

UNITED STATES RELATIONSHIP WITH NATIVE HAWAIIANS

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JULY 16, 2001.—Committed to the Committee of the Whole House on the State of  
the Union and ordered to be printed  
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Mr. HANSEN, from the Committee on Resources,  
submitted the following

R E P O R T

[To accompany H.R. 617]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (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, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. FINDINGS.**

Congress makes the following findings:

(1) The Constitution vests Congress with the authority to address the conditions of the indigenous, native people of the United States.

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

(3) The United States has a special trust relationship to promote the welfare of the native people of the United States, including Native Hawaiians.

(4) Under the treaty making power of the United States, Congress exercised its constitutional authority to confirm a treaty between the United States and the government that represented the Hawaiian people, and from 1826 until 1893, the United States recognized the independence of the Kingdom of Hawaii, extended full diplomatic recognition to the Hawaiian Government, and entered into treaties and conventions with the Hawaiian monarchs to govern commerce and navigation in 1826, 1842, 1849, 1875, and 1887.

(5) Pursuant to the provisions of the Hawaiian Homes Commission Act, 1920 (42 Stat. 108, chapter 42), the United States set aside 203,500 acres of land in the Federal territory that later became the State of Hawaii to address the conditions of Native Hawaiians.

(6) By setting aside 203,500 acres of land for Native Hawaiian homesteads and farms, the Act assists the Native Hawaiian community in maintaining distinct native settlements throughout the State of Hawaii.

(7) Approximately 6,800 Native Hawaiian lessees and their family members reside on Hawaiian Home Lands and approximately 18,000 Native Hawaiians who are eligible to reside on the Home Lands are on a waiting list to receive assignments of land.

(8) In 1959, as part of the compact admitting Hawaii into the United States, Congress established the Ceded Lands Trust for 5 purposes, 1 of which is the betterment of the conditions of Native Hawaiians. Such trust consists of approximately 1,800,000 acres of land, submerged lands, and the revenues derived from such lands, the assets of which have never been completely inventoried or segregated.

(9) Throughout the years, Native Hawaiians have repeatedly sought access to the Ceded Lands Trust and its resources and revenues in order to establish and maintain native settlements and distinct native communities throughout the State.

(10) The Hawaiian Home Lands and the Ceded Lands provide an important foundation for the ability of the Native Hawaiian community to maintain the practice of Native Hawaiian culture, language, and traditions, and for the survival of the Native Hawaiian people.

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

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

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

(14) The Apology Resolution expresses the commitment of Congress and the President to acknowledge the ramifications of the overthrow of the Kingdom of Hawaii and to support reconciliation efforts between the United States and Native Hawaiians; and to have Congress and the President, through the President's designated officials, consult with Native Hawaiians on the reconciliation process as called for under the Apology Resolution.

(15) Despite the overthrow of the Hawaiian Government, Native Hawaiians have continued to maintain their separate identity as a distinct native community through the formation of cultural, social, and political institutions, and to give expression to their rights as native people to self-determination and self-governance as evidenced through their participation in the Office of Hawaiian Affairs.

(16) Native Hawaiians also give expression to their rights as native people to self-determination and self-governance through the provision of governmental services to Native Hawaiians, including the provision of health care services, educational programs, employment and training programs, children's services, conservation programs, fish and wildlife protection, agricultural programs, native language immersion programs and native language immersion schools from kindergarten through high school, as well as college and master's degree programs in native language immersion instruction, and traditional justice programs, and by continuing their efforts to enhance Native Hawaiian self-determination and local control.

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

(18) The Native Hawaiian people wish to preserve, develop, and transmit to future Native Hawaiian generations their ancestral lands and Native Hawaiian political and cultural identity in accordance with their traditions, beliefs, customs and practices, language, and social and political institutions, and to achieve greater self-determination over their own affairs.

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

erning entity for the purpose of giving expression to their rights as native people to self-determination and self-governance.

