

107TH CONGRESS  
1ST SESSION

# H. R. 617

To express the policy of the United States regarding the United States relationship with Native Hawaiians, to provide a process for the reorganization of a Native Hawaiian government and the recognition by the United States of the Native Hawaiian government, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 14, 2001

Mr. ABERCROMBIE (for himself, Mrs. MINK of Hawaii, Mr. KILDEE, Mr. FALEOMAVAEGA, Mr. YOUNG of Alaska, Mr. HANSEN, and Mr. RAHALL) introduced the following bill; which was referred to the Committee on Resources

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## A BILL

To express the policy of the United States regarding the United States relationship with Native Hawaiians, to provide a process for the reorganization of a Native Hawaiian government and the recognition by the United States of the Native Hawaiian government, and for other purposes.

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

3 **SECTION 1. FINDINGS.**

4 Congress makes the following findings:

1           (1) The Constitution vests Congress with the  
2 authority to address the conditions of the indige-  
3 nous, native people of the United States.

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

8           (3) The United States has a special trust rela-  
9 tionship to promote the welfare of the native people  
10 of the United States, including Native Hawaiians.

11           (4) Under the treaty making power of the  
12 United States, Congress exercised its constitutional  
13 authority to confirm a treaty between the United  
14 States and the government that represented the Ha-  
15 waiian people, and from 1826 until 1893, the United  
16 States recognized the independence of the Kingdom  
17 of Hawaii, extended full diplomatic recognition to  
18 the Hawaiian government, and entered into treaties  
19 and conventions with the Hawaiian monarchs to gov-  
20 ern commerce and navigation in 1826, 1842, 1849,  
21 1875, and 1887.

22           (5) Pursuant to the provisions of the Hawaiian  
23 Homes Commission Act, 1920 (42 Stat. 108, chap-  
24 ter 42), the United States set aside 203,500 acres  
25 of land in the Federal territory that later became

1 the State of Hawaii to address the conditions of Na-  
2 tive Hawaiians.

3 (6) By setting aside 203,500 acres of land for  
4 Native Hawaiian homesteads and farms, the Act as-  
5 sists the Native Hawaiian community in maintaining  
6 distinct native settlements throughout the State of  
7 Hawaii.

8 (7) Approximately 6,800 Native Hawaiian les-  
9 sees and their family members reside on Hawaiian  
10 Home Lands and approximately 18,000 Native Ha-  
11 waiians who are eligible to reside on the Home  
12 Lands are on a waiting list to receive assignments  
13 of land.

14 (8) In 1959, as part of the compact admitting  
15 Hawaii into the United States, Congress established  
16 the Ceded Lands Trust for 5 purposes, 1 of which  
17 is the betterment of the conditions of Native Hawai-  
18 ians. Such trust consists of approximately 1,800,000  
19 acres of land, submerged lands, and the revenues de-  
20 rived from such lands, the assets of which have  
21 never been completely inventoried or segregated.

22 (9) Throughout the years, Native Hawaiians  
23 have repeatedly sought access to the Ceded Lands  
24 Trust and its resources and revenues in order to es-

1        establish and maintain native settlements and distinct  
2        native communities throughout the State.

3            (10) The Hawaiian Home Lands and the Ceded  
4        Lands provide an important foundation for the abil-  
5        ity of the Native Hawaiian community to maintain  
6        the practice of Native Hawaiian culture, language,  
7        and traditions, and for the survival of the Native  
8        Hawaiian people.

9            (11) Native Hawaiians have maintained other  
10       distinctly native areas in Hawaii.

11           (12) On November 23, 1993, Public Law 103–  
12       150 (107 Stat. 1510) (commonly known as the Apol-  
13       ogy Resolution) was enacted into law, extending an  
14       apology on behalf of the United States to the Native  
15       people of Hawaii for the United States role in the  
16       overthrow of the Kingdom of Hawaii.

17           (13) The Apology Resolution acknowledges that  
18       the overthrow of the Kingdom of Hawaii occurred  
19       with the active participation of agents and citizens  
20       of the United States and further acknowledges that  
21       the Native Hawaiian people never directly relin-  
22       quished their claims to their inherent sovereignty as  
23       a people over their national lands to the United  
24       States, either through their monarchy or through a  
25       plebiscite or referendum.

1           (14) The Apology Resolution expresses the com-  
2           mitment of Congress and the President to acknowl-  
3           edge the ramifications of the overthrow of the King-  
4           dom of Hawaii and to support reconciliation efforts  
5           between the United States and Native Hawaiians;  
6           and to have Congress and the President, through the  
7           President’s designated officials, consult with Native  
8           Hawaiians on the reconciliation process as called for  
9           under the Apology Resolution.

