set aside approximately 203,500 acres of land in trust to better address the conditions of Native Hawaiians in the Federal territory that later became the State of Hawaii and in enacting the Hawaiian Homes Commission Act, 1920, Congress acknowledged the Native Hawaiian people as a native people of the United States, as evidenced by the Committee Report, which notes that Congress relied on the Indian affairs power and the War Powers, including the power to make peace;

(6) by setting aside 203,500 acres of land in trust for Native Hawaiian homesteads and farms, the Hawaiian Homes Commission Act, 1920, assists the members of the Native Hawaiian community in maintaining distinctly native communities throughout the State of Hawaii;

(7) approximately 6,800 Native Hawaiian families reside on the Hawaiian Home Lands, and approximately 18,000 Native Hawaiians who are eligible to reside on the Hawaiian Home Lands are on a waiting list to receive assignments of Hawaiian Home Lands;

(8)(A) in 1959, as part of the compact with the United States admitting Hawaii into the Union, Congress delegated the authority and responsibility to administer the Hawaiian Homes Commission Act, 1920, lands in trust for Native Hawaiians and established a new public trust (commonly known as the "ceded lands trust"), for 5 purposes, 1 of which is the betterment of the conditions of Native Hawaiians, and Congress thereby reaffirmed its recognition of the Native Hawaiians as a distinctly native community with a direct lineal and historical succession to the aboriginal, indigenous people of Hawaii;

(B) the public trust consists of lands, including submerged lands, natural resources, and the revenues derived from the lands; and

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

(9) Native Hawaiians have continuously sought access to the ceded lands in order to establish and maintain native settlements and distinct native communities throughout the State;

(10) the Hawaiian Home Lands and other ceded lands provide important native land reserves and resources for the Native Hawaiian community to maintain the practice of Native Hawaiian culture, language, and traditions, and for the continuity, survival, and economic self-sufficiency of the Native Hawaiian people as a distinctly native political community;

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

(12) through the Sovereign Council of Hawaiian Homelands Assembly, Native Hawaiian civic associations, charitable trusts established by the Native Hawaiian ali'i, nonprofit native service providers and other community associations, the Native Hawaiian people have actively maintained native traditions and customary usages throughout the Native Hawaiian community and the Federal and State courts have continuously recognized the right of the Native Hawaiian people to engage in certain customary practices and usages on public lands;

(13) on November 23, 1993, Public Law 103-150 (107 Stat. 1510) (commonly known as the "Apology Resolution") was enacted into law, extending an apology on behalf of the United States to the native people of Hawaii for the United States' role in the overthrow of the Kingdom of Hawaii;

(14) the Apology Resolution acknowledges that the overthrow of the Kingdom of Hawaii occurred with the active participation of agents and citizens of the United States, and further acknowledges that the Native Hawaiian people never directly relinquished to the United States their claims to their inherent sovereignty as a people over their national lands, either through the Kingdom of Hawaii or through a plebiscite or referendum;

(15)(A) the Apology Resolution expresses the commitment of Congress and the President-

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

(ii) to support reconciliation efforts between the United States and Native Hawaiians;

(B) Congress established the Office of Hawaiian Relations within the Department of the Interior with 1 of its purposes being to consult with Native Hawaiians on the reconciliation process; and

(C) the United States has the duty to reconcile and reaffirm its friendship with the Native Hawaiian people because, among other things, the United States Minister and United States naval forces participated in the overthrow of the Kingdom of Hawaii;

(16)(A) despite the overthrow of the Government of the Kingdom of Hawaii, Native Hawaiians have continued to maintain their separate identity as a single distinctly native political community through cultural, social, and political institutions, and to give expression to their rights as native people to self-determination, self-governance, and economic self-sufficiency; and

(B) there is clear continuity between the aboriginal, native citizens of the Kingdom of Hawaii and their successors, the Native Hawaiian people today;

(17) Native Hawaiians have also given expression to their rights as native people to self-determination, self-governance, and economic self-sufficiency-

(A) through the provision of governmental services to Native Hawaiians, including the provision of-

(i) health care services;

(ii) educational programs;

(iii) employment and training programs;

(iv) economic development assistance programs;

(v) children's services;

(vi) conservation programs;

(vii) fish and wildlife protection;

(viii) agricultural programs;

(ix) native language immersion programs;

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

(xi) college and master's degree programs in native language immersion instruction; and

(xii) traditional justice programs; and

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

(18) Native Hawaiian people are actively engaged in Native Hawaiian cultural practices, traditional agricultural methods, fishing and subsistence practices, maintenance of cultural use areas and sacred sites, protection of burial sites, and the exercise of their traditional rights to gather medicinal plants and herbs, and food sources;

(19) the Native Hawaiian people wish to preserve, develop, and transmit to future generations of Native Hawaiians their lands and Native Hawaiian political and cultural identity in accordance with their traditions, beliefs, customs and practices, language, and social and political institutions, to control and manage their own lands, including ceded lands, and to achieve greater self-determination over their own affairs;

(20) this Act provides a process within the framework of Federal law for the Native Hawaiian people to exercise their inherent rights as a distinct, indigenous, native community to reorganize a single unified Native Hawaiian governing entity for the purpose of giving expression to their rights as a native people to self-determination and self-governance;

(21) Congress-

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

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

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

(22) the United States has recognized and reaffirmed the special political and legal relationship with the Native Hawaiian people through the enactment of the Act entitled, "An Act to provide for the admission of the State of Hawaii into the Union", approved March 18, 1959 (Public Law 86-3; 73 Stat. 4), by-

(A) ceding to the State of Hawaii title to the public lands formerly held by the United States, and mandating that those lands be held as a public trust for 5 purposes, 1 of which is for the betterment of the conditions of Native Hawaiians; and

(B) transferring the United States responsibility for the administration of the Hawaiian Home Lands to the State of Hawaii, but retaining the exclusive right of the United States to consent to any actions affecting the lands included in the trust and any amendments to the Hawaiian Homes Commission Act, 1920 (42 Stat. 108, chapter 42), that are enacted by the legislature of the State of Hawaii affecting the beneficiaries under the Act;

(23) the United States has continually recognized and reaffirmed that-

(A) Native Hawaiians have a direct genealogical, cultural, historic, and land-based connection to their forebears, the aboriginal, indigenous, native people who exercised original sovereignty

over the Hawaiian Islands;

(B) Native Hawaiians have never relinquished their claims to sovereignty or their sovereign lands;

(C) the United States extends services to Native Hawaiians because of their unique status as the native people of a prior-sovereign nation with whom the United States has a special political and legal relationship; and

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

(24) the State of Hawaii supports the reaffirmation of the special political and legal relationship between the Native Hawaiian governing entity and the United States, as evidenced by 2 unanimous resolutions enacted by the Hawaii State Legislature in the 2000 and 2001 sessions of the Legislature and by the testimony of the Governor of the State of Hawaii before the Committee on Indian Affairs of the Senate on February 25, 2003, and March 1, 2005.

SEC. 3. DEFINITIONS.

In this Act:

(1) Aboriginal, indigenous, native people.-The term "aboriginal, indigenous, native people" means a people whom Congress has recognized as the original inhabitants of the lands that later became part of the United States and who exercised sovereignty in the areas that later became part of the United States.

(2) Apology resolution.-The term "Apology Resolution" means Public Law 103-150 (107 Stat. 1510), a Joint Resolution extending an apology to Native Hawaiians on behalf of the United States for the participation of agents of the United States in the January 17, 1893, overthrow of the Kingdom of Hawaii.

(3) Commission.-The term "Commission" means the Commission established under section 8(b).

(4) Council.-The term "Council" means the Native Hawaiian Interim Governing Council established under section 8(c)(2).

(5) Indian program or service.-

(A) In general.-The term "Indian program or service" means any federally funded or authorized program or service provided to an Indian tribe (or member of an Indian tribe) because of the status of the members of the Indian tribe as Indians.

(B) Inclusions.-The term "Indian program or service" includes a program or service provided by the Bureau of Indian Affairs, the Indian Health Service, or any other Federal agency.

(6) Indian tribe.-The term "Indian tribe" has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 b).

(7) Indigenous, native people.-The term "indigenous, native people" means the lineal descendants of the aboriginal, indigenous, native people of the United States.

(8) Interagency coordinating group.-The term "Interagency Coordinating Group" means the

Native Hawaiian Interagency Coordinating Group established under section 6.

(9) Native hawaiian governing entity.-The term "Native Hawaiian governing entity" means the governing entity organized pursuant to this Act by the qualified Native Hawaiian constituents.

(10) Native hawaiian membership organization.-The term "Native Hawaiian Membership Organization" means an organization that-

(A) serves and represents the interests of Native Hawaiians, has as a primary and stated purpose the provision of services to Native Hawaiians, and has expertise in Native Hawaiian affairs;

(B) has leaders who are elected democratically, or selected through traditional Native leadership practices, by members of the Native Hawaiian community;

(C) advances the cause of Native Hawaiians culturally, socially, economically, or politically;

(D) is a membership organization or association; and

(E) has an accurate and reliable list of Native Hawaiian members.

(11) Office.-The term "Office" means the United States Office for Native Hawaiian Relations established by section 5(a).