(20) The United States has declared that—

(A) the United States has a special responsibility for the welfare of the native peoples of the United States, including Native Hawaiians;

(B) Congress has identified Native Hawaiians as a distinct indigenous group within the scope of its Indian affairs power, and has enacted dozens of statutes on their behalf pursuant to its recognized trust responsibility; and

(C) Congress has also delegated broad authority to administer a portion of the Federal trust responsibility to the State of Hawaii.

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

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

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

(22) The United States continually has recognized and reaffirmed that—

(A) Native Hawaiians have a cultural, historic, and land-based link to the aboriginal, native people who exercised sovereignty over the Hawaiian Islands;

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

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

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

## SEC. 2. DEFINITIONS.

In this Act:

(1) **ABORIGINAL, INDIGENOUS, NATIVE PEOPLE.**—The term “aboriginal, indigenous, native people” means those people whom Congress has recognized as the original inhabitants of the lands and who exercised sovereignty prior to European contact in the areas that later became part of the United States.

(2) **APOLOGY RESOLUTION.**—The term “Apology Resolution” means Public Law 103–150 (107 Stat. 1510), a joint resolution extending an apology to Native Hawaiians on behalf of the United States for the participation of agents of the United States in the January 17, 1893 overthrow of the Kingdom of Hawaii.

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

(4) **INDIGENOUS, NATIVE PEOPLE.**—The term “indigenous, native people” means the lineal descendants of the aboriginal, indigenous, native people of the United States.

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

(6) **NATIVE HAWAIIAN.**—

(A) Prior to the recognition by the United States of the Native Hawaiian governing entity, the term “Native Hawaiian” means the indigenous, native people of Hawaii who are the direct lineal descendants of the aboriginal, indigenous, native people who resided in the islands that now comprise the State of Hawaii on or before January 1, 1893, and who occupied and exercised sovereignty in the Hawaiian archipelago, including the area that now

constitutes the State of Hawaii, and includes all Native Hawaiians who were eligible in 1921 for the programs authorized by the Hawaiian Homes Commission Act (42 Stat. 108, chapter 42) and their lineal descendants.

(B) Following the recognition by the United States of the Native Hawaiian governing entity, the term “Native Hawaiian” shall have the meaning given to such term in the organic governing documents of the Native Hawaiian governing entity.

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

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

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

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

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

(2) the United States has a special trust relationship to promote the welfare of Native Hawaiians;

(3) Congress possesses the authority under the Constitution to enact legislation to address the conditions of Native Hawaiians and has exercised this authority through the enactment of—

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

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

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

(4) Native Hawaiians have—

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

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

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

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

(b) PURPOSE.—It is the intent of Congress that the purpose of this Act is to provide a process for the recognition by the United States of a Native Hawaiian governing entity for purposes of continuing a government-to-government relationship.

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

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

(b) DUTIES OF THE OFFICE.—The United States Office for Native Hawaiian Relations shall—

(1) effectuate and coordinate the trust relationship between the Native Hawaiian people and the United States, and upon the recognition of the Native Hawaiian governing entity by the United States, between the Native Hawaiian governing entity and the United States through the Secretary, and with all other Federal agencies;

(2) continue the process of reconciliation with the Native Hawaiian people, and upon the recognition of the Native Hawaiian governing entity by the United States, continue the process of reconciliation with the Native Hawaiian governing entity;

(3) fully integrate the principle and practice of meaningful, regular, and appropriate consultation with the Native Hawaiian governing entity by providing timely notice to, and consulting with the Native Hawaiian people and the Native Hawaiian governing entity prior to taking any actions that may have the potential to significantly affect Native Hawaiian resources, rights, or lands;

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

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

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

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

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

(1) each Federal agency that administers Native Hawaiian programs, establishes or implements policies that affect Native Hawaiians, or whose actions may significantly or uniquely impact on Native Hawaiian resources, rights, or lands; and

(2) the United States Office for Native Hawaiian Relations established under section 4.

(c) **LEAD AGENCY.**—The Department of the Interior shall serve as the lead agency of the Interagency Coordinating Group, and meetings of the Interagency Coordinating Group shall be convened by the lead agency.