10           (15) Despite the overthrow of the Hawaiian  
11           government, Native Hawaiians have continued to  
12           maintain their separate identity as a distinct native  
13           community through the formation of cultural, social,  
14           and political institutions, and to give expression to  
15           their rights as native people to self-determination  
16           and self-governance as evidenced through their par-  
17           ticipation in the Office of Hawaiian Affairs.

18           (16) Native Hawaiians also maintain a distinct  
19           Native Hawaiian community through the provision  
20           of governmental services to Native Hawaiians, in-  
21           cluding the provision of health care services, edu-  
22           cational programs, employment and training pro-  
23           grams, children’s services, conservation programs,  
24           fish and wildlife protection, agricultural programs,  
25           native language immersion programs and native lan-

1 guage immersion schools from kindergarten through  
2 high school, as well as college and master's degree  
3 programs in native language immersion instruction,  
4 and traditional justice programs, and by continuing  
5 their efforts to enhance Native Hawaiian self-deter-  
6 mination and local control.

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

14 (18) The Native Hawaiian people wish to pre-  
15 serve, develop, and transmit to future Native Hawai-  
16 ian generations their ancestral lands and Native Ha-  
17 waiian political and cultural identity in accordance  
18 with their traditions, beliefs, customs and practices,  
19 language, and social and political institutions, and to  
20 achieve greater self-determination over their own af-  
21 fairs.

22 (19) This Act provides for a process within the  
23 framework of Federal law for the Native Hawaiian  
24 people to exercise their inherent rights as a distinct  
25 aboriginal, indigenous, native community to reorga-

1 nize a Native Hawaiian government for the purpose  
2 of giving expression to their rights as native people  
3 to self-determination and self-governance.

4 (20) The United States has declared that—

5 (A) the United States has a special respon-  
6 sibility for the welfare of the native peoples of  
7 the United States, including Native Hawaiians;

8 (B) Congress has identified Native Hawai-  
9 ians as a distinct indigenous group within the  
10 scope of its Indian affairs power, and has en-  
11 acted dozens of statutes on their behalf pursu-  
12 ant to its recognized trust responsibility; and

13 (C) Congress has also delegated broad au-  
14 thority to administer a portion of the Federal  
15 trust responsibility to the State of Hawaii.

16 (21) The United States has recognized and re-  
17 affirmed the special trust relationship with the Na-  
18 tive Hawaiian people through the enactment of the  
19 Act entitled “An Act to provide for the admission of  
20 the State of Hawaii into the Union”, approved  
21 March 18, 1959 (Public Law 86–3; 73 Stat. 4) by—

22 (A) ceding to the State of Hawaii title to  
23 the public lands formerly held by the United  
24 States, and mandating that those lands be held  
25 in public trust for 5 purposes, one of which is

1 for the betterment of the conditions of Native  
2 Hawaiians; and

3 (B) transferring the United States respon-  
4 sibility for the administration of the Hawaiian  
5 Home Lands to the State of Hawaii, but retain-  
6 ing the authority to enforce the trust, including  
7 the exclusive right of the United States to con-  
8 sent to any actions affecting the lands which  
9 comprise the corpus of the trust and any  
10 amendments to the Hawaiian Homes Commis-  
11 sion Act, 1920 (42 Stat. 108, chapter 42) that  
12 are enacted by the legislature of the State of  
13 Hawaii affecting the beneficiaries under the  
14 Act.

15 (22) The United States continually has recog-  
16 nized and reaffirmed that—

17 (A) Native Hawaiians have a cultural, his-  
18 toric, and land-based link to the aboriginal, na-  
19 tive people who exercised sovereignty over the  
20 Hawaiian Islands;

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

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



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

4           (D) the special trust relationship of Amer-  
5           ican Indians, Alaska Natives, and Native Ha-  
6           waiians to the United States arises out of their  
7           status as aboriginal, indigenous, native people  
8           of the United States.

9 **SEC. 2. DEFINITIONS.**

10         In this Act:

11           (1) **ABORIGINAL, INDIGENOUS, NATIVE PEO-**  
12           **PLE.**—The term “aboriginal, indigenous, native peo-  
13           ple” means those people whom Congress has recog-  
14           nized as the original inhabitants of the lands and  
15           who exercised sovereignty prior to European contact  
16           in the areas that later became part of the United  
17           States.

18           (2) **ADULT MEMBERS.**—The term “adult mem-  
19           bers” means those Native Hawaiians who have at-  
20           tained the age of 18 at the time the Secretary pub-  
21           lishes the final roll, as provided in section 7(a)(3) of  
22           this Act.

