

## Calendar No. 314

111<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION**S. 1011****[Report No. 111–162]**

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

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IN THE SENATE OF THE UNITED STATES

MAY 7, 2009

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

MARCH 11, 2010

Reported by Mr. DORGAN, with an amendment

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

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**A BILL**

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

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

1 **SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “Native Hawaiian Gov-  
3 ernment Reorganization Act of 2009”.

4 **SEC. 2. FINDINGS.**

5       Congress finds that—

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

9           (2) Native Hawaiians, the native people of the  
10 Hawaiian archipelago that is now part of the United  
11 States, are indigenous, native people of the United  
12 States;

13           (3) the United States has a special political and  
14 legal relationship to promote the welfare of the na-  
15 tive people of the United States, including Native  
16 Hawaiians;

17           (4) under the treaty making power of the  
18 United States, Congress exercised its constitutional  
19 authority to confirm treaties between the United  
20 States and the Kingdom of Hawaii, and from 1826  
21 until 1893, the United States—

22                   (A) recognized the sovereignty of the King-  
23 dom of Hawaii;

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

1           (C) entered into treaties and conventions  
2           with the Kingdom of Hawaii to govern com-  
3           merce and navigation in 1826, 1842, 1849,  
4           1875, and 1887;

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

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

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

23          (8)(A) in 1959, as part of the compact with the  
24          United States admitting Hawaii into the Union,  
25          Congress established a public trust (commonly

1 known as the “ceded lands trust”); for 5 purposes;  
 2 1 of which is the betterment of the conditions of Na-  
 3 tive Hawaiians;

4 (B) the public trust consists of lands, including  
 5 submerged lands, natural resources, and the reve-  
 6 nues derived from the lands; and

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

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

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

19 (11) Native Hawaiians continue to maintain  
 20 other distinctly native areas in Hawaii;

21 (12) on November 23, 1993, Public Law 103–  
 22 150 (107 Stat. 1510) (commonly known as the  
 23 “Apology Resolution”) was enacted into law, extend-  
 24 ing an apology on behalf of the United States to the

1 native people of Hawaii for the United States role  
2 in the overthrow of the Kingdom of Hawaii;

3 (13) the Apology Resolution acknowledges that  
4 the overthrow of the Kingdom of Hawaii occurred  
5 with the active participation of agents and citizens  
6 of the United States and further acknowledges that  
7 the Native Hawaiian people never directly relin-  
8 quished to the United States their claims to their in-  
9 herent sovereignty as a people over their national  
10 lands, either through the Kingdom of Hawaii or  
11 through a plebiscite or referendum;

12 (14) the Apology Resolution expresses the com-  
13 mitment of Congress and the President—

14 (A) to acknowledge the ramifications of the  
15 overthrow of the Kingdom of Hawaii;

16 (B) to support reconciliation efforts be-  
17 tween the United States and Native Hawaiians;  
18 and

19 (C) to consult with Native Hawaiians on  
20 the reconciliation process as called for in the  
21 Apology Resolution;

22 (15) despite the overthrow of the Government  
23 of the Kingdom of Hawaii, Native Hawaiians have  
24 continued to maintain their separate identity as a  
25 single distinct native community through cultural;

1 social, and political institutions, and to give expres-  
 2 sion to their rights as native people to self-deter-  
 3 mination, self-governance, and economic self-suffi-  
 4 ciency;

5 (16) Native Hawaiians have also given expres-  
 6 sion to their rights as native people to self-deter-  
 7 mination, self-governance, and economic self-suffi-  
 8 ciency—

9 (A) through the provision of governmental  
 10 services to Native Hawaiians, including the pro-  
 11 vision of—

12 (i) health care services;

13 (ii) educational programs;

14 (iii) employment and training pro-  
 15 grams;

16 (iv) economic development assistance  
 17 programs;

18 (v) children's services;

19 (vi) conservation programs;

20 (vii) fish and wildlife protection;

21 (viii) agricultural programs;

22 (ix) native language immersion pro-  
 23 grams;

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

1                   (xi) college and master's degree pro-  
2                   grams in native language immersion in-  
3                   struction; and

4                   (xii) traditional justice programs; and

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

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

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

24                  (19) this Act provides a process within the  
25                  framework of Federal law for the Native Hawaiian

1 people to exercise their inherent rights as a distinct,  
2 indigenous, native community to reorganize a single  
3 Native Hawaiian governing entity for the purpose of  
4 giving expression to their rights as native people to  
5 self-determination and self-governance;

6 ~~(20)~~ Congress—

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

11 (B) has identified Native Hawaiians as a  
12 distinct group of indigenous, native people of  
13 the United States within the scope of its au-  
14 thority under the Constitution, and has enacted  
15 scores of statutes on their behalf; and

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

20 ~~(21)~~ the United States has recognized and re-  
21 affirmed the special political and legal relationship  
22 with the Native Hawaiian people through the enact-  
23 ment of the Act entitled, “An Act to provide for the  
24 admission of the State of Hawaii into the Union”;



1 approved March 18, 1959 (Public Law 86-3, 73  
2 Stat. 4), by—

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

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

19 (22) the United States has continually recog-  
20 nized and reaffirmed that—

21 (A) Native Hawaiians have a cultural, his-  
22 toric, and land-based link to the aboriginal, in-  
23 digenous, native people who exercised sov-  
24 ereignty over the Hawaiian Islands;

1           (B) Native Hawaiians have never relin-  
2           quished their claims to sovereignty or their sov-  
3           ereign lands;

4           (C) the United States extends services to  
5           Native Hawaiians because of their unique sta-  
6           tus as the indigenous, native people of a once-  
7           sovereign nation with whom the United States  
8           has a special political and legal relationship;  
9           and

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

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

24   **SEC. 3. DEFINITIONS.**

25          In this Act:

1           (1) ABORIGINAL, INDIGENOUS, NATIVE PEO-  
2           PLE.—The term “aboriginal, indigenous, native peo-  
3           ple” means people whom Congress has recognized as  
4           the original inhabitants of the lands that later be-  
5           came part of the United States and who exercised  
6           sovereignty in the areas that later became part of  
7           the United States.

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

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

19          (4) COMMISSION.—The term “commission”  
20          means the Commission established under section  
21          7(b) to provide for the certification that those adult  
22          members of the Native Hawaiian community listed  
23          on the roll meet the definition of Native Hawaiian  
24          set forth in paragraph (10).

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

4           (6) INDIAN PROGRAM OR SERVICE.—

5               (A) IN GENERAL.—The term “Indian pro-  
 6       gram or service” means any federally funded or  
 7       authorized program or service provided to an  
 8       Indian tribe (or member of an Indian tribe) be-  
 9       cause of the status of the members of the In-  
 10      dian tribe as Indians.

11              (B) INCLUSIONS.—The term “Indian pro-  
 12      gram or service” includes a program or service  
 13      provided by the Bureau of Indian Affairs, the  
 14      Indian Health Service, or any other Federal  
 15      agency.

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

20           (8) INDIGENOUS, NATIVE PEOPLE.—The term  
 21      “indigenous, native people” means the lineal de-  
 22      scendants of the aboriginal, indigenous, native peo-  
 23      ple of the United States.

24           (9) INTERAGENCY COORDINATING GROUP.—The  
 25      term “Interagency Coordinating Group” means the

Native Hawaiian Interagency Coordinating Group  
established under section 6:

~~(10) NATIVE HAWAIIAN.—~~

~~(A) IN GENERAL.—~~Subject to subparagraph (B), for the purpose of establishing the roll authorized under section 7(c)(1) and before the reaffirmation of the special political and legal relationship between the United States and the Native Hawaiian governing entity, the term “Native Hawaiian” means—

~~(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 Commis-

1                   sion Act (42 Stat. 108, chapter 42) or a  
2                   direct lineal descendant of that individual.

