

Calendar No. 165

107TH CONGRESS
1ST SESSION

S. 746

[Report No. 107-66]

Expressing 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, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 6, 2001

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

SEPTEMBER 21, 2001

Reported by Mr. INOUE, with an amendment

[Omit the part struck through and insert the part printed in *italic*]

A BILL

Expressing 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, 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,*

1 **SECTION 1. FINDINGS.**

2 Congress makes the following findings:

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

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

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

13 (4) Under the treaty making power of the
14 United States, Congress exercised its constitutional
15 authority to confirm a treaty between the United
16 States and the government that represented the Ha-
17 waiian people, and from 1826 until 1893, the United
18 States recognized the independence of the Kingdom
19 of Hawaii, extended full diplomatic recognition to
20 the Hawaiian Government, and entered into treaties
21 and conventions with the Hawaiian monarchs to gov-
22 ern commerce and navigation in 1826, 1842, 1849,
23 1875, and 1887.

24 (5) Pursuant to the provisions of the Hawaiian
25 Homes Commission Act, 1920 (42 Stat. 108, chap-
26 ter 42), the United States set aside 203,500 acres

1 of land in the Federal territory that later became
2 the State of Hawaii to address the conditions of Na-
3 tive Hawaiians.

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

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

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

23 (9) Throughout the years, Native Hawaiians
24 have repeatedly sought access to the Ceded Lands
25 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 give expression to
19 their rights as native people to self-determination
20 and self-governance through the provision of govern-
21 mental services to Native Hawaiians, including the
22 provision of health care services, educational pro-
23 grams, employment and training programs, chil-
24 dren’s services, conservation programs, fish and
25 wildlife protection, agricultural programs, native lan-

1 guage immersion programs and native language im-
2 mersion schools from kindergarten through high
3 school, as well as college and master's degree pro-
4 grams in native language immersion instruction, and
5 traditional justice programs, and by continuing their
6 efforts to enhance Native Hawaiian self-determina-
7 tion and local 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 Native Hawai-
17 ian generations their ancestral lands and Native Ha-
18 waiian political and cultural identity in accordance
19 with their traditions, beliefs, customs and practices,
20 language, and social and political institutions, and to
21 achieve greater self-determination over their own af-
22 fairs.

23 (19) This Act provides for a process within the
24 framework of Federal law for the Native Hawaiian
25 people to exercise their inherent rights as a distinct

1 aboriginal, indigenous, native community to reorga-
2 nize a Native Hawaiian governing entity for the pur-
3 pose of giving expression to their rights as native
4 people to self-determination and self-governance.

5 (20) The United States has declared that—

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

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

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

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

23 (A) ceding to the State of Hawaii title to
24 the public lands formerly held by the United
25 States, and mandating that those lands be held

1 in public trust for 5 purposes, one of which is
2 for the betterment of the conditions of Native
3 Hawaiians; and

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

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

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

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

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

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

11 **SEC. 2. DEFINITIONS.**

12 In this Act:

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

20 (2) APOLOGY RESOLUTION.—The term “Apol-
21 ogy Resolution” means Public Law 103–150 (107
22 Stat. 1510), a joint resolution extending an apology
23 to Native Hawaiians on behalf of the United States
24 for the participation of agents of the United States

1 in the January 17, 1893, overthrow of the Kingdom
2 of Hawaii.

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

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

17 (5) INTERAGENCY COORDINATING GROUP.—The
18 term “Interagency Coordinating Group” means the
19 Native Hawaiian Interagency Coordinating Group
20 established under section 5.

21 (6) NATIVE HAWAIIAN.—

22 (A) Prior to the recognition by the United
23 States of the Native Hawaiian governing entity,
24 the term “Native Hawaiian” means the indige-
25 nous, native people of Hawaii who are the di-

1 rect lineal descendants of the aboriginal, indige-
2 nous, native people who resided in the islands
3 that now comprise the State of Hawaii on or
4 before January 1, 1893, and who occupied and
5 exercised sovereignty in the Hawaiian archi-
6 pelago, including the area that now constitutes
7 the State of Hawaii, and includes all Native
8 Hawaiians who were eligible in 1921 for the
9 programs authorized by the Hawaiian Homes
10 Commission Act (42 Stat. 108, chapter 42) and
11 their lineal descendants.

12 (B) Following the recognition by the
13 United States of the Native Hawaiian gov-
14 erning entity, the term “Native Hawaiian” shall
15 have the meaning given to such term in the or-
16 ganic governing documents of the Native Ha-
17 waiian governing entity.

18 (7) NATIVE HAWAIIAN GOVERNING ENTITY.—
19 The term “Native Hawaiian governing entity”
20 means the governing entity organized by the Native
21 Hawaiian people.

22 (8) SECRETARY.—The term “Secretary” means
23 the Secretary of the Interior.