23           (3) **APOLOGY RESOLUTION.**—The term “Apol-  
24           ogy Resolution” means Public Law 103–150 (107  
25           Stat. 1510), a joint resolution offering an apology to

1 Native Hawaiians on behalf of the United States for  
2 the participation of agents of the United States in  
3 the January 17, 1893 overthrow of the Kingdom of  
4 Hawaii.

5 (4) CEDED LANDS.—The term “ceded lands”  
6 means those lands which were ceded to the United  
7 States by the Republic of Hawaii under the Joint  
8 Resolution to provide for annexing the Hawaiian Is-  
9 lands to the United States of July 7, 1898 (30 Stat.  
10 750), and which were later transferred to the State  
11 of Hawaii in the Act entitled “An Act to provide for  
12 the admission of the State of Hawaii into the  
13 Union” approved March 18, 1959 (Public Law 86-  
14 3; 73 Stat. 4).

15 (5) COMMISSION.—The term “Commission”  
16 means the commission established in section 7 of  
17 this Act to certify that the adult members of the Na-  
18 tive Hawaiian community contained on the roll de-  
19 veloped under that section meet the definition of Na-  
20 tive Hawaiian, as defined in paragraph (7)(A).

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

25 (7) NATIVE HAWAIIAN.—

1 (A) Prior to the recognition by the United  
2 States of a Native Hawaiian government under  
3 the authority of section 7(d)(2) of this Act, the  
4 term “Native Hawaiian” means the indigenous,  
5 native people of Hawaii who are the lineal de-  
6 scendants of the aboriginal, indigenous, native  
7 people who resided in the islands that now com-  
8 prise the State of Hawaii on or before January  
9 1, 1893, and who occupied and exercised sov-  
10 ereignty in the Hawaiian archipelago, including  
11 the area that now constitutes the State of Ha-  
12 waii, and includes all Native Hawaiians who  
13 were eligible in 1921 for the programs author-  
14 ized by the Hawaiian Homes Commission Act  
15 (42 Stat. 108, chapter 42) and their lineal de-  
16 scendants.

17 (B) Following the recognition by the  
18 United States of the Native Hawaiian govern-  
19 ment under section 7(d)(2) of this Act, the  
20 term “Native Hawaiian” shall have the mean-  
21 ing given to such term in the organic governing  
22 documents of the Native Hawaiian government.

23 (8) NATIVE HAWAIIAN GOVERNMENT.—The  
24 term “Native Hawaiian government” means the citi-  
25 zens of the government of the Native Hawaiian peo-

1 ple that is recognized by the United States under  
2 the authority of section 7(d)(2) of this Act.

3 (9) NATIVE HAWAIIAN INTERIM GOVERNING  
4 COUNCIL.—The term “Native Hawaiian Interim  
5 Governing Council” means the interim governing  
6 council that is organized under section 7(c) of this  
7 Act.

8 (10) ROLL.—The term “roll” means the roll  
9 that is developed under the authority of section 7(a)  
10 of this Act.

11 (11) SECRETARY.—The term “Secretary”  
12 means the Secretary of the Interior.

13 (12) TASK FORCE.—The term “Task Force”  
14 means the Native Hawaiian Interagency Task Force  
15 established under the authority of section 6 of this  
16 Act.

17 **SEC. 3. UNITED STATES POLICY AND PURPOSE.**

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

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

22 (2) the United States has a special trust rela-  
23 tionship to promote the welfare of Native Hawaiians;

24 (3) Congress possesses the authority under the  
25 Constitution to enact legislation to address the con-

1       ditions of Native Hawaiians and has exercised this  
2       authority through the enactment of—

3               (A) the Hawaiian Homes Commission Act,  
4               1920 (42 Stat. 108, chapter 42);

5               (B) the Act entitled “An Act to provide for  
6               the admission of the State of Hawaii into the  
7               Union”, approved March 18, 1959 (Public Law  
8               86–3; 73 Stat. 4); and

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

11             (4) Native Hawaiians have—

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

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

16               (C) the right to reorganize a Native Ha-  
17               waiian government; and

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

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

23             (b) PURPOSE.—It is the intent of Congress that the  
24             purpose of this Act is to provide a process for the reorga-  
25             nization of a Native Hawaiian government and for the rec-

1 ognition by the United States of the Native Hawaiian gov-  
2 ernment for purposes of continuing a government-to-gov-  
3 ernment relationship.

4 **SEC. 4. ESTABLISHMENT OF THE UNITED STATES OFFICE**  
5 **FOR NATIVE HAWAIIAN AFFAIRS.**

6 (a) IN GENERAL.—There is established within the  
7 Office of the Secretary the United States Office for Native  
8 Hawaiian Affairs.