3                   ~~(B) NO EFFECT ON OTHER DEFINI-~~  
4                   ~~TIONS.—~~Nothing in this paragraph affects the  
5                   definition of the term “Native Hawaiian” under  
6                   any other Federal or State law (including a reg-  
7                   ulation).

8                   ~~(11) NATIVE HAWAIIAN GOVERNING ENTITY.—~~  
9                   The term “Native Hawaiian Governing Entity”  
10                  means the governing entity organized by the Native  
11                  Hawaiian people pursuant to this Act.

12                  ~~(12) NATIVE HAWAIIAN PROGRAM OR SERV-~~  
13                  ~~ICE.—~~The term “Native Hawaiian program or serv-  
14                  ice” means any program or service provided to Na-  
15                  tive Hawaiians because of their status as Native Ha-  
16                  waiians.

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

20                  ~~(14) SECRETARY.—~~The term “Secretary”  
21                  means the Secretary of the Interior.

22                  ~~(15) SPECIAL POLITICAL AND LEGAL RELA-~~  
23                  ~~TIONSHIP.—~~The term “special political and legal re-  
24                  lationship” shall refer, except where differences are  
25                  specifically indicated elsewhere in the Act, to the

1 type of and nature of relationship the United States  
 2 has with the several federally recognized Indian  
 3 tribes.

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

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

6 (1) Native Hawaiians are a unique and distinct,  
 7 indigenous, native people with whom the United  
 8 States has a special political and legal relationship;  
 9 (2) the United States has a special political and  
 10 legal relationship with the Native Hawaiian people  
 11 which includes promoting the welfare of Native Ha-  
 12 waiians;

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

18 (A) the Hawaiian Homes Commission Act,  
 19 1920 (42 Stat. 108, chapter 42);

20 (B) the Act entitled “An Act to provide for  
 21 the admission of the State of Hawaii into the  
 22 Union”, approved March 18, 1959 (Public Law  
 23 86–3, 73 Stat. 4); and

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

1           (4) Native Hawaiians have—

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

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

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

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

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

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

20           **SEC. 5. UNITED STATES OFFICE FOR NATIVE HAWAIIAN RE-**  
21                                   **LATIONS.**

22           (a) ESTABLISHMENT.—There is established within  
23           the Office of the Secretary, the United States Office for  
24           Native Hawaiian Relations.

25           (b) DUTIES.—The Office shall—



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

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

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

19          (4) consult with the Interagency Coordinating  
20          Group, other Federal agencies, and the State of Ha-  
21          waii on policies, practices, and proposed actions af-  
22          fecting Native Hawaiian resources, rights, or lands;  
23          and

24          (5) prepare and submit to the Committee on  
25          Indian Affairs and the Committee on Energy and

1       Natural Resources of the Senate and the Committee  
 2       on Resources of the House of Representatives an an-  
 3       nual report detailing the activities of the Interagency  
 4       Coordinating Group that are undertaken with re-  
 5       spect to the continuing process of reconciliation and  
 6       to effect meaningful consultation with the Native  
 7       Hawaiian governing entity and providing rec-  
 8       ommendations for any necessary changes to Federal  
 9       law or regulations promulgated under the authority  
 10      of Federal law.

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

17 **SEC. 6. NATIVE HAWAIIAN INTERAGENCY COORDINATING**  
 18 **GROUP.**

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

1       (b) COMPOSITION.—The Interagency Coordinating  
 2 Group shall be composed of officials, to be designated by  
 3 the President, from—

4           (1) each Federal agency that administers Na-  
 5 tive Hawaiian programs, establishes or implements  
 6 policies that affect Native Hawaiians, or whose ac-  
 7 tions may significantly or uniquely impact Native  
 8 Hawaiian resources, rights, or lands; and

9           (2) the Office.

10       (c) LEAD AGENCY.—

11           (1) IN GENERAL.—The Department of the Inte-  
 12 rior shall serve as the lead agency of the Interagency  
 13 Coordinating Group.

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

16       (d) DUTIES.—The Interagency Coordinating Group  
 17 shall—

18           (1) coordinate Federal programs and policies  
 19 that affect Native Hawaiians or actions by any agen-  
 20 cy or agencies of the Federal Government that may  
 21 significantly or uniquely affect Native Hawaiian re-  
 22 sources, rights, or lands;

23           (2) consult with the Native Hawaiian governing  
 24 entity, through the coordination referred to in sec-  
 25 tion 6(d)(1), but the consultation obligation estab-

lished in this provision shall apply only after the satisfaction of all of the conditions referred to in section 7(c)(6); 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. PROCESS FOR THE REORGANIZATION OF THE NATIVE HAWAIIAN GOVERNING ENTITY AND THE REAFFIRMATION OF THE SPECIAL POLITICAL AND LEGAL RELATIONSHIP BETWEEN THE UNITED STATES AND THE NATIVE HAWAIIAN GOVERNING ENTITY.**

(a) **RECOGNITION OF THE NATIVE HAWAIIAN GOVERNING ENTITY.**—The right of the Native Hawaiian people to reorganize 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           (1) ~~IN GENERAL.~~—There is authorized to be es-  
 2           tablished a Commission to be composed of 9 mem-  
 3           bers for the purposes of—

4                   (A) preparing and maintaining a roll of the  
 5           adult members of the Native Hawaiian commu-  
 6           nity who elect to participate in the reorganiza-  
 7           tion of the single Native Hawaiian governing  
 8           entity; and

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

13          (2) ~~MEMBERSHIP.~~—

14                   (A) ~~APPOINTMENT.~~—

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

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

1 nity who elect to participate in the reorganiza-  
 2 tion of the Native Hawaiian governing entity;  
 3 and

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

8 (5) STAFF.—

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

15 (B) COMPENSATION.—

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

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

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.



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

3           (1) ROLL.—

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

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

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

22               (i) identify the types of documentation  
 23 that may be submitted to the Commission  
 24 that would enable the Commission to de-  
 25 termine whether an individual meets the

definition of Native Hawaiian in section  
3(10);

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

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

(D) CONSULTATION.—In making deter-  
minations that each of the adult members of  
the Native Hawaiian community proposed for  
inclusion on the roll meets the definition of Na-  
tive Hawaiian in section 3(10), the Commission  
may consult with Native Hawaiian organiza-  
tions, 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 de-  
termination of Native Hawaiian ancestry and  
lineal descentancy.

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

(i) submit the roll containing the  
names of the adult members of the Native  
Hawaiian community who meet the defini-

tion of Native Hawaiian in section 3(10) to  
the Secretary within 2 years from the date  
on which the Commission is fully com-  
posed; and

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

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

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

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

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

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

(iii) update the roll to include any Native Hawaiian who has attained the age of 18 and who has been certified by the Commission as meeting the definition of Native Hawaiian in section 3(10) after the initial publication of the roll or after any subsequent publications of the roll.

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

(J) EFFECT OF PUBLICATION.—The publication of the initial and updated roll shall serve as the basis for the eligibility of adult members of the Native Hawaiian community whose names are listed on those rolls to participate in the reorganization of the Native Hawaiian governing entity.