(12) Qualified native hawaiian constituent.-For the purposes of establishing the roll authorized under section 8, and prior to the recognition by the United States of the Native Hawaiian governing entity, the term "qualified Native Hawaiian constituent" means an individual who the Commission determines has satisfied the following criteria and who makes a written statement certifying that he or she-

(A) is-

(i) an individual who is 1 of the indigenous, native people of Hawaii and who is a direct lineal descendant of the aboriginal, indigenous, native people who-

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

(II) occupied and exercised sovereignty in the Hawaiian archipelago, including the area that now constitutes the State of Hawaii; or

(ii) an individual who is 1 of the indigenous, native people of Hawaii and who was eligible in 1921 for the programs authorized by the Hawaiian Homes Commission Act, 1920 (42 Stat. 108, chapter 42), or a direct lineal descendant of that individual;

(B) wishes to participate in the reorganization of the Native Hawaiian governing entity;

(C) is 18 years of age or older;

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

(E) maintains a significant cultural, social, or civic connection to the Native Hawaiian community, as evidenced by satisfying 2 or more of the following 10 criteria:

(i) Resides in the State of Hawaii.

(ii) Resides outside the State of Hawaii and-

(I)(aa) currently serves or served as (or has a parent or spouse who currently serves or served as) a member of the Armed Forces or as an employee of the Federal Government; and

(bb) resided in the State of Hawaii prior to the time he or she (or such parent or spouse) left the State of Hawaii to serve as a member of the Armed Forces or as an employee of the Federal Government; or

(II)(aa) currently is or was enrolled (or has a parent or spouse who currently is or was enrolled) in an accredited institution of higher education outside the State of Hawaii; and

(bb) resided in the State of Hawaii prior to the time he or she (or such parent or spouse) left the State of Hawaii to attend such institution.

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

(II) Is a child or grandchild of an individual who is or was eligible to be a beneficiary of the programs authorized by such Act and who resides or resided on land set aside as "Hawaiian home lands", as defined in such Act.

(iv) Is or was eligible to be a beneficiary of the programs authorized by the Hawaiian Homes Commission Act, 1920 (42 Stat. 108, chapter 42).

(v) Is a child or grandchild of an individual who is or was eligible to be a beneficiary of the programs authorized by the Hawaiian Homes Commission Act, 1920 (42 Stat. 108, chapter 42).

(vi) Resides on or has an ownership interest in, or has a parent or grandparent who resides on or has an ownership interest in, "kuleana land" that is owned in whole or in part by a person who, according to a genealogy verification by the Office of Hawaiian Affairs or by court order, is a lineal descendant of the person or persons who received the original title to such "kuleana land", defined as lands granted to native tenants pursuant to Haw. L. 1850, p. 202, entitled "An Act Confirming Certain Resolutions of the King and Privy Council Passed on the 21st day of December, A.D. 1849, Granting to the Common People Allodial Titles for Their Own Lands and House Lots, and Certain Other Privileges", as amended by Haw. L. 1851, p. 98, entitled "An Act to Amend An Act Granting to the Common People Allodial Titles for Their Own Lands and House Lots, and Certain Other Privileges" and as further amended by any subsequent legislation.

(vii) Is, or is the child or grandchild of, an individual who has been or was a student for at least 1 school year at a school or program taught through the medium of the Hawaiian language under section 302H-6, Hawaii Revised Statutes, or at a school founded and operated primarily or exclusively for the benefit of Native Hawaiians.

(viii) Has been a member since September 30, 2009, of at least 1 Native Hawaiian Membership Organization.

(ix) Has been a member since September 30, 2009, of at least 2 Native Hawaiian

Membership Organizations.

(x) Is regarded as Native Hawaiian and whose mother or father is (or if deceased, was) regarded as Native Hawaiian by the Native Hawaiian community, as evidenced by sworn affidavits from two or more qualified Native Hawaiian constituents certified by the Commission as possessing expertise in the social, cultural, and civic affairs of the Native Hawaiian community.

(13) Secretary.-The term "Secretary" means the Secretary of the Interior.

(14) Special political and legal relationship.-The term "special political and legal relationship" shall refer, except where differences are specifically indicated elsewhere in the Act, to the type of and nature of relationship the United States has with the several federally recognized Indian tribes.

SEC. 4. UNITED STATES POLICY AND PURPOSE.

(a) Policy.-The United States reaffirms that-

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

(2) the United States has a special political and legal relationship with the Native Hawaiian people, which includes promoting the welfare of Native Hawaiians;

(3)(A) Congress possesses and hereby exercises the authority under the Constitution, including but not limited to Article I, Section 8, Clause 3, to enact legislation to better the conditions of Native Hawaiians and has exercised this authority through the enactment of-

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

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

(iii) more than 150 other Federal laws addressing the conditions of Native Hawaiians;

(B) other sources of authority under the Constitution for legislation on behalf of native peoples of the United States, including Native Hawaiians, include but are not limited to the Property, Treaty, and Supremacy Clauses, War Powers, and the Fourteenth Amendment, and Congress hereby relies on those powers in enacting this legislation; and

(C) the Constitution's original Apportionment Clause and the 14th Amendment Citizenship and amended Apportionment Clauses also acknowledge the propriety of legislation on behalf of the native peoples of the United States, including Native Hawaiians;

(4) Native Hawaiians have-

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

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

(C) the right to reorganize a Native Hawaiian governing entity; and

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

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

(b) Purpose.-The purpose of this Act is to provide a process for the reorganization of the single Native Hawaiian governing entity and the reaffirmation of the special political and legal relationship between the United States and that Native Hawaiian governing entity for purposes of continuing a government-to-government relationship.

SEC. 5. UNITED STATES OFFICE FOR NATIVE HAWAIIAN RELATIONS.

(a) Establishment.-There is established within the Office of the Secretary the United States Office for Native Hawaiian Relations.

(b) Duties.-The Office shall-

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

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

(3) provide timely notice to, and consult with, the Native Hawaiian governing entity before taking any actions that may have the potential to significantly affect Native Hawaiian resources, rights, or lands;

(4) work with the Interagency Coordinating Group, other Federal agencies, and the State of Hawaii on policies, practices, and proposed actions affecting Native Hawaiian resources, rights, or lands; and

(5) prepare and submit to the Committee on Indian Affairs and the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives an annual report detailing the activities of the Interagency Coordinating Group that are undertaken with respect to the continuing process of reconciliation and to effect meaningful consultation with the Native Hawaiian governing entity and may provide recommendations for any necessary changes to Federal law or regulations promulgated under the authority of Federal law.

(c) Applicability to Department of Defense.-This section shall have no applicability to the Department of Defense or to any agency or component of the Department of Defense, but the Secretary of Defense may designate 1 or more officials as liaison to the Office.

SEC. 6. NATIVE HAWAIIAN INTERAGENCY COORDINATING GROUP.

(a) Establishment.-In recognition that Federal programs authorized to address the conditions of Native Hawaiians are largely administered by Federal agencies other than the Department of the Interior, there is established an interagency coordinating group, to be known as the "Native Hawaiian Interagency Coordinating Group".

(b) Composition.-The Interagency Coordinating Group shall be composed of officials, to be designated by the President, from-

(1) each Federal agency whose actions may significantly or uniquely impact Native Hawaiian

programs, resources, rights, or lands; and

(2) the Office.

(c) Lead Agency.-

(1) In general.-The Department of the Interior and the White House Office of Intergovernmental Affairs shall serve as the leaders of the Interagency Coordinating Group.

(2) Meetings.-The Secretary shall convene meetings of the Interagency Coordinating Group.

(d) Duties.-The Interagency Coordinating Group shall-

(1) coordinate Federal programs and policies that affect Native Hawaiians or actions by any agency or agencies of the Federal Government that may significantly or uniquely affect Native Hawaiian resources, rights, or lands;

(2) consult with the Native Hawaiian governing entity, through the coordination referred to in paragraph (1), but the consultation obligation established in this provision shall apply only after the satisfaction of all of the conditions referred to in section 8(c)(8); and

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

(e) Applicability to Department of Defense.-This section shall have no applicability to the Department of Defense or to any agency or component of the Department of Defense, but the Secretary of Defense may designate 1 or more officials as liaison to the Interagency Coordinating Group.

SEC. 7. DESIGNATION OF DEPARTMENT OF JUSTICE REPRESENTATIVE.

The Attorney General shall designate an appropriate official within the Department of Justice to assist the Office in the implementation and protection of the rights of Native Hawaiians and their political and legal relationship with the United States, and upon the recognition of the Native Hawaiian governing entity as provided for in section 8, in the implementation and protection of the rights of the Native Hawaiian governing entity and its political and legal relationship with the United States.

SEC. 8. PROCESS FOR REORGANIZATION OF NATIVE HAWAIIAN GOVERNING ENTITY AND REAFFIRMATION OF SPECIAL POLITICAL AND LEGAL RELATIONSHIP BETWEEN UNITED STATES AND NATIVE HAWAIIAN GOVERNING ENTITY.

(a) Recognition of Native Hawaiian Governing Entity.-The right of the qualified Native Hawaiian constituents to reorganize the single Native Hawaiian governing entity to provide for their common welfare and to adopt appropriate organic governing documents is recognized by the United States.

(b) Commission.-

(1) In general.-There is authorized to be established a Commission to be composed of 9 members for the purposes of-

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

(B) certifying that the individuals on the roll of qualified Native Hawaiian constituents meet

the definition of qualified Native Hawaiian constituent set forth in section 3.