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

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

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

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

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

(a) **RECOGNITION OF THE NATIVE HAWAIIAN GOVERNING ENTITY.**—The right of the Native Hawaiian people to organize for their common welfare and to adopt appropriate organic governing documents is hereby recognized by the United States.

(b) **PROCESS FOR RECOGNITION.**—

(1) **SUBMITTAL OF ORGANIC GOVERNING DOCUMENTS.**—Following the organization of the Native Hawaiian governing entity, the adoption of organic governing documents, and the election of officers of the Native Hawaiian governing entity, the duly elected officers of the Native Hawaiian governing entity shall submit the organic governing documents of the Native Hawaiian governing entity to the Secretary.

(2) **CERTIFICATIONS.**—

(A) **IN GENERAL.**—Within 90 days of the date that the duly elected officers of the Native Hawaiian governing entity submit the organic governing documents to the Secretary, the Secretary shall certify that the organic governing documents—

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

(ii) were adopted by a majority vote of the citizens of the Native Hawaiian governing entity;

(iii) provide for the exercise of governmental authorities by the Native Hawaiian governing entity;

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

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

(vi) provide for the protection of the civil rights of the citizens of the Native Hawaiian governing entity and all persons subject to the authority of the Native Hawaiian governing entity, and ensure that the Native Hawaiian governing entity exercises its authority consistent with the requirements of section 202 of the Act of April 11, 1968 (25 U.S.C. 1302); and

(vii) are consistent with applicable Federal law and the special trust relationship between the United States and the indigenous native people of the United States.

(B) **BY THE SECRETARY.**—Within 90 days of the date that the duly elected officers of the Native Hawaiian governing entity submit the organic governing documents to the Secretary, the Secretary shall certify that the

State of Hawaii supports the recognition of the Native Hawaiian governing entity by the United States as evidenced by a resolution or act of the Hawaii State legislature.

**(C) RESUBMISSION IN CASE OF NONCOMPLIANCE.—**

(i) **RESUBMISSION BY THE SECRETARY.**—If the Secretary determines that the organic governing documents do not address the criteria described in subparagraph (A) or that the organic governing documents, or any part thereof, are not consistent with other applicable Federal law, the Secretary shall resubmit the organic governing documents to the duly elected officers of the Native Hawaiian governing entity along with a justification for each of the Secretary’s findings as to why the provisions are not consistent with such law.

(ii) **AMENDMENT AND RESUBMISSION BY THE NATIVE HAWAIIAN GOVERNING ENTITY.**—If the organic governing documents are resubmitted to the duly elected officers of the Native Hawaiian governing entity by the Secretary under clause (i), the duly elected officers of the Native Hawaiian governing entity shall—

(I) amend the organic governing documents to ensure that the documents comply with applicable Federal law and address the criteria described in subparagraph (A); and

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

**(D) CERTIFICATIONS DEEMED MADE.**—The certifications authorized in subparagraph (A) shall be deemed to have been made if the Secretary has not acted within 90 days of the date that the duly elected officers of the Native Hawaiian governing entity have submitted the organic governing documents to the Secretary.

**(3) FEDERAL RECOGNITION.**—Notwithstanding any other provision of law, upon the election of the officers of the Native Hawaiian governing entity and the certifications by the Secretary required under paragraph (2), the United States hereby extends Federal recognition to the Native Hawaiian governing entity as the representative governing body of the Native Hawaiian people.

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

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

**SEC. 8. REAFFIRMATION OF DELEGATION OF FEDERAL AUTHORITY; NEGOTIATIONS.**

(a) **REAFFIRMATION.**—The delegation by the United States of authority to the State of Hawaii to address the conditions of the indigenous, native people of Hawaii contained in the Act entitled “An Act to provide for the admission of the State of Hawaii into the Union” approved March 18, 1959 (Public Law 86–3; 73 Stat. 5) is hereby reaffirmed.