1           ~~(2) ORGANIZATION OF THE NATIVE HAWAIIAN~~  
 2           ~~INTERIM GOVERNING COUNCIL.—~~

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

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

9                     ~~(ii)~~ determine the structure of the  
 10                    Council; and

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

14           ~~(B) POWERS.—~~

15                    ~~(i) IN GENERAL.—~~The Council—

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

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

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

(iii) ACTIVITIES.—

(I) IN GENERAL.—The Council may conduct a referendum among the adult members of the Native Hawaiian community listed on the roll published under this subsection 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 citizenship of the Native Hawaiian governing entity;

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

(cc) the proposed civil rights and protection of the rights of the citizens of the Native Hawaiian governing entity and all per-

sons 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 may develop proposed organic governing documents for the Native Hawaiian governing entity.

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

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

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

(IV) ELECTIONS.—The Council may hold elections for the purpose of

1           ratifying the proposed organic gov-  
 2           erning documents; and on certification  
 3           of the organic governing documents  
 4           by the Secretary in accordance with  
 5           paragraph (4); hold elections of the  
 6           officers of the Native Hawaiian gov-  
 7           erning entity pursuant to paragraph  
 8           (5).

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

15          ~~(4)~~ CERTIFICATIONS.—

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



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

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

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

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

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

(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 and the special political and legal relationship between the United States and the indigenous, native people of the United States; provided that the provisions of Public Law 103-454, 25 U.S.C. 479a, shall not apply.

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

(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 re-submitted 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 paragraph (4) shall be deemed to have been made if the Secretary has not acted within 90 days after the date on which the Council has submitted the 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

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

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

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

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

22 (b) NEGOTIATIONS.—

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

erning 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 lands, natural re-  
sources, and other assets, and the protection of  
existing rights related to such lands or re-  
sources;

(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 juris-  
diction;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (2) FEDERAL SOVEREIGN IMMUNITY.—

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

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

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



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

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

19 (3) STATE SOVEREIGNTY IMMUNITY.—

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

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

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

7       (a) INDIAN GAMING REGULATORY ACT.—

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

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

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

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

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

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

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

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

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

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

1 **SEC. 10. SEVERABILITY.**

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

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

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

8 **SECTION 1. SHORT TITLE.**

9 *This Act may be cited as the “Native Hawaiian Gov-*  
10 *ernment Reorganization Act of 2009”.*

11 **SEC. 2. FINDINGS.**

12 *Congress finds that—*

13 *(1) the Constitution vests Congress with the au-*  
14 *thority to address the conditions of the indigenous,*  
15 *native people of the United States and the Supreme*  
16 *Court has held that under the Indian Commerce,*  
17 *Treaty, Supremacy, and Property Clauses, and the*  
18 *War Powers, Congress may exercise that power to ra-*  
19 *tionally promote the welfare of the native peoples of*  
20 *the United States so long as the native people are a*  
21 *“distinctly native community”;*

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

1           (3) *the United States has a special political and*  
2           *legal relationship with, and has long enacted legisla-*  
3           *tion to promote the welfare of, the native peoples of*  
4           *the United States, including the Native Hawaiian*  
5           *people;*

6           (4) *under the authority of the Constitution, the*  
7           *United States concluded a number of treaties with the*  
8           *Kingdom of Hawaii, and from 1826 until 1893, the*  
9           *United States—*

10                 (A) *recognized the sovereignty of the King-*  
11                 *dom of Hawaii as a nation;*

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

14                 (C) *entered into treaties and conventions of*  
15                 *peace, friendship and commerce with the King-*  
16                 *dom of Hawaii to govern trade, commerce, and*  
17                 *navigation in 1826, 1842, 1849, 1875, and 1887;*

18           (5) *pursuant to the Hawaiian Homes Commis-*  
19           *sion Act, 1920 (42 Stat. 108, chapter 42), the United*  
20           *States set aside approximately 203,500 acres of land*  
21           *in trust to better address the conditions of Native Ha-*  
22           *waiians in the Federal territory that later became the*  
23           *State of Hawaii and in enacting the Hawaiian*  
24           *Homes Commission Act, 1920, Congress acknowledged*  
25           *the Native Hawaiian people as a native people of the*

1       *United States, as evidenced by the Committee Report,*  
2       *which notes that Congress relied on the Indian affairs*  
3       *power and the War Powers, including the power to*  
4       *make peace;*

5               *(6) by setting aside 203,500 acres of land in*  
6       *trust for Native Hawaiian homesteads and farms, the*  
7       *Hawaiian Homes Commission Act, 1920, assists the*  
8       *members of the Native Hawaiian community in*  
9       *maintaining distinctly native communities through-*  
10       *out the State of Hawaii;*

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

17               *(8)(A) in 1959, as part of the compact with the*  
18       *United States admitting Hawaii into the Union,*  
19       *Congress delegated the authority and responsibility to*  
20       *administer the Hawaiian Homes Commission Act,*  
21       *1920, lands in trust for Native Hawaiians and estab-*  
22       *lished a new public trust (commonly known as the*  
23       *“ceded lands trust”), for 5 purposes, 1 of which is the*  
24       *betterment of the conditions of Native Hawaiians,*  
25       *and Congress thereby reaffirmed its recognition of the*

1     *Native Hawaiians as a distinctly native community*  
 2     *with a direct lineal and historical succession to the*  
 3     *aboriginal, indigenous people of Hawaii;*

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

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

9             *(9) Native Hawaiians have continuously sought*  
 10    *access to the ceded lands in order to establish and*  
 11    *maintain native settlements and distinct native com-*  
 12    *munities throughout the State;*

13            *(10) the Hawaiian Home Lands and other ceded*  
 14    *lands provide important native land reserves and re-*  
 15    *sources for the Native Hawaiian community to main-*  
 16    *tain the practice of Native Hawaiian culture, lan-*  
 17    *guage, and traditions, and for the continuity, sur-*  
 18    *vival, and economic self-sufficiency of the Native Ha-*  
 19    *waiian people as a distinctly native political commu-*  
 20    *nity;*

21            *(11) Native Hawaiians continue to maintain*  
 22    *other distinctly native areas in Hawaii, including*  
 23    *native lands that date back to the aliʻi and kuleana*  
 24    *lands reserved under the Kingdom of Hawaii;*



1           (12) through the Sovereign Council of Hawaiian  
 2           Homelands Assembly, Native Hawaiian civic associa-  
 3           tions, charitable trusts established by the Native Ha-  
 4           waiian ali'i, nonprofit native service providers and  
 5           other community associations, the Native Hawaiian  
 6           people have actively maintained native traditions  
 7           and customary usages throughout the Native Hawai-  
 8           ian community and the Federal and State courts  
 9           have continuously recognized the right of the Native  
 10          Hawaiian people to engage in certain customary  
 11          practices and usages on public lands;

12          (13) on November 23, 1993, Public Law 103–150  
 13          (107 Stat. 1510) (commonly known as the “Apology  
 14          Resolution”) was enacted into law, extending an  
 15          apology on behalf of the United States to the native  
 16          people of Hawaii for the United States’ role in the  
 17          overthrow of the Kingdom of Hawaii;

18          (14) the Apology Resolution acknowledges that  
 19          the overthrow of the Kingdom of Hawaii occurred  
 20          with the active participation of agents and citizens of  
 21          the United States, and further acknowledges that the  
 22          Native Hawaiian people never directly relinquished  
 23          to the United States their claims to their inherent  
 24          sovereignty as a people over their national lands, ei-

1        *ther through the Kingdom of Hawaii or through a*  
 2        *plebiscite or referendum;*

3                *(15)(A) the Apology Resolution expresses the*  
 4        *commitment of Congress and the President—*

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

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

9                *(B) Congress established the Office of Hawaiian*  
 10        *Relations within the Department of the Interior with*  
 11        *1 of its purposes being to consult with Native Hawai-*  
 12        *ians on the reconciliation process; and*