(2) Membership.-

(A) Appointment.-

(i) In general.-Not later than 180 days after the date of enactment of this Act, the Secretary shall appoint the members of the Commission in accordance with subparagraph (B).

(ii) Consideration.-In making an appointment under clause (i), the Secretary may take into consideration a recommendation made by any Native Hawaiian Membership Organization.

(B) Requirements.-Each member of the Commission shall demonstrate, as determined by the Secretary-

(i) not less than 10 years of experience in the study and determination of Native Hawaiian genealogy (traditional cultural experience shall be given due consideration); and

(ii) an ability to read and translate into English documents written in the Hawaiian language.

(C) Vacancies.-A vacancy on the Commission-

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

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

(3) Expenses.-Each member of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(4) Duties.-The Commission shall-

(A) prepare and maintain a roll of qualified Native Hawaiian constituents as set forth in subsection (c); and

(B) certify that the individuals on the roll of qualified Native Hawaiian constituents meet the definition of that term as set forth in section 3.

(5) Staff.-

(A) In general.-The Commission may, without regard to the civil service laws (including regulations), appoint and terminate an executive director and such other additional personnel as are necessary to enable the Commission to perform the duties of the Commission.

(B) Compensation.-

(i) In general.-Except as provided in clause (ii), the Commission may fix the

compensation of the executive director and other personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates.

(ii) Maximum rate of pay.-The rate of pay for the executive director and other personnel shall not exceed the rate payable for level V of the Executive Schedule under section 5316 of title 5, United States Code.

(6) Detail of federal government employees.-

(A) In general.-An employee of the Federal Government may be detailed to the Commission without reimbursement.

(B) Civil service status.-The detail of the employee shall be without interruption or loss of civil service status or privilege.

(7) Procurement of temporary and intermittent services.-The Commission may procure temporary and intermittent services in accordance with section 3109(b) of title 5, United States Code, at rates for individuals that do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of that title.

(8) Expiration.-The Secretary shall dissolve the Commission upon the reaffirmation of the special political and legal relationship between the Native Hawaiian governing entity and the United States.

(c) Process for Reorganization of Native Hawaiian Governing Entity.-

(1) Roll.-

(A) Contents.-The roll shall include the names of the qualified Native Hawaiian constituents who are certified by the Commission to be qualified Native Hawaiian constituents, as defined in section 3.

(B) Formation of roll.-Each individual claiming to be a qualified Native Hawaiian constituent shall submit to the Commission documentation in the form established by the Commission that is sufficient to enable the Commission to determine whether the individual meets the definition set forth in section 3; provided that an individual presenting evidence that he or she satisfies the definition in Section 2 of Public Law 103-150 shall be presumed to meet the requirement of section 3(12)(A)(i).

(C) Documentation.-The Commission shall-

(i)(I) identify the types of documentation that may be submitted to the Commission that would enable the Commission to determine whether an individual meets the definition of qualified Native Hawaiian constituent set forth in section 3.

(II) recognize an individual's identification of lineal ancestors on the 1890 Census by the Kingdom of Hawaii as a reliable indicia of lineal descent from the aboriginal, indigenous, native people who resided in the islands that now comprise the State of Hawaii on or before January 1, 1893; and

(III) permit elderly Native Hawaiians and other qualified Native Hawaiian constituents lacking birth certificates or other documentation due to birth on Hawaiian Home Lands or other similar circumstances to establish lineal descent by sworn affidavits from 2 or

more qualified Native Hawaiian constituents;

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

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

(D) Consultation.-In making determinations that each individual proposed for inclusion on the roll of qualified Native Hawaiian constituents meets the definition of qualified Native Hawaiian constituent in section 3, the Commission may consult with bona fide Native Hawaiian Membership Organizations, agencies of the State of Hawaii including but not limited to the Department of Hawaiian Home Lands, the Office of Hawaiian Affairs, and the State Department of Health, and other entities with expertise and experience in the determination of Native Hawaiian ancestry and lineal descendency.

(E) Notification.-The Commission shall-

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

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

(F) Certification and submittal of roll to secretary.-The Commission shall-

(i) submit the roll containing the names of those individuals who meet the definition of qualified Native Hawaiian constituent in section 3 to the Secretary within 2 years from the date on which the Commission is fully composed; and

(ii) certify to the Secretary that each of the qualified Native Hawaiian constituents proposed for inclusion on the roll meets the definition set forth in section 3.

(G) Publication.-Upon certification by the Commission to the Secretary that those listed on the roll meet the definition of qualified Native Hawaiian constituent set forth in section 3, the Commission shall publish the notice of the certification of the roll in the Federal Register, notwithstanding pending appeals pursuant to subparagraph (H).

(H) Appeal.-The Secretary, in consultation with the Commission, shall establish a mechanism for an administrative appeal for any person whose name is excluded from the roll who claims to meet the definition of qualified Native Hawaiian constituent in section 3.

(I) Publication; update.-The Commission shall-

(i) publish the notice of the certification of the roll regardless of whether appeals are pending;

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

(iii) update the roll to include any person who has been certified by the Commission as meeting the definition of qualified Native Hawaiian constituent in section 3 after the initial publication of the roll or after any subsequent publications of the roll; and

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

(J) Effect of publication.-The publication of the initial and updated roll shall serve as the basis for the eligibility of qualified Native Hawaiian constituents whose names are listed on those rolls to participate in the reorganization of the Native Hawaiian governing entity.

(2) Organization of council.-

(A) Organization.-The Commission, in consultation with the Secretary, shall hold a minimum of 3 meetings and each meeting shall be at least 2 working days of the qualified Native Hawaiian constituents listed on the roll established under this section-

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

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

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

(B) Powers.-

(i) In general.-The Council-

(I) shall represent those listed on the roll established under this section 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.-

(I) In general.-The Council shall conduct, among the qualified Native Hawaiian constituents listed on the roll established under this subsection, a referendum for the purpose of determining the proposed elements of the organic governing documents of the Native Hawaiian governing entity, including but not limited to-

(aa) the proposed criteria for future membership in 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 issues determined appropriate by the Council.

(II) Development of organic governing documents.-Based on the referendum, the Council shall develop proposed organic governing documents for the Native Hawaiian governing entity and may seek technical assistance from the Secretary

on the draft organic governing documents to ensure that the draft organic governing documents comply with this Act and other Federal law.

(III) Distribution.-The Council shall publish to all qualified Native Hawaiian constituents of the Native Hawaiian governing entity listed on the roll published under this subsection notice of the availability of-

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

(bb) a brief impartial description of the proposed organic governing documents;

(IV) Elections.-

(aa) In general.-Not sooner than 180 days after the proposed organic governing documents are drafted and distributed, the Council, with the assistance of the Secretary, shall hold elections for the purpose of ratifying the proposed organic governing documents.

(bb) Purpose.-The Council, with the assistance of the Secretary, shall hold the election for the purpose of ratifying the proposed organic governing documents 60 days after publishing notice of an election.

(cc) Officers.-On certification of the organic governing documents by the Secretary in accordance with paragraph (4), the Council, with the assistance of the Secretary, shall hold elections of the officers of the Native Hawaiian governing entity pursuant to paragraph (5).

(3) Submittal of organic governing documents.-Following the reorganization of the Native Hawaiian governing entity and the adoption of organic governing documents, the Council shall submit the organic governing documents 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 9(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 180 days, which may be extended an additional 90 days if the Secretary deems necessary, after the date on which the Council submits the organic governing documents to the Secretary, the Secretary shall certify or decline to certify that the organic governing documents-

(i) establish the criteria for membership in the Native Hawaiian governing entity;

(ii) were adopted by a majority vote of those qualified Native Hawaiian constituents whose names are listed on the roll published by the Secretary and who voted in the election;

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

(iv) provide for the exercise of inherent and other appropriate governmental

authorities by the Native Hawaiian governing entity;

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

(vi) provide 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) are consistent with applicable Federal law.

(B) Resubmission in case of noncompliance.-

(i) Resubmission by the secretary.-If the Secretary determines that the organic governing documents, or any part of the documents, do not meet all of the requirements set forth in subparagraph (A), the Secretary shall resubmit the organic governing documents 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 organic governing documents.-If the organic governing documents are resubmitted to the Council by the Secretary under clause (i), the Council shall-

(I) amend the organic governing documents to ensure that the documents meet all the requirements set forth in subparagraph (A); and

(II) resubmit the amended organic governing documents to the Secretary for certification in accordance with this paragraph.

(C) Certifications deemed made.-The certifications under this paragraph shall be deemed to have been made if the Secretary has not acted within 180 days after the date on which the Council has submitted the organic governing documents of the Native Hawaiian governing entity to the Secretary.

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

(6) Provision of roll.-The Council shall provide a copy of the roll of qualified Native Hawaiian constituents to the governing body of the Native Hawaiian governing entity.

(7) Termination.-The Council shall cease to exist and shall have no power or authority under this Act after the officers of the governing body who are elected as provided in paragraph (5) are installed.