(b) **NEGOTIATIONS.**—Upon the Federal recognition of the Native Hawaiian governing entity by the United States, the United States is authorized to negotiate and enter into an agreement with the State of Hawaii and the Native Hawaiian governing entity regarding the transfer of lands, resources, and assets dedicated to Native Hawaiian use to the Native Hawaiian governing entity. Nothing in this Act is intended to serve as a settlement of any claims against the United States.

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

(a) **INDIAN GAMING REGULATORY ACT.**—Nothing contained in this Act shall be construed as an authorization for the Native Hawaiian governing entity to conduct gaming activities under the authority of the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.).

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

**SEC. 10. SEVERABILITY.**

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

**PURPOSE OF THE BILL**

The purpose of H.R. 617 is to express the policy of the United States regarding the United States relationship with Native Ha-

waiians, 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.

#### BACKGROUND AND NEED FOR LEGISLATION

On January 17, 1893, with the assistance of the United States Minister and U.S. marines, the government of the Kingdom of Hawaii was overthrown. One hundred years later, a resolution extending an apology on behalf of the United States to Native Hawaiians for the illegal overthrow of the Native Hawaiian government and calling for a reconciliation of the relationship between the United States and Native Hawaiians was enacted into law (Public Law 103–150). The Apology Resolution acknowledges that the overthrow of the Kingdom of Hawaii occurred with the active participation of agents and citizens of the United States and further acknowledges that the Native Hawaiian people never directly relinquished their claims to their inherent sovereignty as a people over their national lands to the United States, either through their government or through a plebiscite or referendum.

In December 1999, under President Clinton, the U.S. Departments of the Interior and Justice initiated a process of reconciliation in response to the Apology Resolution by conducting meetings in Native Hawaiian communities on each of the principal islands in the State of Hawaii and culminating in two days of open hearings. In each setting, members of the Native Hawaiian community identified what they believe are the necessary elements of a process to provide for the reconciliation of the relationship between the United States and the Native Hawaiian people. A draft report, entitled “From Mauka to Makai: The River of Justice Must Flow Freely”, was issued by the two departments on October 23, 2000. The principal recommendation contained in the Clinton Administration’s report is set forth below:

Recommendation 1. It is evident from the documentation, statements, and views received during the reconciliation process undertaken by Interior and Justice pursuant to Public Law 103–150 (1993), that the Native Hawaiian people continue to maintain a distinct community and certain governmental structures and they desire to increase their control over their own affairs and institutions. As a matter of justice and equity, this report recommends that the Native Hawaiian people should have self-determination over their own affairs within the framework of Federal law, as do Native American tribes. For generations, the United States has recognized the rights and promoted the welfare of Native Hawaiians as an indigenous people within our Nation through legislation, administrative action, and policy statements. To safeguard and enhance Native Hawaiian self-determination over their lands, cultural resources, and internal affairs, the Departments believe Congress should enact further legislation to clarify Native Hawaiians’ political status and to create a framework for recognizing a government-to-government relationship with a representative Native Hawaiian governing body.

H.R. 617 provides a process for the reorganization of a Native Hawaiian governing entity, and upon certification by the Secretary of the Interior that the organic governing documents of the Native Hawaiian governing entity are consistent with federal law and the trust relationship between the United States and the indigenous, native people of the United States, H.R. 617 provides for the recognition of the Native Hawaiian governing entity by the United States for purposes of carrying on a government-to-government relationship with the Native Hawaiian governing entity.

*Office of Hawaiian Affairs*

With the loss of their government in 1893, Native Hawaiians have sought to maintain political authority within their community. In 1978, the citizens of the State of Hawaii recognized the long-standing efforts of the native people to give expression to their rights to self-determination and self-governance by amending the State constitution in an attempt to provide for the establishment of a quasi-sovereign State agency, the Office of Hawaiian Affairs. The State constitution, as amended, provides that the Office is to be governed by nine trustees who are Native Hawaiian and who are to be elected by Native Hawaiians. The Office administers programs and services with revenues derived from lands which were ceded back to the State of Hawaii upon its admission into the United States. The dedication of these revenues reflects the provisions of the 1959 Hawaii Admissions Act, which provides that the ceded lands and the revenues derived therefrom should be held by the State of Hawaii as a public trust for five purposes—one of which is the betterment of the conditions of Native Hawaiians. The Admissions Act also provided that the new State assumes a trust responsibility for approximately 203,500 acres of land that had previously been set aside under federal law in 1921 for Native Hawaiians in the Hawaiian Homes Commission Act.