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

18                *(16)(A) despite the overthrow of the Government*  
 19        *of the Kingdom of Hawaii, Native Hawaiians have*  
 20        *continued to maintain their separate identity as a*  
 21        *single distinctly native political community through*  
 22        *cultural, social, and political institutions, and to give*  
 23        *expression to their rights as native people to self-de-*  
 24        *termination, self-governance, and economic self-suffi-*  
 25        *ciency; and*

1           *(B) there is clear continuity between the aborigi-*  
 2           *nal, native citizens of the Kingdom of Hawaii and*  
 3           *their successors, the Native Hawaiian people today;*

4           *(17) Native Hawaiians have also given expres-*  
 5           *sion to their rights as native people to self-determina-*  
 6           *tion, self-governance, and economic self-sufficiency—*

7           *(A) through the provision of governmental*  
 8           *services to Native Hawaiians, including the pro-*  
 9           *vision of—*

10                   *(i) health care services;*

11                   *(ii) educational programs;*

12                   *(iii) employment and training pro-*  
 13                   *grams;*

14                   *(iv) economic development assistance*  
 15                   *programs;*

16                   *(v) children's services;*

17                   *(vi) conservation programs;*

18                   *(vii) fish and wildlife protection;*

19                   *(viii) agricultural programs;*

20                   *(ix) native language immersion pro-*  
 21                   *grams;*

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

1                    *(xi) college and master's degree pro-*  
 2                    *grams in native language immersion in-*  
 3                    *struction; and*

4                    *(xii) traditional justice programs; and*  
 5                    *(B) by continuing their efforts to enhance*  
 6                    *Native Hawaiian self-determination and local*  
 7                    *control;*

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

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

24                    *(20) this Act provides a process within the*  
 25                    *framework of Federal law for the Native Hawaiian*

1     *people to exercise their inherent rights as a distinct,*  
2     *indigenous, native community to reorganize a single*  
3     *unified Native Hawaiian governing entity for the*  
4     *purpose of giving expression to their rights as a na-*  
5     *tive people to self-determination and self-governance;*

6             *(21) Congress—*

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

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

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

20             *(22) the United States has recognized and re-*  
21             *affirmed the special political and legal relationship*  
22             *with the Native Hawaiian people through the enact-*  
23             *ment of the Act entitled, "An Act to provide for the*  
24             *admission of the State of Hawaii into the Union",*

1       *approved March 18, 1959 (Public Law 86–3; 73 Stat.*  
 2       *4), by—*

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

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

19       *(23) the United States has continually recog-*  
 20       *nized and reaffirmed that—*

21               *(A) Native Hawaiians have a direct genea-*  
 22       *logical, cultural, historic, and land-based connec-*  
 23       *tion to their forebears, the aboriginal, indige-*  
 24       *nous, native people who exercised original sov-*  
 25       *ereignty over the Hawaiian Islands;*

1           (B) *Native Hawaiians have never relin-*  
2           *quished their claims to sovereignty or their sov-*  
3           *ereign lands;*

4           (C) *the United States extends services to*  
5           *Native Hawaiians because of their unique status*  
6           *as the native people of a prior-sovereign nation*  
7           *with whom the United States has a special polit-*  
8           *ical and legal relationship; and*

9           (D) *the special relationship of American In-*  
10          *dians, Alaska Natives, and Native Hawaiians to*  
11          *the United States arises out of their status as ab-*  
12          *original, indigenous, native people of the United*  
13          *States; and*

14          (24) *the State of Hawaii supports the reaffirma-*  
15          *tion of the special political and legal relationship be-*  
16          *tween the Native Hawaiian governing entity and the*  
17          *United States, as evidenced by 2 unanimous resolu-*  
18          *tions enacted by the Hawaii State Legislature in the*  
19          *2000 and 2001 sessions of the Legislature and by the*  
20          *testimony of the Governor of the State of Hawaii be-*  
21          *fore the Committee on Indian Affairs of the Senate on*  
22          *February 25, 2003, and March 1, 2005.*

23 **SEC. 3. DEFINITIONS.**

24          *In this Act:*

1           (1) *ABORIGINAL, INDIGENOUS, NATIVE PEO-*  
 2           *PLE.*—*The term “aboriginal, indigenous, native peo-*  
 3           *ple” means a people whom Congress has recognized as*  
 4           *the original inhabitants of the lands that later became*  
 5           *part of the United States and who exercised sov-*  
 6           *ereignty in the areas that later became part of the*  
 7           *United States.*

8           (2) *APOLOGY RESOLUTION.*—*The term “Apology*  
 9           *Resolution” means Public Law 103–150 (107 Stat.*  
 10           *1510), a Joint Resolution extending an apology to*  
 11           *Native Hawaiians on behalf of the United States for*  
 12           *the participation of agents of the United States in the*  
 13           *January 17, 1893, overthrow of the Kingdom of Ha-*  
 14           *waii.*

15           (3) *COMMISSION.*—*The term “Commission”*  
 16           *means the Commission established under section 8(b).*

17           (4) *COUNCIL.*—*The term “Council” means the*  
 18           *Native Hawaiian Interim Governing Council estab-*  
 19           *lished under section 8(c)(2).*

20           (5) *INDIAN PROGRAM OR SERVICE.*—

21           (A) *IN GENERAL.*—*The term “Indian pro-*  
 22           *gram or service” means any federally funded or*  
 23           *authorized program or service provided to an In-*  
 24           *Indian tribe (or member of an Indian tribe) be-*



1           *cause of the status of the members of the Indian*  
 2           *tribe as Indians.*

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

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

12          (7) *INDIGENOUS, NATIVE PEOPLE.*—*The term*  
 13          *“indigenous, native people” means the lineal descend-*  
 14          *ants of the aboriginal, indigenous, native people of the*  
 15          *United States.*

16          (8) *INTERAGENCY COORDINATING GROUP.*—*The*  
 17          *term “Interagency Coordinating Group” means the*  
 18          *Native Hawaiian Interagency Coordinating Group*  
 19          *established under section 6.*

20          (9) *NATIVE HAWAIIAN GOVERNING ENTITY.*—*The*  
 21          *term “Native Hawaiian governing entity” means the*  
 22          *governing entity organized pursuant to this Act by*  
 23          *the qualified Native Hawaiian constituents.*

1           (10) *NATIVE HAWAIIAN MEMBERSHIP ORGANIZA-*  
 2           *TION.—The term “Native Hawaiian Membership Or-*  
 3           *ganization” means an organization that—*

4                   (A) *serves and represents the interests of*  
 5                   *Native Hawaiians, has as a primary and stated*  
 6                   *purpose the provision of services to Native Ha-*  
 7                   *waiians, and has expertise in Native Hawaiian*  
 8                   *affairs;*

9                   (B) *has leaders who are elected democrat-*  
 10                  *ically, or selected through traditional Native*  
 11                  *leadership practices, by members of the Native*  
 12                  *Hawaiian community;*

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

15                  (D) *is a membership organization or asso-*  
 16                  *ciation; and*

17                  (E) *has an accurate and reliable list of Na-*  
 18                  *tive Hawaiian members.*

19           (11) *OFFICE.—The term “Office” means the*  
 20           *United States Office for Native Hawaiian Relations*  
 21           *established by section 5(a).*

22           (12) *QUALIFIED NATIVE HAWAIIAN CON-*  
 23           *STITUENT.—For the purposes of establishing the roll*  
 24           *authorized under section 8, and prior to the recogni-*  
 25           *tion by the United States of the Native Hawaiian*

1       governing entity, the term “qualified Native Hawai-  
2       ian constituent” means an individual who the Com-  
3       mission determines has satisfied the following criteria  
4       and who makes a written statement certifying that he  
5       or she—