9 (b) DUTIES OF THE OFFICE.—The United States Of-  
10 fice for Native Hawaiian Affairs shall—

11 (1) effectuate and coordinate the special trust  
12 relationship between the Native Hawaiian people  
13 and the United States through the Secretary, and  
14 with all other Federal agencies;

15 (2) upon the recognition of the Native Hawai-  
16 ian government by the United States as provided for  
17 in section 7(d)(2) of this Act, effectuate and coordi-  
18 nate the special trust relationship between the Na-  
19 tive Hawaiian government and the United States  
20 through the Secretary, and with all other Federal  
21 agencies;

22 (3) fully integrate the principle and practice of  
23 meaningful, regular, and appropriate consultation  
24 with the Native Hawaiian people by providing timely  
25 notice to, and consulting with the Native Hawaiian

1 people prior to taking any actions that may affect  
2 traditional or current Native Hawaiian practices and  
3 matters that may have the potential to significantly  
4 or uniquely affect Native Hawaiian resources, rights,  
5 or lands, and upon the recognition of the Native Ha-  
6 waiian government as provided for in section 7(d)(2)  
7 of this Act, fully integrate the principle and practice  
8 of meaningful, regular, and appropriate consultation  
9 with the Native Hawaiian government by providing  
10 timely notice to, and consulting with the Native Ha-  
11 waiian people and the Native Hawaiian government  
12 prior to taking any actions that may have the poten-  
13 tial to significantly affect Native Hawaiian re-  
14 sources, rights, or lands;

15 (4) consult with the Native Hawaiian Inter-  
16 agency Task Force, other Federal agencies, and with  
17 relevant agencies of the State of Hawaii on policies,  
18 practices, and proposed actions affecting Native Ha-  
19 waiian resources, rights, or lands;

20 (5) be responsible for the preparation and sub-  
21 mittal to the Committee on Indian Affairs of the  
22 Senate, the Committee on Energy and Natural Re-  
23 sources of the Senate, and the Committee on Re-  
24 sources of the House of Representatives of an an-  
25 nual report detailing the activities of the Interagency

1 Task Force established under section 6 of this Act  
2 that are undertaken with respect to the continuing  
3 process of reconciliation and to effect meaningful  
4 consultation with the Native Hawaiian people and  
5 the Native Hawaiian government and providing rec-  
6 ommendations for any necessary changes to existing  
7 Federal statutes or regulations promulgated under  
8 the authority of Federal law;

9 (6) be responsible for continuing the process of  
10 reconciliation with the Native Hawaiian people, and  
11 upon the recognition of the Native Hawaiian govern-  
12 ment by the United States as provided for in section  
13 7(d)(2) of this Act, be responsible for continuing the  
14 process of reconciliation with the Native Hawaiian  
15 government; and

16 (7) assist the Native Hawaiian people in facili-  
17 tating a process for self-determination, including but  
18 not limited to the provision of technical assistance in  
19 the development of the roll under section 7(a) of this  
20 Act, the organization of the Native Hawaiian In-  
21 terim Governing Council as provided for in section  
22 7(c) of this Act, and the recognition of the Native  
23 Hawaiian government as provided for in section 7(d)  
24 of this Act.



1           (c) **AUTHORITY.**—The United States Office for Na-  
2 tive Hawaiian Affairs is authorized to enter into a contract  
3 with or make grants for the purposes of the activities au-  
4 thorized or addressed in section 7 of this Act for a period  
5 of 3 years from the date of enactment of this Act.

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

8           The Attorney General shall designate an appropriate  
9 official within the Department of Justice to assist the  
10 United States Office for Native Hawaiian Affairs in the  
11 implementation and protection of the rights of Native Ha-  
12 waiians and their political, legal, and trust relationship  
13 with the United States, and upon the recognition of the  
14 Native Hawaiian government as provided for in section  
15 7(d)(2) of this Act, in the implementation and protection  
16 of the rights of the Native Hawaiian government and its  
17 political, legal, and trust relationship with the United  
18 States.

19 **SEC. 6. NATIVE HAWAIIAN INTERAGENCY TASK FORCE.**

20           (a) **ESTABLISHMENT.**—There is established an inter-  
21 agency task force to be known as the “Native Hawaiian  
22 Interagency Task Force”.

23           (b) **COMPOSITION.**—The Task Force shall be com-  
24 posed of officials, to be designated by the President,  
25 from—

1           (1) each Federal agency that establishes or im-  
2           plements policies that affect Native Hawaiians or  
3           whose actions may significantly or uniquely impact  
4           on Native Hawaiian resources, rights, or lands;

5           (2) the United States Office for Native Hawai-  
6           ian Affairs established under section 4 of this Act;  
7           and

8           (3) the Executive Office of the President.