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

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

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

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

6 (3) Congress possesses the authority under the
7 Constitution to enact legislation to address the con-
8 ditions of Native Hawaiians and has exercised this
9 authority through the enactment of—

10 (A) the Hawaiian Homes Commission Act,
11 1920 (42 Stat. 108, chapter 42);

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

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

18 (4) Native Hawaiians have—

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

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

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

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

4 (b) PURPOSE.—It is the intent of Congress that the
5 purpose of this Act is to provide a process for the recogni-
6 tion by the United States of a Native Hawaiian governing
7 entity for purposes of continuing a government-to-govern-
8 ment relationship.

9 **SEC. 4. ESTABLISHMENT OF THE UNITED STATES OFFICE**
10 **FOR NATIVE HAWAIIAN RELATIONS.**

11 (a) IN GENERAL.—There is established within the
12 Office of the Secretary the United States Office for Native
13 Hawaiian Relations.

14 (b) DUTIES OF THE OFFICE.—The United States Of-
15 fice for Native Hawaiian Relations shall—

16 (1) effectuate and coordinate the trust relation-
17 ship between the Native Hawaiian people and the
18 United States, and upon the recognition of the Na-
19 tive Hawaiian governing entity by the United States,
20 between the Native Hawaiian governing entity and
21 the United States through the Secretary, and with
22 all other Federal agencies;

23 (2) continue the process of reconciliation with
24 the Native Hawaiian people, and upon the recogni-
25 tion of the Native Hawaiian governing entity by the

1 United States, continue the process of reconciliation
2 with the Native Hawaiian governing entity;

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

11 (4) consult with the Interagency Coordinating
12 Group, other Federal agencies, and with relevant
13 agencies of the State of Hawaii on policies, prac-
14 tices, and proposed actions affecting Native Hawai-
15 ian resources, rights, or lands; and

16 (5) prepare and submit to the Committee on
17 Indian Affairs and the Committee on Energy and
18 Natural Resources of the Senate, and the Committee
19 on Resources of the House of Representatives an an-
20 nual report detailing the activities of the Interagency
21 Coordinating Group that are undertaken with re-
22 spect to the continuing process of reconciliation and
23 to effect meaningful consultation with the Native
24 Hawaiian governing entity and providing rec-
25 ommendations for any necessary changes to existing

1 Federal statutes or regulations promulgated under
2 the authority of Federal law.

3 **SEC. 5. NATIVE HAWAIIAN INTERAGENCY COORDINATING**
4 **GROUP.**

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

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

15 (1) each Federal agency that administers Na-
16 tive Hawaiian programs, establishes or implements
17 policies that affect Native Hawaiians, or whose ac-
18 tions may significantly or uniquely impact on Native
19 Hawaiian resources, rights, or lands; and

20 (2) the United States Office for Native Hawai-
21 ian Relations established under section 4.

22 (c) LEAD AGENCY.—The Department of the Interior
23 shall serve as the lead agency of the Interagency Coordi-
24 nating Group, and meetings of the Interagency Coordi-
25 nating Group shall be convened by the lead agency.

1 (d) DUTIES.—The responsibilities of the Interagency
2 Coordinating Group shall be—

3 (1) the coordination of Federal programs and
4 policies that affect Native Hawaiians or actions by
5 any agency or agencies of the Federal Government
6 which may significantly or uniquely impact on Na-
7 tive Hawaiian resources, rights, or lands;

8 (2) to assure that each Federal agency develops
9 a policy on consultation with the Native Hawaiian
10 people, and upon recognition of the Native Hawaiian
11 governing entity by the United States, consultation
12 with the Native Hawaiian governing entity; and

13 (3) to assure the participation of each Federal
14 agency in the development of the report to Congress
15 authorized in section 4(b)(5).

16 **SEC. 6. PROCESS FOR THE RECOGNITION OF THE NATIVE**
17 **HAWAIIAN GOVERNING ENTITY.**

18 (a) RECOGNITION OF THE NATIVE HAWAIIAN GOV-
19 ERNING ENTITY.—The right of the Native Hawaiian peo-
20 ple to organize for their common welfare and to adopt ap-
21 propriate organic governing documents is hereby recog-
22 nized by the United States.

23 (b) PROCESS FOR RECOGNITION.—

24 (1) SUBMITTAL OF ORGANIC GOVERNING DOCU-
25 MENTS.—Following the organization of the Native

1 Hawaiian governing entity, the adoption of organic
2 governing documents, and the election of officers of
3 the Native Hawaiian governing entity, the duly elect-
4 ed officers of the Native Hawaiian governing entity
5 shall submit the organic governing documents of the
6 Native Hawaiian governing entity to the Secretary.