(8) Reaffirmation.-Notwithstanding any other provision of law, the special political and legal relationship between the United States and the Native Hawaiian people is hereby reaffirmed and the United States extends Federal recognition to the Native Hawaiian governing entity as the representative sovereign governing body of the Native Hawaiian people after-

(A) the approval of the organic governing documents by the Secretary under subparagraph (A) or (C) of paragraph (4); and

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

SEC. 9. REAFFIRMATION OF DELEGATION OF FEDERAL AUTHORITY TO STATE OF HAWAII; NEGOTIATIONS; CLAIMS.

(a) Reaffirmation.-The delegation by the United States of authority to the State of Hawaii to address the conditions of the indigenous, native people of Hawaii contained in the Act entitled "An Act to provide for the admission of the State of Hawaii into the Union", approved March 18, 1959 (Public Law 86-3; 73 Stat. 4), is reaffirmed.

(b) Negotiations.-

(1) In general.-Upon the reaffirmation of the special political and legal relationship between the United States and the Native Hawaiian governing entity, the United States and the State of Hawaii may enter into negotiations with the Native Hawaiian governing entity designed to lead to an agreement addressing such matters as-

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

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

(C) the exercise of civil and criminal jurisdiction;

(D) the exercise of other powers and authorities that are recognized by the United States as powers and authorities typically exercised by governments representing indigenous, native people of the United States;

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

(F) grievances regarding assertions of historical wrongs committed against Native Hawaiians by the United States or by the State of Hawaii.

(2) Amendments to existing laws.-Upon agreement on any matter or matters negotiated with the United States or the State of Hawaii, and the Native Hawaiian governing entity, the parties may submit-

(A) to the Committee on Indian Affairs of the Senate, the Committee on Energy and Natural Resources of the Senate, and the Committee on Natural Resources of the House of Representatives recommendations for proposed amendments to Federal law that will enable the implementation of agreements reached between the governments; and

(B) to the Governor and the legislature of the State of Hawaii, recommendations for proposed amendments to State law that will enable the implementation of agreements reached between the governments.

(3) Governmental authority and power.-The Native Hawaiian governing entity shall be vested with the inherent powers and privileges of self-government of a native government under existing law, except as set forth in section 10(a). Said powers and privileges may be modified by agreement between the Native Hawaiian governing entity, the United States, and the State pursuant to paragraph (1), subject to the limit described by section 10(a). Unless so agreed, nothing in this Act shall preempt Federal or State authority over Native Hawaiians or their

property under existing law or authorize the State to tax or regulate the Native Hawaiian governing entity.

(4) Membership.-Once the United States extends Federal recognition to the Native Hawaiian governing entity, the United States will recognize and affirm the Native Hawaiian governing entity's inherent power and authority to determine its own membership criteria, to determine its own membership, and to grant, deny, revoke, or qualify membership without regard to whether any person was or was not deemed to be a qualified Native Hawaiian constituent under this Act.

(c) Claims.-Nothing in this Act-

(1) alters existing law, including case law, regarding obligations of the United States or the State of Hawaii relating to events or actions that occurred prior to recognition of the Native Hawaiian governing entity;

(2) creates, enlarges, revives, modifies, diminishes, extinguishes, waives, or otherwise alters any claim or cause of action against the United States or its officers or the State of Hawaii or its officers, or any defense (including the defense of statute of limitations) to any such claim or cause of action; or

(3) amends section 2409a of title 28, United States Code (commonly known as the "Quiet Title Act"), chapter 171 of title 28, United States Code (commonly known as the "Federal Tort Claims Act"), section 1491 of title 28, United States Code (commonly known as the "Tucker Act"), section 1505 of title 28, United States Code (commonly known as the "Indian Tucker Act"), the Hawaii Organic Act (31 Stat. 141), or any other Federal statute, except as expressly amended by this Act.

SEC. 10. APPLICABILITY OF CERTAIN FEDERAL LAWS.

(a) Indian Gaming Regulatory Act.-

(1) In general.-The Native Hawaiian governing entity and Native Hawaiians may not conduct gaming activities as a matter of claimed inherent authority or under the authority of any Federal law, including the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) or under any regulations thereunder promulgated by the Secretary or the National Indian Gaming Commission.

(2) Applicability.-The prohibition contained in paragraph (1) regarding the use of Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) and inherent authority to game applies regardless of whether gaming by Native Hawaiians or the Native Hawaiian governing entity would be located on land within the State of Hawaii or within any other State or territory of the United States.

(b) Single Governing Entity.-This Act will result in the recognition of the single Native Hawaiian governing entity. Additional Native Hawaiian groups shall not be eligible for acknowledgment pursuant to the Federal Acknowledgment Process set forth in part 83 of title 25, Code of Federal Regulations, or any other administrative acknowledgment or recognition process.

(c) Indian Civil Rights Act of 1968.-The Council and the subsequent governing entity recognized under this Act shall be an Indian tribe, as defined in section 201 of the Indian Civil Rights Act of 1968 (25 U.S.C. 1301) for purposes of sections 201 through 203 of that Act (25 U.S.C. 1301-1303).

(d) Indian Programs, Services, and Laws.-

(1) In general.-Notwithstanding any other provision of this Act, nothing in this Act extends eligibility for any Indian program or service to the Native Hawaiian governing entity or its members unless a statute governing such a program or service expressly provides that Native Hawaiians or the Native Hawaiian governing entity is eligible for such program or service. Nothing in this Act affects the eligibility of any person for any program or service under any statute or law in effect before the date of enactment of this Act.

(2) Applicability of other terms.-In Federal statutes or regulations in force prior to the United States' recognition of the Native Hawaiian governing entity, the terms "Indian" and "Native American", and references to Indian tribes, bands, nations, pueblos, villages, or other organized groups or communities, shall not apply to the Native Hawaiian governing entity or its members, unless the Federal statute or regulation expressly applies to Native Hawaiians or the Native Hawaiian governing entity.

(e) Real Property Transfers.-Section 2116 of the Revised Statutes (commonly known as the "Indian Trade and Intercourse Act") (25 U.S.C. 177) does not apply to any purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from Native Hawaiians, Native Hawaiian entities, or the Kingdom of Hawaii that occurred prior to the date of the United States' recognition of the Native Hawaiian governing entity.

SEC. 11. SEVERABILITY.

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

SEC. 12. AUTHORIZATION OF APPROPRIATIONS.

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

Year: [\[2009\]](#) , [2008](#) , [2007](#) , [2006](#) , [2005](#) , [2004](#) , [2003](#) , [2002](#) , [2001](#) , [2000](#) , [1999](#)

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Substitute Amendment to S. 1011

December 18, 2009

Purpose: In the nature of a substitute.

S. 1011

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.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Native Hawaiian Government Reorganization Act of 2009".

SEC. 2. FINDINGS.

Congress finds that-

(1) the Constitution vests Congress with the authority to address the conditions of the indigenous, native people of the United States and the Supreme Court has held that under the Indian Commerce, Treaty, Supremacy, and Property Clauses, and the War Powers, Congress may exercise that power to rationally promote the welfare of the native peoples of the United States so long as the native people are a "distinctly native community";

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

(3) the United States has a special political and legal relationship with, and has long enacted legislation to promote the welfare of, the native peoples of the United States, including the Native Hawaiian people;

(4) under the authority of the Constitution, the United States concluded a number of treaties with the Kingdom of Hawaii, and from 1826 until 1893, the United States-

(A) recognized the sovereignty of the Kingdom of Hawaii as a nation;

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

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

(5) pursuant to the Hawaiian Homes Commission Act, 1920 (42 Stat. 108, chapter 42), the United States set aside approximately 203,500 acres of land in trust to better address the conditions of Native Hawaiians in the Federal territory that later became the State of Hawaii and in enacting the Hawaiian Homes Commission Act, 1920, Congress acknowledged the Native Hawaiian people as a native people of the United States, as evidenced by the Committee Report, which notes that Congress relied on the Indian affairs power and the War Powers, including the power to make peace;

(6) by setting aside 203,500 acres of land in trust for Native Hawaiian homesteads and farms, the Hawaiian Homes Commission Act, 1920, assists the members of the Native Hawaiian community in maintaining distinctly native communities throughout the State of Hawaii;

(7) approximately 8,039 [6,800] Native Hawaiian families reside on the Hawaiian Home Lands, and approximately 38,811 [18,000] Native Hawaiians who are eligible to reside on the Hawaiian Home Lands are on a waiting list to receive assignments of Hawaiian Home Lands;

(8)(A) in 1959, as part of the compact with the United States admitting Hawaii into the Union, Congress delegated the authority and responsibility to administer the Hawaiian Homes Commission Act, 1920, lands in trust for Native Hawaiians and established a new public trust (commonly known as the "ceded lands trust"), for 5 purposes, 1 of which is the betterment of the conditions of Native Hawaiians, and Congress thereby reaffirmed its recognition of the Native Hawaiians as a distinctly native community with a direct lineal and historical succession to the aboriginal, indigenous people of Hawaii;

(B) the public trust consists of lands, including submerged lands, natural resources, and the revenues derived from the lands; and

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

(9) Native Hawaiians have continuously sought access to the ceded lands in order to establish and maintain native settlements and distinct native communities throughout the State;

(10) the Hawaiian Home Lands and other ceded lands provide important native land reserves and resources for the Native Hawaiian community to maintain the practice of Native Hawaiian culture, language, and traditions, and for the continuity, survival, and economic self-sufficiency of the Native Hawaiian people as a distinctly native political community;