6               (A) is—

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

11                       (I) resided in the islands that now  
12                       comprise the State of Hawaii on or be-  
13                       fore January 1, 1893; and

14                       (II) occupied and exercised sov-  
15                       ereignty in the Hawaiian archipelago,  
16                       including the area that now constitutes  
17                       the State of Hawaii; or

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

1           *(B) wishes to participate in the reorganiza-*  
2           *tion of the Native Hawaiian governing entity;*

3           *(C) is 18 years of age or older;*

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

5           *(E) maintains a significant cultural, social,*  
6           *or civic connection to the Native Hawaiian com-*  
7           *munity, as evidenced by satisfying 2 or more of*  
8           *the following 10 criteria:*

9                     *(i) Resides in the State of Hawaii.*

10                    *(ii) Resides outside the State of Ha-*  
11                    *waii and—*

12                             *(I)(aa) currently serves or served*  
13                             *as (or has a parent or spouse who cur-*  
14                             *rently serves or served as) a member of*  
15                             *the Armed Forces or as an employee of*  
16                             *the Federal Government; and*

17                             *(bb) resided in the State of Ha-*  
18                             *waii prior to the time he or she (or*  
19                             *such parent or spouse) left the State of*  
20                             *Hawaii to serve as a member of the*  
21                             *Armed Forces or as an employee of the*  
22                             *Federal Government; or*

23                             *(II)(aa) currently is or was en-*  
24                             *rolled (or has a parent or spouse who*  
25                             *currently is or was enrolled) in an ac-*

1           *credited institution of higher education*  
2           *outside the State of Hawaii; and*

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

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

13                    *(II) Is a child or grandchild of an in-*  
14          *dividual who is or was eligible to be a bene-*  
15          *ficiary of the programs authorized by such*  
16          *Act and who resides or resided on land set*  
17          *aside as “Hawaiian home lands”, as de-*  
18          *finied in such Act.*

19                    *(iv) Is or was eligible to be a bene-*  
20          *ficiary of the programs authorized by the*  
21          *Hawaiian Homes Commission Act, 1920*  
22          *(42 Stat. 108, chapter 42).*

23                    *(v) Is a child or grandchild of an indi-*  
24          *vidual who is or was eligible to be a bene-*  
25          *ficiary 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.*

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

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

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

16                  (x) *Is regarded as a Native Hawaiian*  
17                  *and whose mother or father is (or if de-*  
18                  *ceased, was) regarded as a Native Hawai-*  
19                  *ian by the Native Hawaiian community, as*  
20                  *evidenced by sworn affidavits from 2 or*  
21                  *more qualified Native Hawaiian constitu-*  
22                  *ents certified by the Commission as pos-*  
23                  *sessing expertise in the social, cultural, and*  
24                  *civic affairs of the Native Hawaiian com-*  
25                  *munity.*

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

3           (14) *SPECIAL POLITICAL AND LEGAL RELATION-*  
4           *SHIP*.—The term “special political and legal relation-  
5           ship” shall refer, except where differences are specifi-  
6           cally indicated elsewhere in the Act, to the type of  
7           and nature of relationship the United States has with  
8           the several federally recognized Indian tribes.

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

10          (a) *POLICY*.—The United States reaffirms that—

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

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

18               (3)(A) *Congress possesses and hereby exercises the*  
19               *authority under the Constitution, including but not*  
20               *limited to Article I, Section 8, Clause 3, to enact leg-*  
21               *islation to better the conditions of Native Hawaiians*  
22               *and has exercised this authority through the enact-*  
23               *ment of—*

24                       (i) *the Hawaiian Homes Commission Act,*  
25                       *1920 (42 Stat. 108, chapter 42);*



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

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

7           (B) other sources of authority under the Con-  
8           stitution for legislation on behalf of native peoples of  
9           the United States, including Native Hawaiians, in-  
10          clude but are not limited to the Property, Treaty, and  
11          Supremacy Clauses, War Powers, and the Fourteenth  
12          Amendment, and Congress hereby relies on those pow-  
13          ers in enacting this legislation; and

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

19          (4) Native Hawaiians have—

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

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

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

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

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

6           (b) *PURPOSE.*—The purpose of this Act is to provide  
7           a process for the reorganization of the single Native Hawai-  
8           ian governing entity and the reaffirmation of the special  
9           political and legal relationship between the United States  
10          and that Native Hawaiian governing entity for purposes  
11          of continuing a government-to-government relationship.

12   **SEC. 5. UNITED STATES OFFICE FOR NATIVE HAWAIIAN RE-**  
13                           **LATIONS.**

14          (a) *ESTABLISHMENT.*—There is established within the  
15          Office of the Secretary the United States Office for Native  
16          Hawaiian Relations.

17          (b) *DUTIES.*—The Office shall—

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

21               (2) upon the reaffirmation of the government-to-  
22               government relationship between the single Native  
23               Hawaiian governing entity and the United States, ef-  
24               fectuate and coordinate the special political and legal  
25               relationship between the Native Hawaiian governing

1        *entity and the United States through the Secretary,*  
2        *and with all other Federal agencies;*

3            *(3) provide timely notice to, and consult with,*  
4        *the Native Hawaiian governing entity before taking*  
5        *any actions that may have the potential to signifi-*  
6        *cantly affect Native Hawaiian resources, rights, or*  
7        *lands;*

8            *(4) work with the Interagency Coordinating*  
9        *Group, other Federal agencies, and the State of Ha-*  
10       *waii on policies, practices, and proposed actions af-*  
11       *fecting Native Hawaiian resources, rights, or lands;*  
12       *and*

13           *(5) prepare and submit to the Committee on In-*  
14       *dian Affairs and the Committee on Energy and Nat-*  
15       *ural Resources of the Senate and the Committee on*  
16       *Natural Resources of the House of Representatives an*  
17       *annual report detailing the activities of the Inter-*  
18       *agency Coordinating Group that are undertaken with*  
19       *respect to the continuing process of reconciliation and*  
20       *to effect meaningful consultation with the Native Ha-*  
21       *waiian governing entity and may provide rec-*  
22       *ommendations for any necessary changes to Federal*  
23       *law or regulations promulgated under the authority*  
24       *of Federal law.*

1       (c) *APPLICABILITY TO DEPARTMENT OF DEFENSE.*—  
 2       *This section shall have no applicability to the Department*  
 3       *of Defense or to any agency or component of the Depart-*  
 4       *ment of Defense, but the Secretary of Defense may designate*  
 5       *1 or more officials as liaison to the Office.*

6       **SEC. 6. NATIVE HAWAIIAN INTERAGENCY COORDINATING**  
 7                               **GROUP.**

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

14       (b) *COMPOSITION.*—*The Interagency Coordinating*  
 15       *Group shall be composed of officials, to be designated by*  
 16       *the President, from—*

17               (1) *each Federal agency whose actions may sig-*  
 18               *nificantly or uniquely impact Native Hawaiian pro-*  
 19               *grams, resources, rights, or lands; and*

20               (2) *the Office.*

21       (c) *LEAD AGENCY.*—

22               (1) *IN GENERAL.*—*The Department of the Inte-*  
 23               *rior and the White House Office of Intergovernmental*  
 24               *Affairs shall serve as the leaders of the Interagency*  
 25               *Coordinating Group.*

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

3           (d) *DUTIES.*—*The Interagency Coordinating Group*  
4           *shall—*

5                 (1) *coordinate Federal programs and policies*  
6                 *that affect Native Hawaiians or actions by any agen-*  
7                 *cy or agencies of the Federal Government that may*  
8                 *significantly or uniquely affect Native Hawaiian re-*  
9                 *sources, rights, or lands;*