9           (c) LEAD AGENCIES.—The Department of the Inte-  
10          rior and the Department of Justice shall serve as the lead  
11          agencies of the Task Force, and meetings of the Task  
12          Force shall be convened at the request of either of the  
13          lead agencies.

14          (d) CO-CHAIRS.—The Task Force representative of  
15          the United States Office for Native Hawaiian Affairs es-  
16          tablished under the authority of section 4 of this Act and  
17          the Attorney General’s designee under the authority of  
18          section 5 of this Act shall serve as co-chairs of the Task  
19          Force.

20          (e) DUTIES.—The responsibilities of the Task Force  
21          shall be—

22                (1) the coordination of Federal policies that af-  
23                fect Native Hawaiians or actions by any agency or  
24                agencies of the Federal Government which may sig-

1 significantly or uniquely impact on Native Hawaiian re-  
2 sources, rights, or lands;

3 (2) to assure that each Federal agency develops  
4 a policy on consultation with the Native Hawaiian  
5 people, and upon recognition of the Native Hawaiian  
6 government by the United States as provided in sec-  
7 tion 7(d)(2) of this Act, consultation with the Native  
8 Hawaiian government; and

9 (3) to assure the participation of each Federal  
10 agency in the development of the report to Congress  
11 authorized in section 4(b)(5) of this Act.

12 **SEC. 7. PROCESS FOR THE DEVELOPMENT OF A ROLL FOR**  
13 **THE ORGANIZATION OF A NATIVE HAWAIIAN**  
14 **INTERIM GOVERNING COUNCIL, FOR THE OR-**  
15 **GANIZATION OF A NATIVE HAWAIIAN IN-**  
16 **TERIM GOVERNING COUNCIL AND A NATIVE**  
17 **HAWAIIAN GOVERNMENT, AND FOR THE REC-**  
18 **OGNITION OF THE NATIVE HAWAIIAN GOV-**  
19 **ERNMENT.**

20 (a) ROLL.—

21 (1) PREPARATION OF ROLL.—The United  
22 States Office for Native Hawaiian Affairs shall as-  
23 sist the adult members of the Native Hawaiian com-  
24 munity who wish to participate in the reorganization  
25 of a Native Hawaiian government in preparing a roll

1 for the purpose of the organization of a Native Ha-  
2 waiian Interim Governing Council. The roll shall in-  
3 clude the names of the—

4 (A) adult members of the Native Hawaiian  
5 community who wish to become citizens of a  
6 Native Hawaiian government and who are—

7 (i) the lineal descendants of the ab-  
8 original, indigenous, native people who re-  
9 sided in the islands that now comprise the  
10 State of Hawaii on or before January 1,  
11 1893, and who occupied and exercised sov-  
12 ereignty in the Hawaiian archipelago; or

13 (ii) Native Hawaiians who were eligi-  
14 ble in 1921 for the programs authorized by  
15 the Hawaiian Homes Commission Act (42  
16 Stat. 108, chapter 42) or their lineal de-  
17 scendants; and

18 (B) the children of the adult members list-  
19 ed on the roll prepared under this subsection.

20 (2) CERTIFICATION AND SUBMISSION.—

21 (A) COMMISSION.—

22 (i) IN GENERAL.—There is authorized  
23 to be established a Commission to be com-  
24 posed of 9 members for the purpose of cer-  
25 tifying that the adult members of the Na-

1           tive Hawaiian community on the roll meet  
2           the definition of Native Hawaiian, as de-  
3           fined in section 2(7)(A) of this Act.

4           (ii) MEMBERSHIP.—

5           (I) APPOINTMENT.—The Sec-  
6           retary shall appoint the members of  
7           the Commission in accordance with  
8           subclause (II). Any vacancy on the  
9           Commission shall not affect its powers  
10          and shall be filled in the same manner  
11          as the original appointment.

12          (II) REQUIREMENTS.—The mem-  
13          bers of the Commission shall be Na-  
14          tive Hawaiian, as defined in section  
15          2(7)(A) of this Act, and shall have ex-  
16          pertise in the certification of Native  
17          Hawaiian ancestry.