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

(12) through the [Sovereign Council of Hawaiian Homelands Assembly] Native Hawaiian homestead associations, Native Hawaiian civic associations, charitable trusts established by the Native Hawaiian ali'i, nonprofit native service providers and other community associations, the Native Hawaiian people have actively maintained native traditions and customary usages throughout the Native Hawaiian community and the Federal and State courts have continuously recognized the right of the Native Hawaiian people to engage in certain customary practices and usages on public lands;

(13) on November 23, 1993, Public Law 103-150 (107 Stat. 1510) (commonly known as the "Apology Resolution") was enacted into law, extending an apology on behalf of the United States to the [native] Native Hawaiian descendents of the aboriginal, indigenous, native people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii [people of Hawaii] for the United States' role in the overthrow of the Kingdom of Hawaii;

(14) the Apology Resolution acknowledges that the overthrow of the Kingdom of Hawaii occurred with the active participation of agents and citizens of the United States, and further acknowledges that the Native Hawaiian people never directly relinquished to the United States their claims to their inherent sovereignty as a people over their national lands, either through the Kingdom of Hawaii or through a plebiscite or referendum;

(15)(A) the Apology Resolution expresses the commitment of Congress and the President-

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

(ii) to support reconciliation efforts between the United States and Native Hawaiians;

(B) Congress established the Office of Hawaiian Relations within the Department of the Interior with 1 of its purposes being to consult with Native Hawaiians on the reconciliation process; and

(C) the United States has the duty to reconcile and reaffirm its friendship with the Native Hawaiian people because, among other things, the United States Minister and United States naval forces participated in the overthrow of the Kingdom of Hawaii;

(16)(A) despite the overthrow of the Government of the Kingdom of Hawaii, Native Hawaiians have continued to maintain their separate identity as a single distinctly native political community through cultural, social, and political institutions, and to give expression to their rights as native people to self-determination, self-governance, and economic self-sufficiency; and

(B) there is clear continuity between the aboriginal, indigenous, native people of Hawaii [native citizens of the Kingdom of Hawaii] and their successors, the Native Hawaiian people today;

(17) Native Hawaiians have also given expression to their rights as native people to self-determination, self-governance, and economic self-sufficiency-

(A) through the provision of governmental services to Native Hawaiians, including the provision of-

(i) health care services;

(ii) educational programs;

(iii) employment and training programs;

(iv) economic development assistance programs;

(v) children's services;

(vi) conservation programs;

(vii) fish and wildlife protection;

(viii) agricultural programs;

(ix) native language immersion programs;

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

(xi) college and master's degree programs in native language immersion instruction; and

(xii) traditional justice programs; and

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

(18) Native Hawaiian people are actively engaged in Native Hawaiian cultural practices, traditional agricultural methods, fishing and subsistence practices, maintenance of cultural use areas and sacred sites, protection of burial sites, and the exercise of their traditional rights to gather medicinal plants and herbs, and food sources;

(19) the Native Hawaiian people wish to preserve, develop, and transmit to future generations of Native Hawaiians their lands and Native Hawaiian political and cultural identity in accordance with their traditions, beliefs, customs and practices, language, and social and political institutions, to control and manage their own lands, including ceded lands, and to achieve greater self-determination over their own affairs;

(20) this Act provides a process within the framework of Federal law for the Native Hawaiian people to exercise their inherent rights as a distinct, indigenous, native community to reorganize a single unified Native Hawaiian governing entity for the purpose of giving expression to their rights as a native people to self-determination and self-governance;

(21) Congress-

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

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

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

(22) the United States has recognized and reaffirmed the special political and legal relationship with the Native Hawaiian people through the enactment of the Act entitled, "An Act to provide for the admission of the State of Hawaii into the Union", approved March 18, 1959 (Public Law 86-3; 73 Stat. 4), by-

(A) ceding to the State of Hawaii title to the public lands formerly held by the United States, and mandating that those lands be held as a public trust for 5 purposes, 1 of which is for the betterment of the conditions of Native Hawaiians; and

(B) transferring the United States responsibility for the administration of the Hawaiian Home Lands to the State of Hawaii, but retaining the exclusive right of the United States to consent to any actions affecting the lands included in the trust and any amendments to the Hawaiian Homes Commission Act, 1920 (42 Stat. 108, chapter 42), that are enacted by the legislature of the State of Hawaii affecting the beneficiaries under the Act;

(23) the United States has continually recognized and reaffirmed that-

(A) Native Hawaiians have a direct genealogical, cultural, historic, and land-based connection to their forebears, the aboriginal, indigenous, native people who exercised original sovereignty over the Hawaiian Islands;

(B) Native Hawaiians have never relinquished their claims to sovereignty or their sovereign lands;

(C) the United States extends services to Native Hawaiians because of their unique status as the native people of a prior-sovereign nation with whom the United States has a special political and legal relationship; and

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

(24) the State of Hawaii supports the reaffirmation of the special political and legal relationship between the Native Hawaiian governing entity and the United States, as evidenced by 2 unanimous resolutions enacted by the Hawaii State Legislature in the 2000 and 2001 sessions of the Legislature and by the testimony of the Governor of the State of Hawaii before the Committee on Indian Affairs of the Senate on February 25, 2003, and March 1, 2005.

SEC. 3. DEFINITIONS.

In this Act:

(1) Aboriginal, indigenous, native people.-The term "aboriginal, indigenous, native people" means a people whom Congress has recognized as the original inhabitants of the lands that later became part of the United States and who exercised sovereignty in the areas that later became part of the United States.

(2) Apology resolution.-The term "Apology Resolution" means Public Law 103-150 (107 Stat. 1510), a Joint Resolution extending an apology to Native Hawaiians on behalf of the United States for the participation of agents of the United States in the January 17, 1893, overthrow of the Kingdom of Hawaii.

(3) Commission.-The term "Commission" means the Commission established under section 8(b).

(4) Council.-The term "Council" means the Native Hawaiian Interim Governing Council established under section 8(c)(2).

(5) Indian program or service.-

(A) In general.-The term "Indian program or service" means any federally funded or authorized program or service provided to an Indian tribe (or member of an Indian tribe) because of the status of the members of the Indian tribe as Indians.

(B) Inclusions.-The term "Indian program or service" includes a program or service provided by the Bureau of Indian Affairs, the Indian Health Service, or any other Federal agency.

(6) Indian tribe.-The term "Indian tribe" has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(7) Indigenous, native people.-The term "indigenous, native people" means the lineal descendants of the aboriginal, indigenous, native people of the United States.

(8) Interagency coordinating group.-The term "Interagency Coordinating Group" means the Native Hawaiian Interagency Coordinating Group established under section 6.

(9) Native Hawaiian Governing Entity [governing entity].-The term "Native Hawaiian [governing entity] Governing Entity" means the governing entity organized pursuant to this Act by the qualified Native Hawaiian constituents.

(10) Native Hawaiian [membership] Organization.-The term "Native Hawaiian [Membership] Organization" means an organization that-

(A) serves and represents the interests of Native Hawaiians, has as a primary and stated purpose the provision of services to Native Hawaiians, and has expertise in Native Hawaiian affairs;

(B) has leaders who are elected democratically, or selected through traditional Native leadership practices, by members of the Native Hawaiian community;

(C) advances the cause of Native Hawaiians culturally, socially, economically, or politically; and

[(D) is a membership organization or association; and]

(E) has an accurate and reliable list of Native Hawaiian members.

(11) Office.-The term "Office" means the United States Office for Native Hawaiian Relations established by section 5(a).

(12) Qualified [native Hawaiian] Native Hawaiian Constituent.-For the purposes of establishing the roll authorized under section 8, and prior to the recognition by the United States of the Native Hawaiian governing entity, the term "Qualified Native Hawaiian Constituent" means an individual who the Commission determines has satisfied the

following criteria and who makes a written statement certifying that he or she-

(A) is-

(i) an individual who is 1 of the indigenous, native people of Hawaii and who is a direct lineal descendant of the aboriginal, indigenous, native people who-

(I) resided in the islands that now comprise the State of Hawaii on or before January 1, 1893, and occupied and exercised sovereignty in the Hawaiian archipelago, including the area that now constitutes the State of Hawaii; or

(II) resided in the islands that now comprise the State of Hawaii prior to 1778, and occupied and exercised sovereignty in the Hawaiian archipelago, including the area that now constitutes the State of Hawaii; or

(ii) an individual who is 1 of the indigenous, native people of Hawaii and who was eligible in 1921 for the programs authorized by the Hawaiian Homes Commission Act, 1920 (42 Stat. 108, chapter 42), or a direct lineal descendant of that individual;

(B) wishes to participate in the reorganization of the Native Hawaiian governing entity;

(C) is 18 years of age or older;

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

(E) maintains a significant cultural, social, or civic connection to the Native Hawaiian community, as evidenced by satisfying 2 or more of the following 10 criteria:

(i) Resides in the State of Hawaii.

(ii) Resides outside the State of Hawaii and-

(I)(aa) currently serves or served as (or has a parent or spouse who currently serves or served as) a member of the Armed Forces or as an employee of the Federal Government; and

(bb) resided in the State of Hawaii prior to the time he or she (or such parent or spouse) left the State of Hawaii to serve as a member of the Armed Forces or as an employee of the Federal Government; or

(II)(aa) currently is or was enrolled (or has a parent or spouse who currently is or was enrolled) in an accredited institution of higher education outside the State of Hawaii; and

(bb) resided in the State of Hawaii prior to the time he or she (or such parent or spouse) left the State of Hawaii to attend such institution.