10                (2) *consult with the Native Hawaiian governing*  
11                *entity, through the coordination referred to in para-*  
12                *graph (1), but the consultation obligation established*  
13                *in this provision shall apply only after the satisfac-*  
14                *tion of all of the conditions referred to in section*  
15                *8(c)(8); and*

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

19           (e) *APPLICABILITY TO DEPARTMENT OF DEFENSE.*—  
20           *This section shall have no applicability to the Department*  
21           *of Defense or to any agency or component of the Depart-*  
22           *ment of Defense, but the Secretary of Defense may designate*  
23           *1 or more officials as liaison to the Interagency Coordi-*  
24           *nating Group.*

1 **SEC. 7. DESIGNATION OF DEPARTMENT OF JUSTICE REP-**  
 2 **RESENTATIVE.**

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

12 **SEC. 8. PROCESS FOR REORGANIZATION OF NATIVE HAWAI-**  
 13 **IAN GOVERNING ENTITY AND REAFFIRMA-**  
 14 **TION OF SPECIAL POLITICAL AND LEGAL RE-**  
 15 **LATIONSHIP BETWEEN UNITED STATES AND**  
 16 **NATIVE HAWAIIAN GOVERNING ENTITY.**

17 (a) *RECOGNITION OF NATIVE HAWAIIAN GOVERNING*  
 18 *ENTITY.—The right of the qualified Native Hawaiian con-*  
 19 *stituents to reorganize the single Native Hawaiian gov-*  
 20 *erning entity to provide for their common welfare and to*  
 21 *adopt appropriate organic governing documents is recog-*  
 22 *nized by the United States.*

23 (b) *COMMISSION.—*

24 (1) *IN GENERAL.—There is authorized to be es-*  
 25 *tablished a Commission to be composed of 9 members*  
 26 *for the purposes of—*

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

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

7           (2) *MEMBERSHIP.*—

8           (A) *APPOINTMENT.*—

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

14          (ii) *CONSIDERATION.*—In making an  
15          appointment under clause (i), the Secretary  
16          may take into consideration a recommenda-  
17          tion made by any Native Hawaiian Mem-  
18          bership Organization.

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

22          (i) not less than 10 years of experience  
23          in the study and determination of Native  
24          Hawaiian genealogy (traditional cultural

1 *experience shall be given due consideration);*

2 *and*

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

6 *(C) VACANCIES.—A vacancy on the Com-*  
 7 *mission—*

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

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

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

19 *(4) DUTIES.—The Commission shall—*

20 *(A) prepare and maintain a roll of quali-*  
 21 *fied Native Hawaiian constituents as set forth in*  
 22 *subsection (c); and*

23 *(B) certify that the individuals on the roll*  
 24 *of qualified Native Hawaiian constituents meet*



1        *the definition of that term as set forth in section*  
 2        *3.*

3        *(5) STAFF.—*

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

10        *(B) COMPENSATION.—*

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

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

24        *(6) DETAIL OF FEDERAL GOVERNMENT EMPLOY-*  
 25        *EES.—*

1           (A) *IN GENERAL.*—*An employee of the Fed-*  
 2           *eral Government may be detailed to the Commis-*  
 3           *sion without reimbursement.*

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

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

15          (8) *EXPIRATION.*—*The Secretary shall dissolve*  
 16          *the Commission upon the reaffirmation of the special*  
 17          *political and legal relationship between the Native*  
 18          *Hawaiian governing entity and the United States.*

19          (c) *PROCESS FOR REORGANIZATION OF NATIVE HA-*  
 20          *WAIAN GOVERNING ENTITY.*—

21               (1) *ROLL.*—

22               (A) *CONTENTS.*—*The roll shall include the*  
 23               *names of the qualified Native Hawaiian con-*  
 24               *stituents who are certified by the Commission to*

1        *be qualified Native Hawaiian constituents, as*  
 2        *defined in section 3.*

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

14               (C) *DOCUMENTATION.—The Commission*  
 15       *shall—*

16               (i)(I) *identify the types of documenta-*  
 17       *tion that may be submitted to the Commis-*  
 18       *sion that would enable the Commission to*  
 19       *determine whether an individual meets the*  
 20       *definition of qualified Native Hawaiian*  
 21       *constituent set forth in section 3;*

22               (II) *recognize an individual’s identi-*  
 23       *fication of lineal ancestors on the 1890 Cen-*  
 24       *sus by the Kingdom of Hawaii as a reliable*  
 25       *indicia of lineal descent from the aborigi-*

1            *nal, indigenous, native people who resided*  
 2            *in the islands that now comprise the State*  
 3            *of Hawaii on or before January 1, 1893;*  
 4            *and*

5            *(III) permit elderly Native Hawaiians*  
 6            *and other Native Hawaiians lacking birth*  
 7            *certificates or other documentation due to*  
 8            *birth on Hawaiian Home Lands or other*  
 9            *similar circumstances to establish lineal de-*  
 10           *scend by sworn affidavits from 2 or more*  
 11           *qualified Native Hawaiian constituents;*

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

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

17           *(D) CONSULTATION.—In making deter-*  
 18           *minations that each individual proposed for in-*  
 19           *clusion on the roll of qualified Native Hawaiian*  
 20           *constituents meets the definition of qualified Na-*  
 21           *tive Hawaiian constituent in section 3, the Com-*  
 22           *mission may consult with Native Hawaiian*  
 23           *Membership Organizations, agencies of the State*  
 24           *of Hawaii including but not limited to the De-*  
 25           *partment of Hawaiian Home Lands, the Office*

1       *of Hawaiian Affairs, and the State Department*  
 2       *of Health, and other entities with expertise and*  
 3       *experience in the determination of Native Ha-*  
 4       *waiian ancestry and lineal descendancy.*

5               (E)     NOTIFICATION.—*The Commission*  
 6       *shall—*

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

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

13               (F)     CERTIFICATION AND SUBMITTAL OF  
 14       *ROLL TO SECRETARY.—The Commission shall—*

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

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

1           (G) *PUBLICATION.*—Upon certification by  
2           the Commission to the Secretary that those listed  
3           on the roll meet the definition of qualified Native  
4           Hawaiian constituent set forth in section 3, the  
5           Commission shall publish the notice of the cer-  
6           tification of the roll in the Federal Register, not-  
7           withstanding pending appeals pursuant to sub-  
8           paragraph (H).

9           (H) *APPEAL.*—The Secretary, in consulta-  
10          tion with the Commission, shall establish a  
11          mechanism for an administrative appeal for any  
12          person whose name is excluded from the roll who  
13          claims to meet the definition of qualified Native  
14          Hawaiian constituent in section 3.

15          (I) *PUBLICATION; UPDATE.*—The Commis-  
16          sion shall—

17               (i) publish the notice of the certifi-  
18               cation of the roll regardless of whether ap-  
19               peals are pending;

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

23               (iii) update the roll to include any  
24               person who has been certified by the Com-  
25               mission as meeting the definition of quali-

1 *fied Native Hawaiian constituent in section*  
 2 *3 after the initial publication of the roll or*  
 3 *after any subsequent publications of the roll;*  
 4 *and*

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

7 *(J) EFFECT OF PUBLICATION.—The publi-*  
 8 *cation of the initial and updated roll shall serve*  
 9 *as the basis for the eligibility of qualified Native*  
 10 *Hawaiian constituents whose names are listed*  
 11 *on those rolls to participate in the reorganiza-*  
 12 *tion of the Native Hawaiian governing entity.*

13 *(2) ORGANIZATION OF COUNCIL.—*

14 *(A) ORGANIZATION.—The Commission, in*  
 15 *consultation with the Secretary, shall hold a*  
 16 *minimum of 3 meetings and each meeting shall*  
 17 *be at least 2 working days of the qualified Native*  
 18 *Hawaiian constituents listed on the roll estab-*  
 19 *lished under this section—*

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

22 *(ii) to determine the structure of the*  
 23 *Council, including the number of Council*  
 24 *members; and*

1                   (iii) to elect members from individuals  
 2                   listed on the roll established under this sub-  
 3                   section to the Council.