18          (III) CONGRESSIONAL SUBMIS-  
19          SION OF SUGGESTED CANDIDATES.—  
20          In appointing members of the Com-  
21          mission, the Secretary may choose  
22          such members from among—

23                  (aa) five suggested can-  
24                  didates submitted by the Major-  
25                  ity Leader of the Senate and the

1                   Minority Leader of the Senate  
2                   from a list of candidates provided  
3                   to such leaders by the Chairman  
4                   and Vice Chairman of the Com-  
5                   mittee on Indian Affairs of the  
6                   Senate; and

7                   (bb) four suggested can-  
8                   didates submitted by the Speaker  
9                   of the House of Representatives  
10                  and the Minority Leader of the  
11                  House of Representatives from a  
12                  list provided to the Speaker and  
13                  the Minority Leader by the  
14                  Chairman and Ranking member  
15                  of the Committee on Resources  
16                  of the House of Representatives.

17                  (iii) EXPENSES.—Each member of the  
18                  Commission shall be allowed travel ex-  
19                  penses, including per diem in lieu of sub-  
20                  sistence, at rates authorized for employees  
21                  of agencies under subchapter I of chapter  
22                  57 of title 5, United States Code, while  
23                  away from their homes or regular places of  
24                  business in the performance of services for  
25                  the Commission.

1           (B) CERTIFICATION.—The Commission  
2 shall certify that the individuals listed on the  
3 roll developed under the authority of this sub-  
4 section are Native Hawaiians, as defined in sec-  
5 tion 2(7)(A) of this Act.

6           (3) SECRETARY.—

7           (A) CERTIFICATION.—The Secretary shall  
8 review the Commission’s certification of the  
9 membership roll and determine whether it is  
10 consistent with applicable Federal law, includ-  
11 ing the special trust relationship between the  
12 United States and the indigenous, native people  
13 of the United States.

14           (B) PUBLICATION.—Upon making the de-  
15 termination authorized in subparagraph (A),  
16 the Secretary shall publish a final roll.

17           (C) APPEAL.—

18           (i) ESTABLISHMENT OF MECHA-  
19 NISM.—The Secretary is authorized to es-  
20 tablish a mechanism for an appeal of the  
21 Commission’s determination as it  
22 concerns—

23                           (I) the exclusion of the name of  
24                           a person who meets the definition of

1 Native Hawaiian, as defined in section  
2 2(7)(A) of this Act, from the roll; or  
3 (II) a challenge to the inclusion  
4 of the name of a person on the roll on  
5 the grounds that the person does not  
6 meet the definition of Native Hawai-  
7 ian, as so defined.

8 (ii) PUBLICATION; UPDATE.—The  
9 Secretary shall publish the final roll while  
10 appeals are pending, and shall update the  
11 final roll and the publication of the final  
12 roll upon the final disposition of any ap-  
13 peal.

14 (D) FAILURE TO ACT.—If the Secretary  
15 fails to make the certification authorized in  
16 subparagraph (A) within 90 days of the date  
17 that the Commission submits the membership  
18 roll to the Secretary, the certification shall be  
19 deemed to have been made, and the Commis-  
20 sion shall publish the final roll.

21 (4) EFFECT OF PUBLICATION.—The publication  
22 of the final roll shall serve as the basis for the eligi-  
23 bility of adult members listed on the roll to partici-  
24 pate in all referenda and elections associated with  
25 the organization of a Native Hawaiian Interim Gov-



1 erning Council and the Native Hawaiian govern-  
2 ment.

3 (b) RECOGNITION OF RIGHTS.—The right of the Na-  
4 tive Hawaiian people to organize for their common welfare  
5 and to adopt appropriate organic governing documents is  
6 hereby recognized by the United States.

7 (c) ORGANIZATION OF THE NATIVE HAWAIIAN IN-  
8 TERIM GOVERNING COUNCIL.—

9 (1) ORGANIZATION.—The adult members listed  
10 on the roll developed under the authority of sub-  
11 section (a) are authorized to—

12 (A) develop criteria for candidates to be  
13 elected to serve on the Native Hawaiian Interim  
14 Governing Council;

15 (B) determine the structure of the Native  
16 Hawaiian Interim Governing Council; and

17 (C) elect members to the Native Hawaiian  
18 Interim Governing Council.

19 (2) ELECTION.—Upon the request of the adult  
20 members listed on the roll developed under the au-  
21 thority of subsection (a), the United States Office  
22 for Native Hawaiian Affairs may assist the Native  
23 Hawaiian community in holding an election by secret  
24 ballot (absentee and mail balloting permitted), to

1 elect the membership of the Native Hawaiian In-  
2 terim Governing Council.

3 (3) POWERS.—

4 (A) IN GENERAL.—The Native Hawaiian  
5 Interim Governing Council is authorized to rep-  
6 resent those on the roll in the implementation  
7 of this Act and shall have no powers other than  
8 those given to it in accordance with this Act.