On February 23, 2000, the United States Supreme Court issued a ruling in the case of *Rice v. Cayetano*. The Supreme Court held that because the Office of Hawaiian Affairs is an agency of the State of Hawaii that is funded in part by appropriations made by the State legislature, the election for the trustees of the Office of Hawaiian Affairs must be open to all citizens of the State of Hawaii who are otherwise eligible to vote in statewide elections.

The nine Native Hawaiian trustees of the Office of Hawaiian Affairs subsequently resigned their positions, and an election to fill the trustee positions was held on November 7, 2000. All citizens of the State of Hawaii who were otherwise eligible to vote in statewide elections were entitled to cast their ballots for the 97 candidates who registered to run for the Office of Hawaiian Affairs trustee positions.

The native people of Hawaii were thus divested of the mechanism that was established under the Hawaii State Constitution that, since 1978, has enabled them to give expression to their rights as indigenous, native people of the United States to self-determination and self-governance. H.R. 617 is designed to address these developments by providing a means under federal law, consistent with the federal policy of self-determination and self-governance for America's indigenous, native people, for Native Hawaiians



to have a status similar to that of the other indigenous, native people of the United States.

#### COMMITTEE ACTION

H.R. 617 was introduced by Congressman Neil Abercrombie (D-HI) on February 14, 2001, and was referred to the Committee on Resources. On May 16, 2001, the Committee met to consider the bill. Congressman Abercrombie offered an amendment in the nature of a substitute with mirrored a companion Senate measure (S. 746). The amendment was adopted by voice vote, and the bill, as amended, was ordered favorably reported to the House of Representatives by voice vote.

During the 106th Congress, Congressman Abercrombie introduced H.R. 4904, a predecessor to H.R. 617. Five days of joint hearings were held on the bill by the Resources Committee and the Senate Indian Affairs Committee in Hawaii from August 28, 2000, through September 1, 2000. H.R. 4904 was approved by the House of Representatives on September 26, 2000. H.R. 4904 failed to pass the Senate before the *sine die* adjournment of the 106th Congress.

#### SECTION-BY-SECTION ANALYSIS

##### *Section 1. Findings*

This section sets forth Congress' findings. Findings (1) through (4) reflect Congress' recognition of Native Hawaiians as the native people of the United States and Hawaii. Findings (5) through (7) reflect Congress' determination of the need to address the conditions of Native Hawaiians through the Hawaiian Homes Commission Act of 1920. Findings (8) and (9) reflect Congress' establishment of the Ceded Lands Trust as a condition of statehood for the State of Hawaii. Finding (10) reflects the importance of the Hawaiian Home Lands and Ceded Lands to Native Hawaiians as a foundation for the Native Hawaiian community for the survival of the Native Hawaiian people. Finding (11) notes that Native Hawaiians have maintained other distinctly native areas. Findings (12) through (14) reflect the effect of the Apology Resolution. Findings (15) through (19) reflect the Native Hawaiian community as a "distinctly" native community. Finding (20) reflects the position of the United States before the U.S. Supreme Court in the case of *Rice v. Cayetano*. Findings (21) and (22) reaffirm the special trust relationship between the Native Hawaiian people and the United States.

##### *Section 2. Definitions*

This section sets forth definitions of terms used in the bill. Defined terms are: Aboriginal, Indigenous, Native People; Apology Resolution; Ceded Lands; Indigenous, Native People; Interagency Coordinating Group; Native Hawaiian; Native Hawaiian Governing Entity; and Secretary.