4                   (B) POWERS.—

5                   (i) IN GENERAL.—The Council—

6                   (I) shall represent those listed on  
 7                   the roll established under this section  
 8                   in the implementation of this Act; and

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

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

16                  (iii) ACTIVITIES.—

17                  (I) IN GENERAL.—The Council  
 18                  shall conduct, among the qualified Na-  
 19                  tive Hawaiian constituents listed on  
 20                  the roll established under this sub-  
 21                  section, a referendum for the purpose of  
 22                  determining the proposed elements of  
 23                  the organic governing documents of the  
 24                  Native Hawaiian governing entity, in-  
 25                  cluding but not limited to—



1                   (aa) the proposed criteria for  
 2                   future membership in the Native  
 3                   Hawaiian governing entity;

4                   (bb) the proposed powers and  
 5                   authorities to be exercised by the  
 6                   Native Hawaiian governing enti-  
 7                   ty, as well as the proposed privi-  
 8                   leges and immunities of the Na-  
 9                   tive Hawaiian governing entity;

10                  (cc) the proposed civil rights  
 11                  and protection of the rights of the  
 12                  citizens of the Native Hawaiian  
 13                  governing entity and all persons  
 14                  affected by the exercise of govern-  
 15                  mental powers and authorities of  
 16                  the Native Hawaiian governing  
 17                  entity; and

18                  (dd) other issues determined  
 19                  appropriate by the Council.

20                  (II) DEVELOPMENT OF ORGANIC  
 21                  GOVERNING DOCUMENTS.—Based on  
 22                  the referendum, the Council shall de-  
 23                  velop proposed organic governing docu-  
 24                  ments for the Native Hawaiian gov-  
 25                  erning entity and may seek technical

1           *assistance from the Secretary on the*  
 2           *draft organic governing documents to*  
 3           *ensure that the draft organic governing*  
 4           *documents comply with this Act and*  
 5           *other Federal law.*

6                   (III) *DISTRIBUTION.*—*The Coun-*  
 7           *cil shall publish to all qualified Native*  
 8           *Hawaiian constituents of the Native*  
 9           *Hawaiian governing entity listed on*  
 10          *the roll published under this subsection*  
 11          *notice of the availability of—*

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

15                   (bb) *a brief impartial de-*  
 16           *scription of the proposed organic*  
 17           *governing documents;*

18                   (IV) *ELECTIONS.*—

19                   (aa)   *IN    GENERAL.*—*Not*  
 20           *sooner than 180 days after the*  
 21           *proposed organic governing docu-*  
 22           *ments are drafted and distributed,*  
 23           *the Council, with the assistance of*  
 24           *the Secretary, shall hold elections*  
 25           *for the purpose of ratifying the*

1                   *proposed organic governing docu-*  
2                   *ments.*

3                   *(bb) PURPOSE.—The Coun-*  
4                   *cil, with the assistance of the Sec-*  
5                   *retary, shall hold the election for*  
6                   *the purpose of ratifying the pro-*  
7                   *posed organic governing docu-*  
8                   *ments 60 days after publishing*  
9                   *notice of an election.*

10                  *(cc) OFFICERS.—On certifi-*  
11                  *cation of the organic governing*  
12                  *documents by the Secretary in ac-*  
13                  *cordance with paragraph (4), the*  
14                  *Council, with the assistance of the*  
15                  *Secretary, shall hold elections of*  
16                  *the officers of the Native Hawai-*  
17                  *ian governing entity pursuant to*  
18                  *paragraph (5).*

19                  *(3) SUBMITTAL OF ORGANIC GOVERNING DOCU-*  
20                  *MENTS.—Following the reorganization of the Native*  
21                  *Hawaiian governing entity and the adoption of or-*  
22                  *ganic governing documents, the Council shall submit*  
23                  *the organic governing documents of the Native Ha-*  
24                  *waiian governing entity to the Secretary.*

25                  *(4) CERTIFICATIONS.—*

1           (A) *IN GENERAL.*—*Within the context of the*  
2           *future negotiations to be conducted under the au-*  
3           *thority of section 9(b)(1), and the subsequent ac-*  
4           *tions by the Congress and the State of Hawaii*  
5           *to enact legislation to implement the agreements*  
6           *of the 3 governments, not later than 180 days,*  
7           *which may be extended an additional 90 days if*  
8           *the Secretary deems necessary, after the date on*  
9           *which the Council submits the organic governing*  
10          *documents to the Secretary, the Secretary shall*  
11          *certify or decline to certify that the organic gov-*  
12          *erning documents—*

13               (i) *establish the criteria for member-*  
14               *ship in the Native Hawaiian governing en-*  
15               *tity;*

16               (ii) *were adopted by a majority vote of*  
17               *those qualified Native Hawaiian constitu-*  
18               *ents whose names are listed on the roll pub-*  
19               *lished by the Secretary and who voted in*  
20               *the election;*

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

1           (iv) provide for the exercise of inherent  
 2           and other appropriate governmental au-  
 3           thorities by the Native Hawaiian governing  
 4           entity;

5           (v) prevent the sale, disposition, lease,  
 6           or encumbrance of lands, interests in lands,  
 7           or other assets of the Native Hawaiian gov-  
 8           erning entity without the consent of the Na-  
 9           tive Hawaiian governing entity;

10          (vi) provide for the protection of the  
 11          civil rights of the citizens of the Native Ha-  
 12          waiian governing entity and all persons af-  
 13          fected by the exercise of governmental pow-  
 14          ers and authorities by the Native Hawaiian  
 15          governing entity; and

16          (vii) are consistent with applicable  
 17          Federal law.

18          (B) RESUBMISSION IN CASE OF NONCOMPLI-  
 19          ANCE.—

20               (i) RESUBMISSION BY THE SEC-  
 21          RETARY.—If the Secretary determines that  
 22          the organic governing documents, or any  
 23          part of the documents, do not meet all of the  
 24          requirements set forth in subparagraph (A),  
 25          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.

1           (5) *ELECTIONS.*—On completion of the certifi-  
 2           cations by the Secretary under paragraph (4), the  
 3           Council, with the assistance of the Secretary, shall  
 4           hold elections of the officers of the Native Hawaiian  
 5           governing entity.

6           (6) *PROVISION OF ROLL.*—The Council shall pro-  
 7           vide a copy of the roll of qualified Native Hawaiian  
 8           constituents to the governing body of the Native Ha-  
 9           waiian governing entity.

10          (7) *TERMINATION.*—The Council shall cease to  
 11          exist and shall have no power or authority under this  
 12          Act after the officers of the governing body who are  
 13          elected as provided in paragraph (5) are installed.