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

(II) Is a child or grandchild of an individual who is or was eligible to be a beneficiary of the programs authorized by such Act and who resides or resided on land set aside as "Hawaiian home lands", as defined in such Act.

(iv) Is or was eligible to be a beneficiary of the programs authorized by the Hawaiian Homes Commission Act, 1920 (42 Stat. 108, chapter 42).

(v) Is a child or grandchild of an individual who is or was eligible to be a beneficiary of the programs authorized by the Hawaiian Homes Commission Act, 1920 (42 Stat. 108, chapter 42).

(vi) Resides on or has an ownership interest in, or has a parent or grandparent who resides on or has an ownership interest in, "kuleana land" that is owned in whole or in part by a person who, according to a genealogy verification by the Office of Hawaiian Affairs or by court order, is a lineal descendant of the person or persons who received the original title to such "kuleana land", defined as lands granted to native tenants pursuant to Haw. L. 1850, p. 202, entitled "An Act Confirming Certain Resolutions of the King and Privy Council Passed on the 21st day of December, A.D. 1849, Granting to the Common People Allodial Titles for Their Own Lands and House Lots, and Certain Other Privileges", as amended by Haw. L. 1851, p. 98, entitled "An Act to Amend An Act Granting to the Common People Allodial Titles for Their Own Lands and House Lots, and Certain Other Privileges" and as further amended by any subsequent legislation.

(vii) Is, or is the child or grandchild of, an individual who has been or was a student for at least 1 school year at a school or program taught through the medium of the Hawaiian language under section 302H-6, Hawaii Revised Statutes, or at a school founded and operated primarily or exclusively for the benefit of Native Hawaiians.

(viii) Has been a member since September 30, 2009, of at least 1 or more Native Hawaiian [membership] Organizations.

[(ix) Has been a member since September 30, 2009, of at least 2 Native Hawaiian [Membership] Organizations.]

(ix) Is regarded as Native Hawaiian and whose mother or father is (or if deceased, was) regarded as Native Hawaiian by the Native Hawaiian community, as evidenced by sworn affidavits from two or more qualified Native Hawaiian constituents certified by the Commission as possessing expertise in the social, cultural, and civic affairs of the Native Hawaiian community.

(13) Secretary.-The term "Secretary" means the Secretary of the Interior.

(14) Special political and legal relationship.-The term "special political and legal relationship" shall refer, except where differences are specifically indicated elsewhere in the Act, to the type of and nature of relationship the United States has with the several federally recognized Indian tribes.

SEC. 4. UNITED STATES POLICY AND PURPOSE.

(a) Policy.-The United States reaffirms that-

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

(2) the United States has a special political and legal relationship with the Native Hawaiian people, which includes promoting the welfare of Native Hawaiians;

(3)(A) Congress possesses and hereby exercises the authority under the Constitution, including but not limited to Article I, Section 8, Clause 3, to enact legislation to better the conditions of Native Hawaiians and has exercised this authority through the enactment of-

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

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

(iii) more than 150 other Federal laws addressing the conditions of Native Hawaiians;

(B) other sources of authority under the Constitution for legislation on behalf of the indigenous, native people[s] of the United States, including Native Hawaiians, include but are not limited to the Property, Treaty, and Supremacy Clauses, War Powers, and the Fourteenth Amendment, and Congress hereby relies on those powers in enacting this legislation; and

(C) the Constitution's original Apportionment Clause and the 14th Amendment Citizenship and amended Apportionment Clauses also acknowledge the propriety of legislation on behalf of the native peoples of the United States, including Native Hawaiians;

(4) Native Hawaiians have-

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

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

(C) the right to reorganize a Native Hawaiian governing entity; and

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

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

(b) Purpose.-The purpose of this Act is to provide a process for the reorganization of the single Native Hawaiian governing entity and the reaffirmation of the special political and legal relationship between the United States and that Native Hawaiian governing entity for purposes of continuing a government-to-government relationship.

SEC. 5. UNITED STATES OFFICE FOR NATIVE HAWAIIAN RELATIONS.

(a) Establishment.-There is established within the Office of the Secretary the United States Office for Native Hawaiian Relations.

(b) Duties.-The Office shall-

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

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

(3) provide timely notice to, and consult with, the Native Hawaiian governing entity before taking any actions that may have the potential to significantly affect Native Hawaiian resources, rights, or lands;

(4) work with the Interagency Coordinating Group, other Federal agencies, and the State of Hawaii on policies, practices, and proposed actions affecting Native Hawaiian resources, rights, or lands; and

(5) prepare and submit to the Committee on Indian Affairs and the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives an annual report detailing the activities of the Interagency Coordinating Group that are undertaken with respect to the continuing process of reconciliation and to effect meaningful consultation with the Native Hawaiian governing entity and may provide recommendations for any necessary changes to Federal law or regulations promulgated under the authority of Federal law.

(c) Applicability to Department of Defense.-This section shall have no applicability to the Department of Defense or to any agency or component of the Department of Defense, but the Secretary of Defense may designate 1 or more officials as liaison to the Office.

SEC. 6. NATIVE HAWAIIAN INTERAGENCY COORDINATING GROUP.

(a) Establishment.-In recognition that Federal programs authorized to address the conditions of Native Hawaiians are largely administered by Federal agencies other than the Department of the Interior, there is

established an interagency coordinating group, to be known as the "Native Hawaiian Interagency Coordinating Group".

(b) Composition.-The Interagency Coordinating Group shall be composed of officials, to be designated by the President, from-

(1) each Federal agency whose actions may significantly or uniquely impact Native Hawaiian programs, resources, rights, or lands; and

(2) the Office.

(c) Lead Agency.-

(1) In general.-The Department of the Interior and the White House Office of Intergovernmental Affairs shall serve as the leaders of the Interagency Coordinating Group.

(2) Meetings.-The Secretary shall convene meetings of the Interagency Coordinating Group.

(d) Duties.-The Interagency Coordinating Group shall-

(1) coordinate Federal programs and policies that affect Native Hawaiians or actions by any agency or agencies of the Federal Government that may significantly or uniquely affect Native Hawaiian resources, rights, or lands;

(2) consult with the Native Hawaiian governing entity, through the coordination referred to in paragraph (1), but the consultation obligation established in this provision shall apply only after the satisfaction of all of the conditions referred to in section 8(c)(8); and

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

(e) Applicability to Department of Defense.-This section shall have no applicability to the Department of Defense or to any agency or component of the Department of Defense, but the Secretary of Defense may designate 1 or more officials as liaison to the Interagency Coordinating Group.

SEC. 7. DESIGNATION OF DEPARTMENT OF JUSTICE REPRESENTATIVE.

The Attorney General shall designate an appropriate official within the Department of Justice to assist the Office in the implementation and protection of the rights of Native Hawaiians and their political and legal relationship with the United States, and upon the recognition of the Native Hawaiian governing entity as provided for in section 8, in the implementation and protection of the rights of the Native Hawaiian governing entity and its political and legal relationship with the United States.

SEC. 8. PROCESS FOR REORGANIZATION OF NATIVE HAWAIIAN GOVERNING ENTITY AND REAFFIRMATION OF SPECIAL POLITICAL AND LEGAL RELATIONSHIP BETWEEN UNITED STATES AND NATIVE HAWAIIAN GOVERNING ENTITY.

(a) Recognition of Native Hawaiian Governing Entity.-The right of the qualified Native Hawaiian constituents to reorganize the single Native Hawaiian governing entity to provide for their common welfare and to adopt appropriate organic governing documents is recognized by the United States.

(b) Commission.-

(1) In general.-There is authorized to be established a Commission to be composed of 9 members for the purposes of-

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

(B) certifying that the individuals on the roll of qualified Native Hawaiian constituents meet the definition of qualified Native Hawaiian constituent set forth in section 3.

(2) Membership.-

(A) Appointment.-

(i) In general.-Not later than 180 days after the date of enactment of this Act, the Secretary shall appoint the members of the Commission in accordance with subparagraph (B).

(ii) Consideration.-In making an appointment under clause (i), the Secretary may take into consideration a recommendation made by any Native Hawaiian [Membership] Organization.

(B) Requirements.-Each member of the Commission shall demonstrate, as determined by the Secretary-

(i) not less than 10 years of experience in the study and determination of Native Hawaiian genealogy (traditional cultural experience shall be given due consideration); and

(ii) an ability to read and translate into English documents written in the Hawaiian language.

(C) Vacancies.-A vacancy on the Commission-

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

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

(3) Expenses.-Each member of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(4) Duties.-The Commission shall-

(A) prepare and maintain a roll of qualified Native Hawaiian constituents as set forth in subsection (c); and

(B) certify that the individuals on the roll of qualified Native Hawaiian constituents meet the definition of that term as set forth in section 3.

(5) Staff.-

(A) In general.-The Commission may, without regard to the civil service laws (including regulations), appoint and terminate an executive director and such other additional personnel as are necessary to enable the Commission to perform the duties of the Commission.

(B) Compensation.-

(i) In general.-Except as provided in clause (ii), the Commission may fix the compensation of the executive director and other personnel without regard to the provisions of chapter 51 and subchapter III of

chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates.