7 (2) CERTIFICATIONS.—

8 (A) IN GENERAL.—Within 90 days of the
9 date that the duly elected officers of the Native
10 Hawaiian governing entity submit the organic
11 governing documents to the Secretary, the Sec-
12 retary shall certify that the organic governing
13 documents—

14 (i) establish the criteria for citizenship
15 in the Native Hawaiian governing entity;

16 (ii) were adopted by a majority vote of
17 the citizens of the Native Hawaiian gov-
18 erning entity;

19 (iii) provide for the exercise of govern-
20 mental authorities by the Native Hawaiian
21 governing entity;

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

1 (v) prevent the sale, disposition, lease,
2 or encumbrance of lands, interests in
3 lands, or other assets of the Native Hawai-
4 ian governing entity without the consent of
5 the Native Hawaiian governing entity;

6 (vi) provide for the protection of the
7 civil rights of the citizens of the Native
8 Hawaiian governing entity and all persons
9 subject to the authority of the Native Ha-
10 waiian governing entity, and ensure that
11 the Native Hawaiian governing entity exer-
12 cises its authority consistent with the re-
13 quirements of section 202 of the Act of
14 April 11, 1968 (25 U.S.C. 1302); and

15 (vii) are consistent with applicable
16 Federal law and the special trust relation-
17 ship between the United States and the in-
18 digenous native people of the United
19 States.

20 (B) BY THE SECRETARY.—Within 90 days
21 of the date that the duly elected officers of the
22 Native Hawaiian governing entity submit the
23 organic governing documents to the Secretary,
24 the Secretary shall certify that the State of Ha-
25 waii supports the recognition of ~~the~~ a Native

1 Hawaiian governing entity by the United States
2 as evidenced by a resolution or act of the Ha-
3 waii State legislature.

4 (C) RESUBMISSION IN CASE OF NON-
5 COMPLIANCE WITH FEDERAL LAW.—

6 (i) RESUBMISSION BY THE SEC-
7 RETARY.—If the Secretary determines that
8 the organic governing documents, or any
9 part thereof, are not consistent with appli-
10 cable Federal law, the Secretary shall re-
11 submit the organic governing documents to
12 the duly elected officers of the Native Ha-
13 waiian governing entity along with a jus-
14 tification for each of the Secretary’s find-
15 ings as to why the provisions are not con-
16 sistent with such law.

17 (ii) AMENDMENT AND RESUBMISSION
18 BY THE NATIVE HAWAIIAN GOVERNING EN-
19 TITY.—If the organic governing documents
20 are resubmitted to the duly elected officers
21 of the Native Hawaiian governing entity by
22 the Secretary under clause (i), the duly
23 elected officers of the Native Hawaiian
24 governing entity shall—

1 (I) amend the organic governing
2 documents to ensure that the docu-
3 ments comply with applicable Federal
4 law; and

5 (II) resubmit the amended or-
6 ganic governing documents to the Sec-
7 retary for certification in accordance
8 with the requirements of this para-
9 graph.

10 (D) CERTIFICATIONS DEEMED MADE.—

11 The certifications authorized in subparagraph
12 (B) shall be deemed to have been made if the
13 Secretary has not acted within 90 days of the
14 date that the duly elected officers of the Native
15 Hawaiian governing entity have submitted the
16 organic governing documents of the Native Ha-
17 waiian governing entity to the Secretary.

18 (3) FEDERAL RECOGNITION.—Notwithstanding
19 any other provision of law, upon the election of the
20 officers of the Native Hawaiian governing entity and
21 the certifications by the Secretary required under
22 paragraph (1), the United States hereby extends
23 Federal recognition to the Native Hawaiian gov-
24 erning entity as the representative governing body of
25 the Native Hawaiian people.

1 **SEC. 7. AUTHORIZATION OF APPROPRIATIONS.**

2 There is authorized to be appropriated such sums as
3 may be necessary to carry out the activities authorized in
4 this Act.

5 **SEC. 8. REAFFIRMATION OF DELEGATION OF FEDERAL AU-**
6 **THORITY; NEGOTIATIONS.**

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 ad-
11 mission of the State of Hawaii into the Union” approved
12 March 18, 1959 (Public Law 86–3; 73 Stat. 5) is hereby
13 reaffirmed.

14 (b) NEGOTIATIONS.—Upon the Federal recognition
15 of the Native Hawaiian governing entity by the United
16 States, the United States is authorized to negotiate and
17 enter into an agreement with the State of Hawaii and the
18 Native Hawaiian governing entity regarding the transfer
19 of lands, resources, and assets dedicated to Native Hawai-
20 ian use to the Native Hawaiian governing entity. Nothing
21 in this Act is intended to serve as a settlement of any
22 claims against the United States.

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

24 (a) INDIAN GAMING REGULATORY ACT.—Nothing
25 contained in this Act shall be construed as an authoriza-
26 tion for the Native Hawaiian governing entity to conduct

1 gaming activities under the authority of the Indian Gam-
2 ing Regulatory Act (25 U.S.C. 2701 et seq.).

3 (b) BUREAU OF INDIAN AFFAIRS.—Nothing con-
4 tained in this Act shall be construed as an authorization
5 for eligibility to participate in any programs and services
6 provided by the Bureau of Indian Affairs for any persons
7 not otherwise eligible for such programs or services.

8 **SEC. 10. SEVERABILITY.**

9 In the event that any section or provision of this Act
10 is held invalid, it is the intent of Congress that the remain-
11 ing sections or provisions of this Act shall continue in full
12 force and effect.

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