14          (8) *REAFFIRMATION.*—Notwithstanding any  
 15          other provision of law, the special political and legal  
 16          relationship between the United States and the Native  
 17          Hawaiian people is hereby reaffirmed and the United  
 18          States extends Federal recognition to the Native Ha-  
 19          waiian governing entity as the representative sov-  
 20          ereign governing body of the Native Hawaiian people  
 21          after—

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

1                   *(B) the officers of the Native Hawaiian gov-*  
 2                   *erning entity elected under paragraph (5) have*  
 3                   *been installed.*

4   **SEC. 9. REAFFIRMATION OF DELEGATION OF FEDERAL AU-**  
 5                   **THORITY TO STATE OF HAWAII; NEGOTIA-**  
 6                   **TIONS; CLAIMS.**

7           *(a) REAFFIRMATION.—The delegation by the United*  
 8           *States of authority to the State of Hawaii to address the*  
 9           *conditions of the indigenous, native people of Hawaii con-*  
 10           *tained in the Act entitled “An Act to provide for the admis-*  
 11           *sion of the State of Hawaii into the Union”, approved*  
 12           *March 18, 1959 (Public Law 86–3; 73 Stat. 4), is re-*  
 13           *affirmed.*

14           *(b) NEGOTIATIONS.—*

15                   *(1) IN GENERAL.—Upon the reaffirmation of the*  
 16           *special political and legal relationship between the*  
 17           *United States and the Native Hawaiian governing*  
 18           *entity, the United States and the State of Hawaii*  
 19           *may enter into negotiations with the Native Hawai-*  
 20           *ian governing entity designed to lead to an agreement*  
 21           *addressing such matters as—*

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



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

4           (C) *the exercise of civil and criminal juris-*  
 5           *diction;*

6           (D) *the exercise of other powers and au-*  
 7           *thorities that are recognized by the United States*  
 8           *as powers and authorities typically exercised by*  
 9           *governments representing indigenous, native peo-*  
 10          *ple of the United States;*

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

13          (F) *grievances regarding assertions of his-*  
 14          *torical wrongs committed against Native Hawai-*  
 15          *ians by the United States or by the State of Ha-*  
 16          *waii.*

17          (2) *AMENDMENTS TO EXISTING LAWS.*—*Upon*  
 18          *agreement on any matter or matters negotiated with*  
 19          *the United States or the State of Hawaii, and the Na-*  
 20          *tive Hawaiian governing entity, the parties may sub-*  
 21          *mit—*

22                (A) *to the Committee on Indian Affairs of*  
 23                *the Senate, the Committee on Energy and Nat-*  
 24                *ural Resources of the Senate, and the Committee*  
 25                *on Natural Resources of the House of Represent-*

atives 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

1       *affirm the Native Hawaiian governing entity’s inher-*  
 2       *ent power and authority to determine its own mem-*  
 3       *bership criteria, to determine its own membership,*  
 4       *and to grant, deny, revoke, or qualify membership*  
 5       *without regard to whether any person was or was not*  
 6       *deemed to be a qualified Native Hawaiian constituent*  
 7       *under this Act.*

8       (c) CLAIMS.—*Nothing in this Act—*

9               (1) *alters existing law, including case law, re-*  
 10       *garding obligations of the United States or the State*  
 11       *of Hawaii relating to events or actions that occurred*  
 12       *prior to recognition of the Native Hawaiian gov-*  
 13       *erning entity;*

14              (2) *creates, enlarges, revives, modifies, dimin-*  
 15       *ishes, extinguishes, waives, or otherwise alters any*  
 16       *claim or cause of action against the United States or*  
 17       *its officers or the State of Hawaii or its officers, or*  
 18       *any defense (including the defense of statute of limita-*  
 19       *tions) to any such claim or cause of action; or*

20              (3) *amends section 2409a of title 28, United*  
 21       *States Code (commonly known as the “Quiet Title*  
 22       *Act”), chapter 171 of title 28, United States Code*  
 23       *(commonly known as the “Federal Tort Claims Act”),*  
 24       *section 1491 of title 28, United States Code (com-*  
 25       *monly known as the “Tucker Act”), section 1505 of*

1       *title 28, United States Code (commonly known as the*  
 2       *“Indian Tucker Act”), the Hawaii Organic Act (31*  
 3       *Stat. 141), or any other Federal statute, except as ex-*  
 4       *pressly amended by this Act.*

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

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

7           (1) *IN GENERAL.*—*The Native Hawaiian gov-*  
 8       *erning entity and Native Hawaiians may not con-*  
 9       *duct gaming activities as a matter of claimed inher-*  
 10      *ent authority or under the authority of any Federal*  
 11      *law, including the Indian Gaming Regulatory Act*  
 12      *(25 U.S.C. 2701 et seq.) or under any regulations*  
 13      *thereunder promulgated by the Secretary or the Na-*  
 14      *tional Indian Gaming Commission.*

15          (2) *APPLICABILITY.*—*The prohibition contained*  
 16      *in paragraph (1) regarding the use of Indian Gaming*  
 17      *Regulatory Act (25 U.S.C. 2701 et seq.) and inherent*  
 18      *authority to game applies regardless of whether gam-*  
 19      *ing by Native Hawaiians or the Native Hawaiian*  
 20      *governing entity would be located on land within the*  
 21      *State of Hawaii or within any other State or terri-*  
 22      *tory of the United States.*

23          (b) *SINGLE GOVERNING ENTITY.*—*This Act will result*  
 24      *in the recognition of the single Native Hawaiian governing*  
 25      *entity. Additional Native Hawaiian groups shall not be eli-*

1 gible for acknowledgment pursuant to the Federal Acknowl-  
 2 edgment Process set forth in part 83 of title 25, Code of  
 3 Federal Regulations, or any other administrative acknowl-  
 4 edgment or recognition process.

5 (c) INDIAN CIVIL RIGHTS ACT OF 1968.—The Council  
 6 and the subsequent governing entity recognized under this  
 7 Act shall be an Indian tribe, as defined in section 201 of  
 8 the Indian Civil Rights Act of 1968 (25 U.S.C. 1301) for  
 9 purposes of sections 201 through 203 of that Act (25 U.S.C.  
 10 1301–1303).

11 (d) INDIAN PROGRAMS, SERVICES, AND LAWS.—

12 (1) IN GENERAL.—Notwithstanding any other  
 13 provision of this Act, nothing in this Act extends eli-  
 14 gibility for any Indian program or service to the Na-  
 15 tive Hawaiian governing entity or its members unless  
 16 a statute governing such a program or service ex-  
 17 pressly provides that Native Hawaiians or the Native  
 18 Hawaiian governing entity is eligible for such pro-  
 19 gram or service. Nothing in this Act affects the eligi-  
 20 bility of any person for any program or service under  
 21 any statute or law in effect before the date of enact-  
 22 ment of this Act.

23 (2) APPLICABILITY OF OTHER TERMS.—In Fed-  
 24 eral statutes or regulations in force prior to the  
 25 United States' recognition of the Native Hawaiian

1       governing entity, the terms “Indian” and “Native  
 2       American”, and references to Indian tribes, bands,  
 3       nations, pueblos, villages, or other organized groups  
 4       or communities, shall not apply to the Native Hawai-  
 5       ian governing entity or its members, unless the Fed-  
 6       eral statute or regulation expressly applies to Native  
 7       Hawaiians or the Native Hawaiian governing entity.

8       (e) *REAL PROPERTY TRANSFERS.*—Section 2116 of the  
 9       Revised Statutes (commonly known as the “Indian Trade  
 10      and Intercourse Act”) (25 U.S.C. 177) does not apply to  
 11      any purchase, grant, lease, or other conveyance of lands,  
 12      or of any title or claim thereto, from Native Hawaiians,  
 13      Native Hawaiian entities, or the Kingdom of Hawaii that  
 14      occurred prior to the date of the United States’ recognition  
 15      of the Native Hawaiian governing entity.

16   **SEC. 11. SEVERABILITY.**

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

20   **SEC. 12. AUTHORIZATION OF APPROPRIATIONS.**

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



Calendar No. 314

11<sup>TH</sup> CONGRESS  
2<sup>D</sup> Session

**S. 1011**

[Report No. 111-162]

**A BILL**

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

MARCH 11, 2010

Reported with an amendment