(ii) Maximum rate of pay.-The rate of pay for the executive director and other personnel shall not exceed the rate payable for level V of the Executive Schedule under section 5316 of title 5, United States Code.

(6) Detail of federal government employees.-

(A) In general.-An employee of the Federal Government may be detailed to the Commission without reimbursement.

(B) Civil service status.-The detail of the employee shall be without interruption or loss of civil service status or privilege.

(7) Procurement of temporary and intermittent services.-The Commission may procure temporary and intermittent services in accordance with section 3109(b) of title 5, United States Code, at rates for individuals that do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of that title.

(8) Expiration.-The Secretary shall dissolve the Commission upon the reaffirmation of the special political and legal relationship between the Native Hawaiian governing entity and the United States.

(c) Process for Reorganization of Native Hawaiian Governing Entity.-

(1) Roll.-

(A) Contents.-The roll shall include the names of the qualified Native Hawaiian constituents who are certified by the Commission to be qualified Native Hawaiian constituents, as defined in section 3.

(B) Formation of roll.-Each individual claiming to be a qualified Native Hawaiian constituent shall submit to the Commission documentation in the form established by the Commission that is sufficient to enable the Commission to determine whether the individual meets the definition set forth in section 3; provided that -

(i) an individual presenting evidence that he or she satisfies the definition in Section 2 of Public Law 103-150 shall be presumed to meet the requirement of section 3(12)(A)[(i)], except that,

(ii) by satisfying such definition, such individual shall not be deemed to be eligible to qualify for or participate in any program authorized by the Hawaiian Homes Commission Act (42 Stat.108, chapter 42) for which the individual is not otherwise eligible."

(C) Documentation.-The Commission shall-

(i)(I) identify the types of documentation that may be submitted to the Commission that would enable the Commission to determine whether an individual meets the definition of qualified Native Hawaiian constituent set forth in section 3.

(II) recognize an individual's identification of lineal ancestors on the 1890 Census by the Kingdom of Hawaii as a reliable indicia of lineal descent from the aboriginal, indigenous, native people who resided in the islands that now comprise the State of Hawaii on or before January 1, 1893; and

(III) permit elderly Native Hawaiians and other qualified Native Hawaiian constituents lacking birth certificates or other documentation due to birth on Hawaiian Home Lands or other similar circumstances to establish lineal descent by sworn affidavits from 2 or more qualified Native Hawaiian constituents;

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

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

(D) Consultation.-In making determinations that each individual proposed for inclusion on the roll of qualified Native Hawaiian constituents meets the definition of qualified Native Hawaiian constituent in section 3, the Commission may consult with bona fide Native Hawaiian [Membership] Organizations, agencies of the State of Hawaii including but not limited to the Department of Hawaiian Home Lands, the Office of Hawaiian Affairs, and the State Department of Health, and other entities with expertise and experience in the determination of Native Hawaiian ancestry and lineal descendancy.

(E) Notification.-The Commission shall-

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

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

(F) Certification and submittal of roll to secretary.-The Commission shall-

(i) submit the roll containing the names of those individuals who meet the definition of qualified Native Hawaiian constituent in section 3 to the Secretary within 2 years from the date on which the Commission is fully composed; and

(ii) certify to the Secretary that each of the qualified Native Hawaiian constituents proposed for inclusion on the roll meets the definition set forth in section 3.

(G) Publication.-Upon certification by the Commission to the Secretary that those listed on the roll meet the definition of qualified Native Hawaiian constituent set forth in section 3, the Commission shall publish the notice of the certification of the roll in the Federal Register, notwithstanding pending appeals pursuant to subparagraph (H).

(H) Appeal.-The Secretary, in consultation with the Commission, shall establish a mechanism for an administrative appeal for any person whose name is excluded from the roll who claims to meet the definition of qualified Native Hawaiian constituent in section 3.

(I) Publication; update.-The Commission shall-

(i) publish the notice of the certification of the roll regardless of whether appeals are pending;

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

(iii) update the roll to include any person who has been certified by the Commission as meeting the definition of qualified Native Hawaiian constituent in section 3 after the initial publication of the roll or after any subsequent publications of the roll; and

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

(J) Effect of publication.-The publication of the initial and updated roll shall serve as the basis for the eligibility of qualified Native Hawaiian

constituents whose names are listed on those rolls to participate in the reorganization of the Native Hawaiian governing entity.

(2) Organization of council.-

(A) Organization.-The Commission, in consultation with the Secretary, shall hold a minimum of 3 meetings and each meeting shall be at least 2 working days of the qualified Native Hawaiian constituents listed on the roll established under this section-

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

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

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

(B) Powers.-

(i) In general.-The Council-

(I) shall represent those listed on the roll established under this section 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.-

(I) In general.-The Council shall conduct, among the qualified Native Hawaiian constituents listed on the roll established under this subsection, a referendum for the purpose of determining the proposed elements of the organic governing documents of the Native Hawaiian governing entity, including but not limited to-

(aa) the proposed criteria for future membership in 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, including the rights protected under the Indian Civil Rights Act of 1968;

(dd) the protection and preservation of the rights vested on the date of enactment of this Act of those Native Hawaiians who are eligible to reside on the Hawaiian homelands under the authority of the Hawaiian Homes Commission Act, 1920 (42 Stat. 108, chapter 42) and

(ee) other issues determined appropriate by the Council.

(II) Development of organic governing documents.-Based on the referendum, the Council shall develop proposed organic governing documents for the Native Hawaiian governing entity and may seek technical assistance from the Secretary on the draft organic governing documents to ensure that the draft organic governing documents comply with this Act and other Federal law.

(III) Distribution.-The Council shall publish to all qualified Native Hawaiian constituents of the Native Hawaiian governing entity listed on the roll published under this subsection notice of the availability of-

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

(bb) a brief impartial description of the proposed organic governing documents;

(IV) Elections.-

(aa) In general.-Not sooner than 180 days after the proposed organic governing documents are drafted and distributed, the Council, with the assistance of the Secretary, shall hold elections for the purpose of ratifying the proposed organic governing documents.

(bb) Purpose.-The Council, with the assistance of the Secretary, shall hold the election for the purpose of ratifying the proposed organic governing documents 60 days after publishing notice of an election.

(cc) Officers.-On certification of the organic governing documents by the Secretary in accordance with paragraph (4), the Council, with the assistance of the Secretary, shall hold elections of the officers of the Native Hawaiian governing entity pursuant to paragraph (5).

(3) Submittal of organic governing documents.-Following the reorganization of the Native Hawaiian governing entity and the adoption of organic governing documents, the Council shall submit the organic governing documents 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 9(b), 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 180 days, which may be extended an additional 90 days if the Secretary deems necessary, after the date on which the Council submits the organic governing documents to the Secretary, the Secretary shall certify or decline to certify that the organic governing documents-

(i) establish the criteria for membership in the Native Hawaiian governing entity;

(ii) were adopted by a majority vote of those qualified Native Hawaiian constituents whose names are listed on the roll published by the Secretary and who voted in the election;

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

(iv) provide for the exercise of inherent and other appropriate governmental authorities by the Native Hawaiian governing entity as set forth in section[s] 9 (c) [and (4)] of the Act and subject to the enactment of further legislation by the Congress [and the State of Hawaii];

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

(vi) provide 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[;], including the rights protected under the Indian Civil Rights Act of 1968;

(vii) provide for the protection and preservation of the rights vested on the date of enactment of this Act of those Native Hawaiians who are eligible to reside on the Hawaiian homelands under the authority of the Hawaiian Homes Commission Act, 1920 (42 Stat. 108, chapter 42) and

(viii) are consistent with applicable Federal law.

(B) Resubmission in case of noncompliance.-

(i) Resubmission by the secretary.-If the Secretary determines that the organic governing documents, or any part of the documents, do not meet all of the requirements set forth in subparagraph (A), the Secretary shall resubmit the organic governing documents 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 organic governing documents.-If the organic governing documents are resubmitted to the Council by the Secretary under clause (i), the Council shall-

(I) amend the organic governing documents to ensure that the documents meet all the requirements set forth in subparagraph (A); and

(II) resubmit the amended organic governing documents to the Secretary for certification in accordance with this paragraph.

(C) Certifications deemed made.-The certifications under this paragraph shall be deemed to have been made if the Secretary has not acted within 180 days after the date on which the Council has submitted the organic governing documents of the Native Hawaiian governing entity to the Secretary.

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

(6) Provision of roll.-The Council shall provide a copy of the roll of qualified Native Hawaiian constituents to the governing body of the Native Hawaiian governing entity.

(7) Termination.-The Council shall cease to exist and shall have no power or authority under this Act after the officers of the governing body who are elected as provided in paragraph (5) are installed.

(8) Reaffirmation.-Notwithstanding any other provision of law, the special political and legal relationship between the United States and the Native Hawaiian people is hereby reaffirmed and the United States extends Federal recognition to the Native Hawaiian governing entity as the representative sovereign governing body of the Native Hawaiian people after-

(A) the approval of the organic governing documents by the Secretary under subparagraph (A) or (C) of paragraph (4); and

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

SEC. 9. REAFFIRMATION OF DELEGATION OF FEDERAL AUTHORITY TO STATE OF HAWAII; NEGOTIATIONS; GOVERNMENTAL POWER AND AUTHORITY; CLAIMS; SOVEREIGN IMMUNITY.