9 (B) FUNDING.—The Native Hawaiian In-  
10 terim Governing Council is authorized to enter  
11 into a contract or grant with any Federal agen-  
12 cy, including but not limited to, the United  
13 States Office for Native Hawaiian Affairs with-  
14 in the Department of the Interior and the Ad-  
15 ministration for Native Americans within the  
16 Department of Health and Human Services, to  
17 carry out the activities set forth in subpara-  
18 graph (C).

19 (C) ACTIVITIES.—

20 (i) IN GENERAL.—The Native Hawai-  
21 ian Interim Governing Council is author-  
22 ized to conduct a referendum of the adult  
23 members listed on the roll developed under  
24 the authority of subsection (a) for the pur-

1 pose of determining (but not limited to)  
2 the following:

3 (I) The proposed elements of the  
4 organic governing documents of a Na-  
5 tive Hawaiian government.

6 (II) The proposed powers and  
7 authorities to be exercised by a Native  
8 Hawaiian government, as well as the  
9 proposed privileges and immunities of  
10 a Native Hawaiian government.

11 (III) The proposed civil rights  
12 and protection of such rights of the  
13 citizens of a Native Hawaiian govern-  
14 ment and all persons subject to the  
15 authority of a Native Hawaiian gov-  
16 ernment.

17 (ii) DEVELOPMENT OF ORGANIC GOV-  
18 ERNING DOCUMENTS.—Based upon the  
19 referendum, the Native Hawaiian Interim  
20 Governing Council is authorized to develop  
21 proposed organic governing documents for  
22 a Native Hawaiian government.

23 (iii) DISTRIBUTION.—The Native Ha-  
24 waiian Interim Governing Council is au-  
25 thorized to distribute to all adult members

1 of those listed on the roll, a copy of the  
2 proposed organic governing documents, as  
3 drafted by the Native Hawaiian Interim  
4 Governing Council, along with a brief im-  
5 partial description of the proposed organic  
6 governing documents.

7 (iv) CONSULTATION.—The Native Ha-  
8 waiian Interim Governing Council is au-  
9 thorized to freely consult with those mem-  
10 bers listed on the roll concerning the text  
11 and description of the proposed organic  
12 governing documents.

13 (D) ELECTIONS.—

14 (i) IN GENERAL.—The Native Hawai-  
15 ian Interim Governing Council is author-  
16 ized to hold elections for the purpose of  
17 ratifying the proposed organic governing  
18 documents, and upon ratification of the or-  
19 ganic governing documents, to hold elec-  
20 tions for the officers of the Native Hawai-  
21 ian government.

22 (ii) ASSISTANCE.—Upon the request  
23 of the Native Hawaiian Interim Governing  
24 Council, the United States Office of Native

1 Hawaiian Affairs may assist the Council in  
2 conducting such elections.

3 (4) TERMINATION.—The Native Hawaiian In-  
4 terim Governing Council shall have no power or au-  
5 thority under this Act after the time at which the  
6 duly elected officers of the Native Hawaiian govern-  
7 ment take office.

8 (d) RECOGNITION OF THE NATIVE HAWAIIAN GOV-  
9 ERNMENT.—

10 (1) PROCESS FOR RECOGNITION.—

11 (A) SUBMITTAL OF ORGANIC GOVERNING  
12 DOCUMENTS.—The duly elected officers of the  
13 Native Hawaiian government shall submit the  
14 organic governing documents of the Native Ha-  
15 waiian government to the Secretary.

16 (B) CERTIFICATIONS.—Within 90 days of  
17 the date that the duly elected officers of the  
18 Native Hawaiian government submit the or-  
19 ganic governing documents to the Secretary,  
20 the Secretary shall certify that the organic gov-  
21 erning documents—

22 (i) were adopted by a majority vote of  
23 the adult members listed on the roll pre-  
24 pared under the authority of subsection  
25 (a);

1           (ii) are consistent with applicable Fed-  
2           eral law and the special trust relationship  
3           between the United States and the indige-  
4           nous native people of the United States;

5           (iii) provide for the exercise of those  
6           governmental authorities that are recog-  
7           nized by the United States as the powers  
8           and authorities that are exercised by other  
9           governments representing the indigenous,  
10          native people of the United States;

11          (iv) provide for the protection of the  
12          civil rights of the citizens of the Native  
13          Hawaiian government and all persons sub-  
14          ject to the authority of the Native Hawai-  
15          ian government, and to assure that the  
16          Native Hawaiian government exercises its  
17          authority consistent with the requirements  
18          of section 202 of the Act of April 11, 1968  
19          (25 U.S.C. 1302);

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 government without the consent of the  
24          Native Hawaiian government;

1 (vi) establish the criteria for citizen-  
2 ship in the Native Hawaiian government;  
3 and

4 (vii) provide authority for the Native  
5 Hawaiian government to negotiate with  
6 Federal, State, and local governments, and  
7 other entities.