##### *Section 3. United States Policy and Purpose*

This section reaffirms that Native Hawaiians are an aboriginal, indigenous, native people with whom the United States has a trust relationship and states Congress' intent to provide a process for

federal recognition of a Native Hawaiian governing entity for purposes of continuing a government-to-government relationship.

*Section 4. Establishment of the United States Office for Native Hawaiian Relations*

This provision authorizes the establishment of the United States Office for Native Hawaiian Relations within the Office of the Secretary of the Department of the Interior. The United States Office for Native Hawaiian Relations is charged with: (1) effectuating and coordinating the special trust relationship between the Native Hawaiian people and the United States; (2) continuing the process of reconciliation; (3) conducting meaningful, regular, and appropriate consultation with the Native Hawaiian people and Native Hawaiian governing entity regarding any actions that may have the potential to significantly affect Native Hawaiian resources, rights, or lands; (4) consulting with the Native Hawaiian Coordinating Group, other federal agencies, and with the State of Hawaii on policies, practices, and proposed actions affecting Native Hawaiian resources, rights, or lands; and (5) preparing and submitting to the Senate Committee on Indian Affairs, Senate Committee on Energy and Natural Resources, and House Resources Committee an annual report detailing the Interagency Coordinating Group's activities regarding the reconciliation process, consultation with the Native Hawaiian people, and recommendations of necessary changes to existing federal statutes.

The United States Office for Native Hawaiian Relations would serve as a liaison between the Native Hawaiian people and the United States for the purposes of assisting with the process of federal recognition of the Native Hawaiian governing entity, continuing the reconciliation process, and ensuring proper consultation with the Native Hawaiian people for any federal policy impacting Native Hawaiians. The United States Office for Native Hawaiian Relations would not assume the responsibility or authority for any of the federal programs established to address the conditions of Native Hawaiians. All federal programs established and administered by federal agencies will remain with those agencies.

*Section 5. Native Hawaiian Interagency Coordinating Group*

This section recognizes that because federal programs authorized to address the conditions of Native Hawaiians are largely administered by federal agencies other than the Department of the Interior there is a need to establish an Interagency Coordinating Group to be composed of officials from each federal agency that administers Native Hawaiian programs, establishes or implements policies that affect Native Hawaiians, or whose actions may significantly or uniquely impact on Native Hawaiian resources, rights, or lands. The primary responsibility of the Interagency Coordinating Group is to coordinate federal policies or actions that affect Native Hawaiians or impact Native Hawaiian resources, rights, or lands. The Interagency Coordinating Group is also charged with assuring that each federal agency develop a Native Hawaiian consultation policy and participate in the development of the report to Congress.

*Section 6. Process for the recognition of the Native Hawaiian governing entity*

This section recognizes the right of the Native Hawaiian people to organize for their common welfare and to adopt appropriate organic governing documents. This section provides the process for federal recognition of the Native Hawaiian governing entity.

Upon the organization of the Native Hawaiian governing entity, the adoption of organic governing documents, and the election of officers of the Native Hawaiian governing entity, the duly elected officers of the Native Hawaiian governing entity submit the organic governing documents to the Secretary of the Interior for certification. Within 90 days of the submission of the organic governing documents, the Secretary shall certify that the organic governing documents: establish the criteria for citizenship in the Native Hawaiian governing entity; were adopted by a majority vote of the citizens of the Native Hawaiian governing entity; provide for the exercise of governmental authorities by the Native Hawaiian governing entity; provide for the Native Hawaiian governing entity to negotiate with federal, State, and local governments, and other entities; prevent the sale, disposition, lease, or encumbrance of lands, interests in lands, or other assets of the Native Hawaiian governing entity without the consent of the Native Hawaiian governing entity; provide for the protection of the civil rights of the citizens of the Native Hawaiian governing entity and those subject to the authority of the Native Hawaiian governing entity; and are consistent with applicable federal law and the special trust relationship between the United States and Native Hawaiians.

Within 90 days of the submission of the organic governing documents, the Secretary shall also certify that the State of Hawaii supports the recognition of the Native Hawaiian governing entity by the United States as evidenced by a resolution or act of the Hawaii State Legislature.