(a) Reaffirmation.-The delegation by the United States of authority to the State of Hawaii to address the conditions of the indigenous, native people of Hawaii contained in the Act entitled "An Act to provide for the admission of the State of Hawaii into the Union", approved March 18, 1959 (Public Law 86-3; 73 Stat. 4), is reaffirmed.

(b) Negotiations.-

(1) In general.-Upon the reaffirmation of the special political and legal relationship between the United States and the Native Hawaiian governing entity, the United States and the State of Hawaii may enter into negotiations with the Native Hawaiian governing entity designed to lead to an agreement addressing such matters as-

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

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

(C) the exercise of civil and criminal jurisdiction;

(D) sovereign immunity, taxation and the exercise of other powers and authorities that are recognized by the United States as powers and authorities typically exercised by governments representing indigenous, native people of the United States;

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

(F) grievances regarding assertions of historical wrongs committed against Native Hawaiians by the United States or by the State of Hawaii.

(2) Amendments to existing laws.-Upon agreement on any matter or matters negotiated with the United States or the State of Hawaii, and the Native Hawaiian governing entity, the parties may submit-

(A) to the Committee on Indian Affairs of the Senate, the Committee on Energy and Natural Resources of the Senate, and the Committee on Natural Resources of the House of Representatives recommendations for proposed amendments to Federal law that will enable the implementation of agreements reached between the governments; and

(B) to the Governor and the legislature of the State of Hawaii, recommendations for proposed amendments to State law that will enable the implementation of agreements reached between the governments.

[(3) Governmental Authority and Power. – The Native Hawaiian governing entity shall be vested with the inherent powers and privileges of self-government of a native government under existing law, except as set forth in section 10(a). Said powers and privileges may be modified by agreement between the Native Hawaiian governing entity, the United States and the State pursuant to paragraph (1), subject to the limit described by section 10(a). Unless so agreed, nothing in this Act shall preempt Federal or State authority over Native Hawaiians or their property under existing law or authorize the State to tax or regulate the Native Hawaiian governing entity.]

(c) Governmental Authority and Power.- (1) Prior to the completion of negotiations authorized in section 9(b) of this Act and the enactment of necessary implementing legislation, the Native Hawaiian governing entity shall exercise only the following inherent, internal powers and privileges of self-government --

(a) the right to determine its membership and its membership criteria;

(b) the right to determine its governance structure;

(c) the right to regulate internal affairs and the conduct of the members of the Native Hawaiian governing entity; and

(d) the authority to provide governmental services and programs to its members;

except as set forth in section 10.

(2) The Secretary may approve organic governing documents that contain additional inherent internal powers of self-government if the Secretary finds them to be --

(a) consistent with the inherent internal powers and privileges of self-government of a Native government under existing law; and

(b) not inconsistent with any provisions of this Act.

(3) Said powers and privileges may be modified by agreement between the Native Hawaiian governing entity, the United States, and the State pursuant to the negotiations authorized in section 9(b) and subject to the enactment of implementing legislation and the limit described by section 10(a).

[Unless so agreed, nothing in this Act shall preempt Federal or State authority over Native Hawaiians or their property under existing law, or authorize the State to tax or regulate the Native Hawaiian governing entity.]

[(4) Membership.-Once the United States extends Federal recognition to the Native Hawaiian governing entity, the United States will recognize and affirm the Native Hawaiian governing entity's inherent power and authority to determine its own membership criteria, to determine its own membership, and to grant, deny, revoke, or qualify membership without regard to whether any person was or was not deemed to be a qualified Native Hawaiian constituent under this Act.]

(d) Claims.-Nothing in this Act-

(1) alters existing law, including case law, regarding obligations of the United States or the State of Hawaii relating to events or actions that occurred prior to recognition of the Native Hawaiian governing entity;

(2) creates, enlarges, revives, modifies, diminishes, extinguishes, waives, or otherwise alters any claim or cause of action against the United States or its officers, the State of Hawaii or its officers, or any other person or entity, or any defense (including the defense of statute of limitations) to any such claim or cause of action; or

(3) shall be construed to constitute an override pursuant to section 5 of the Fourteenth Amendment of State sovereign immunity held under the Eleventh Amendment, and the State of Hawaii fully retains its sovereign immunity that existed prior to the enactment of this Act;

([3]4) amends section 2409a of title 28, United States Code (commonly known as the "Quiet Title Act"), chapter 171 of title 28, United States Code (commonly known as the "Federal Tort Claims Act"), section 1491 of title 28, United States Code (commonly known as the "Tucker Act"), section 1505 of title 28, United States Code (commonly known as the "Indian Tucker Act"), the Hawaii Organic Act (31 Stat. 141), or any other Federal statute, except as expressly amended by this Act.

(e) Sovereign Immunity--Neither the Native Hawaiian governing entity, nor its officers, shall be immune from suit in the courts of the United States, the State of Hawaii, or any other State, and shall possess no sovereign immunity until such sovereign immunity is recognized by the Congress following the negotiations set forth herein.

SEC. 10. APPLICABILITY OF CERTAIN FEDERAL LAWS.

(a) Indian Gaming Regulatory Act.-

(1) In general.-The Native Hawaiian governing entity and Native Hawaiians may not conduct gaming activities as a matter of claimed inherent authority or under the authority of any Federal law, including the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) or under any regulations thereunder promulgated by the Secretary or the National Indian Gaming Commission.

(2) Applicability.-The prohibition contained in paragraph (1) regarding the use of Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) and inherent authority to game applies regardless of whether gaming by Native Hawaiians or the Native Hawaiian governing entity would be located on land within the State of Hawaii or within any other State or territory of the United States.

(b) Single Governing Entity.-This Act will result in the recognition of the single Native Hawaiian governing entity. Additional Native Hawaiian groups shall not be eligible for acknowledgment pursuant to the Federal Acknowledgment Process set forth in part 83 of title 25, Code of Federal Regulations, or any other administrative acknowledgment or recognition process.

[(c) Indian Civil Rights Act of 1968.-The Council and the subsequent governing entity recognized under this Act shall be an Indian tribe, as defined in section 201 of the Indian Civil Rights Act of 1968 (25 U.S.C. 1301) for purposes of sections 201 through 203 of that Act (25 U.S.C. 1301-1303).]

[(d) c) Indian Programs, Services, and Laws.-

(1) In general.-Notwithstanding any other provision of this Act, nothing in this Act extends eligibility for any Indian program or service to the Native Hawaiian governing entity or its members unless a statute governing such a program or service expressly provides that Native Hawaiians or the Native Hawaiian governing entity is eligible for such program or service. Nothing in this Act affects the eligibility of any person for any program or service under any statute or law in effect before the date of enactment of this Act.

(2) Applicability of other terms.-In Federal statutes or regulations in force prior to the United States' recognition of the Native Hawaiian governing entity, the terms "Indian" and "Native American", and references to Indian tribes, bands, nations, pueblos, villages, or other organized groups or communities, shall not apply to the Native Hawaiian governing entity or its members, unless the Federal statute or regulation expressly applies to Native Hawaiians or the Native Hawaiian governing entity.

(d) Taking Land into Trust: Notwithstanding any other provision of law, including but not limited to part 151 of Title 25, Code of Federal Regulations, nothing in this Act authorizes the Secretary to take land into trust on behalf of the Native Hawaiian governing entity or

individual Native Hawaiians, and the Secretary shall not take any such land into trust pending the outcome of the negotiations authorized in section 9(b) and the enactment of authorizing legislation by the Congress.

(e) Real Property Transfers.-Section 2116 of the Revised Statutes (commonly known as the "Indian Trade and Intercourse Act") (25 U.S.C. 177) does not apply to any purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from Native Hawaiians, Native Hawaiian entities, or the Kingdom of Hawaii that occurred prior to the date of the United States' recognition of the Native Hawaiian governing entity.

(f) Jurisdiction. (1) Nothing in this Act alters the civil or criminal jurisdiction of the United States or the State of Hawaii over lands or persons within the State of Hawaii.

(2) The scope and application of Federal and State civil and criminal jurisdiction can be altered only as a result of further legislation, enacted after the conclusion of the negotiation process authorized in section 9 (b).

(g) Federal, State, and Municipal Powers and Authorities.

(1) Nothing in this Act, or in any powers and authorities of the Native Hawaiian governing entity shall alter or preempt –

(A) the authority of the Federal government or the State of Hawaii over Native Hawaiians or their property under existing law;

(B) the authority of the State of Hawaii or its municipalities to levy, assess, and collect State and local taxes; or

(C) the authority of the State of Hawaii or its municipalities to regulate real and personal property in the State of Hawaii, including activities conducted on and development of real property.

(2) Notwithstanding any other provision of this Act and notwithstanding any powers and authorities of the Native Hawaiian governing entity, the authority of the State of Hawaii and its municipalities to levy, assess, and collect State and local taxes and to regulate real and personal property in the State of Hawaii, including activities conducted on and development of real property, shall include and extend to the Native Hawaiian governing entity, its individual

members, and the real and personal property of the Native Hawaiian governing entity and its individual members.

SEC. 11. SEVERABILITY.

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

SEC. 12. AUTHORIZATION OF APPROPRIATIONS.

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