8 (C) FAILURE TO ACT.—If the Secretary  
9 fails to act within 90 days of the date that the  
10 duly elected officers of the Native Hawaiian  
11 government submitted the organic governing  
12 documents of the Native Hawaiian government  
13 to the Secretary, the certifications authorized in  
14 subparagraph (B) shall be deemed to have been  
15 made.

16 (D) RESUBMISSION IN CASE OF NON-  
17 COMPLIANCE WITH FEDERAL LAW.—

18 (i) RESUBMISSION BY THE SEC-  
19 RETARY.—If the Secretary determines that  
20 the organic governing documents, or any  
21 part thereof, are not consistent with appli-  
22 cable Federal law, the Secretary shall re-  
23 submit the organic governing documents to  
24 the duly elected officers of the Native Ha-  
25 waiian government along with a justifica-

1           tion for each of the Secretary’s findings as  
2           to why the provisions are not consistent  
3           with such law.

4           (ii) AMENDMENT AND RESUBMISSION  
5           BY THE NATIVE HAWAIIAN GOVERN-  
6           MENT.—If the organic governing docu-  
7           ments are resubmitted to the duly elected  
8           officers of the Native Hawaiian govern-  
9           ment by the Secretary under clause (i), the  
10          duly elected officers of the Native Hawai-  
11          ian government shall—

12                   (I) amend the organic governing  
13                   documents to ensure that the docu-  
14                   ments comply with applicable Federal  
15                   law; and

16                   (II) resubmit the amended or-  
17                   ganic governing documents to the Sec-  
18                   retary for certification in accordance  
19                   with subparagraphs (B) and (C).

20          (2) FEDERAL RECOGNITION.—

21                   (A) RECOGNITION.—Notwithstanding any  
22                   other provision of law, upon the election of the  
23                   officers of the Native Hawaiian government and  
24                   the certifications (or deemed certifications) by  
25                   the Secretary authorized in paragraph (1), Fed-



1           eral recognition is hereby extended to the Na-  
2           tive Hawaiian government as the representative  
3           governing body of the Native Hawaiian people.

4           (B) NO DIMINISHMENT OF RIGHTS OR  
5           PRIVILEGES.—Nothing contained in this Act  
6           shall diminish, alter, or amend any existing  
7           rights or privileges enjoyed by the Native Ha-  
8           waiian people which are not inconsistent with  
9           the provisions of this Act.

10 **SEC. 8. AUTHORIZATION OF APPROPRIATIONS.**

11           There is authorized to be appropriated such sums as  
12           may be necessary to carry out the activities authorized in  
13           this Act.

14 **SEC. 9. REAFFIRMATION OF DELEGATION OF FEDERAL AU-**  
15 **THORITY; NEGOTIATIONS.**

16           (a) REAFFIRMATION.—The delegation by the United  
17           States of authority to the State of Hawaii to address the  
18           conditions of Native Hawaiians contained in the Act enti-  
19           tled “An Act to provide for the admission of the State  
20           of Hawaii into the Union” approved March 18, 1959  
21           (Public Law 86–3; 73 Stat. 5) is hereby reaffirmed.

22           (b) NEGOTIATIONS.—Upon the Federal recognition  
23           of the Native Hawaiian government pursuant to section  
24           7(d)(2) of this Act, the United States is authorized to ne-  
25           gotiate and enter into an agreement with the State of Ha-

1 waii and the Native Hawaiian government regarding the  
2 transfer of lands, resources, and assets dedicated to Na-  
3 tive Hawaiian use under existing law as in effect on the  
4 date of enactment of this Act to the Native Hawaiian gov-  
5 ernment.

6 **SEC. 10. DISCLAIMER.**

7       Nothing in this Act is intended to serve as a settle-  
8 ment of any claims against the United States, or to affect  
9 the rights of the Native Hawaiian people under inter-  
10 national law.

11 **SEC. 11. REGULATIONS.**

12       The Secretary is authorized to make such rules and  
13 regulations and such delegations of authority as the Sec-  
14 retary deems necessary to carry out the provisions of this  
15 Act.

16 **SEC. 12. SEVERABILITY.**

17       In the event that any section or provision of this Act,  
18 or any amendment made by this Act is held invalid, it  
19 is the intent of Congress that the remaining sections or  
20 provisions of this Act, and the amendments made by this  
21 Act, shall continue in full force and effect.

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