If the Secretary, after receipt of the organic governing documents, determines that the documents are deficient in addressing the matters stipulated under Section 6(b)(2)(A)(i) through (vii), or determines that any provision of the organic governing documents does not comply with any other applicable federal law, the Secretary shall return the organic governing documents to the Native Hawaiian governing entity. The Secretary shall identify to the Native Hawaiian governing entity each provision that is determined to be deficient or in noncompliance and provide a justification for each finding. The Native Hawaiian governing entity is authorized to amend the organic governing documents to ensure their compliance with this Act and may resubmit the organic governing documents to the Secretary for certification.

The certifications shall be deemed to have been made if the Secretary has not acted within 90 days of the date that the duly elected officers of the Native Hawaiian governing entity have submitted the organic governing documents of the Native Hawaiian governing entity to the Secretary.

Upon election of the Native Hawaiian governing entity's officers and the certifications (or deemed certifications) by the Secretary, federal recognition is extended to the Native Hawaiian governing entity.

*Section 7. Authorization of appropriations*

This section authorizes the appropriation of such sums as may be necessary to carry out the activities authorized.

*Section 8. Reaffirmation of delegation of federal authority; negotiations*

This section reaffirms the United States' delegation of authority to the State of Hawaii in the Admissions Act to address the conditions of the indigenous, native people of Hawaii. Upon federal recognition of the Native Hawaiian governing entity, the United States is authorized to negotiate with the State of Hawaii and the Native Hawaiian governing entity regarding the transfer to the Native Hawaiian governing entity of lands, resources and assets dedicated to Native Hawaiians.

This section provides that nothing in this Act is intended to serve as a settlement of any claims against the United States.

*Section 9. Applicability of certain federal laws*

This section states that nothing in this Act shall be construed as an authorization for the Native Hawaiian governing entity to conduct gaming activities under the authority of the Indian Gaming Regulatory Act or for eligibility to participate in any programs and services provided by the Bureau of Indian Affairs.

*Section 10. Severability*

This section provides that should any section or provision of this Act be deemed invalid, the remaining sections, provisions, and amendments shall continue in full force and effect.

## COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Resources' oversight findings and recommendations are reflected in the body of this report.

## CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 of the Constitution of the United States grants Congress the authority to enact this bill.

## COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

2. Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

3. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is 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.

4. Congressional Budget Office Cost Estimate. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, May 23, 2001.*

Hon. JAMES V. HANSEN,  
*Chairman, Committee on Resources,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 617, 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.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Lanette J. Walker (for federal costs), and Marjorie Miller (for the impact on state, local, and tribal governments).

Sincerely,

STEVEN LIEBERMAN  
(For Dan L. Crippen, Director).

Enclosure.

*H.R. 617—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*

H.R. 617 would establish a process for a Native Hawaiian government to be constituted and recognized by the federal government. CBO estimates that implementing H.R. 617 would have no significant impact on the federal budget. The bill would not affect direct spending or receipts, so pay-as-you-go procedures would not apply. H.R. 617 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments. Enactment of this legislation could lead to the creation of a new government to represent native Hawaiians. The transfer of any lands or other assets to this new government, including lands now controlled by the state of Hawaii, would be the subject of future negotiations. Similarly, federal payments to native Hawaiians following recognition of a Native Hawaiian government would depend on future legislation.

The bill would establish the United States Office for Native Hawaiian Affairs within the Department of the Interior (DOI) to coordinate services to native Hawaiians. In addition, H.R. 617 would establish the Native Hawaiian Interagency Coordinating Group to coordinate federal programs and policies that affect native Hawaiians. Based on information from DOI, CBO expects that the agency would require up to five additional employees to implement the bill. Therefore, CBO estimates that implementing H.R. 617 would cost less than \$500,000 a year, subject to the availability of appropriated funds.

The CBO staff contacts for this estimate are Lanette J. Walker (for federal costs), and Marjorie Miller (for the impact on state, local, and tribal governments). This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW

This bill makes no changes in existing law.

