

# Calendar No. 185

108TH CONGRESS  
1ST SESSION

# S. 344

[Report No. 108-85]

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.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 11, 2003

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

JUNE 27, 2003

Reported by Mr. CAMPBELL, with an amendment

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

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## 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,*

★(Star Print)

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 language 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          wahi supports the recognition of a Native Ha-

1           waiian governing entity by the United States as  
2           evidenced by a resolution or act of the Hawaii  
3           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.

13 **SECTION 1. SHORT TITLE.**

14 *This Act may be cited as the “Native Hawaiian Rec-*  
15 *ognition Act of 2003”.*

16 **SEC. 2. FINDINGS.**

17 *Congress finds that—*

18 (1) *the Constitution vests Congress with the au-*  
19 *thority to address the conditions of the indigenous,*  
20 *native people of the United States;*

21 (2) *Native Hawaiians, the native people of the*  
22 *Hawaiian archipelago that is now part of the United*  
23 *States, are indigenous, native people of the United*  
24 *States;*

1           (3) *the United States has a special political and*  
2 *legal responsibility to promote the welfare of the na-*  
3 *tive people of the United States, including Native Ha-*  
4 *waiians;*

5           (4) *under the treaty making power of the United*  
6 *States, Congress exercised its constitutional authority*  
7 *to confirm treaties between the United States and the*  
8 *Kingdom of Hawaii, and from 1826 until 1893, the*  
9 *United States—*

10           (A) *recognized the independence of the*  
11 *Kingdom of Hawaii;*

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

14           (C) *entered into treaties and conventions*  
15 *with the Hawaiian monarchs to govern com-*  
16 *merce and navigation in 1826, 1842, 1849, 1875,*  
17 *and 1887;*

18           (5) *pursuant to the Hawaiian Homes Commis-*  
19 *sion Act, 1920 (42 Stat. 108, chapter 42), the United*  
20 *States set aside 203,500 acres of land in the Federal*  
21 *territory that later became the State of Hawaii to ad-*  
22 *dress the conditions of Native Hawaiians;*

23           (6) *by setting aside 203,500 acres of land for Na-*  
24 *tive Hawaiian homesteads and farms, the Act assists*  
25 *the Native Hawaiian community in maintaining dis-*

1 *tinct native settlements throughout the State of Ha-*  
2 *waii;*

3 *(7) approximately 6,800 Native Hawaiian les-*  
4 *sees and their family members reside on Hawaiian*  
5 *Home Lands and approximately 18,000 Native Ha-*  
6 *waiians who are eligible to reside on the Home Lands*  
7 *are on a waiting list to receive assignments of land;*

8 *(8)(A) in 1959, as part of the compact admitting*  
9 *Hawaii into the Union, Congress established a public*  
10 *trust (commonly known as the “ceded lands trust”),*  
11 *for 5 purposes, 1 of which is the betterment of the con-*  
12 *ditions of Native Hawaiians;*

13 *(B) the trust consists of lands, including (sub-*  
14 *merged lands), natural resources, and the revenues de-*  
15 *rived from the lands; and*

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

18 *(9) throughout the years, Native Hawaiians have*  
19 *repeatedly sought access to the ceded lands in order*  
20 *to establish and maintain native settlements and dis-*  
21 *tinct native communities throughout the State;*

22 *(10) the Hawaiian Home Lands and other ceded*  
23 *lands provide an important foundation for the ability*  
24 *of the Native Hawaiian community to maintain the*  
25 *practice of Native Hawaiian culture, language, and*



1 *traditions, and for the survival and economic self-suf-*  
2 *ficiency of the Native Hawaiian people;*

3 *(11) Native Hawaiians have maintained other*  
4 *distinctly native areas in Hawaii;*

5 *(12) on November 23, 1993, Public Law 103–150*  
6 *(107 Stat. 1510) (commonly known as the “Apology*  
7 *Resolution”) was enacted into law, extending an*  
8 *apology on behalf of the United States to the Native*  
9 *people of Hawaii for the United States role in the*  
10 *overthrow of the Kingdom of Hawaii;*

11 *(13) the Apology Resolution acknowledges that*  
12 *the overthrow of the Kingdom of Hawaii occurred*  
13 *with the active participation of agents and citizens of*  
14 *the United States and further acknowledges that the*  
15 *Native Hawaiian people never directly relinquished*  
16 *their claims to their inherent sovereignty as a people*  
17 *over their national lands to the United States, either*  
18 *through their monarchy or through a plebiscite or ref-*  
19 *erendum;*

20 *(14) the Apology Resolution expresses the com-*  
21 *mitment of Congress and the President—*

22 *(A) to acknowledge the ramifications of the*  
23 *overthrow of the Kingdom of Hawaii;*

24 *(B) to support reconciliation efforts between*  
25 *the United States and Native Hawaiians; and*

1           (C) to have Congress and the President,  
2           through the President's designated officials, con-  
3           sult with Native Hawaiians on the reconciliation  
4           process as called for under the Apology Resolu-  
5           tion;

6           (15) despite the overthrow of the Hawaiian Gov-  
7           ernment, Native Hawaiians have continued to main-  
8           tain their separate identity as a distinct native com-  
9           munity through the formation of cultural, social, and  
10          political institutions, and to give expression to their  
11          rights as native people to self-determination, self-gov-  
12          ernance, and economic self-sufficiency;

13          (16) Native Hawaiians also give expression to  
14          their rights as native people to self-determination,  
15          self-governance, and economic self-sufficiency—

16               (A) through the provision of governmental  
17               services to Native Hawaiians, including the pro-  
18               vision of—

19                       (i) health care services;

20                       (ii) educational programs;

21                       (iii) employment and training pro-  
22                       grams;

23                       (iv) economic development assistance  
24                       programs;

25                       (v) children's services;

1                   (vi) conservation programs;

2                   (vii) fish and wildlife protection;

3                   (viii) agricultural programs;

4                   (ix) native language immersion pro-  
5                   grams;

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

8                   (xi) college and master's degree pro-  
9                   grams in native language immersion in-  
10                  struction; and

11                  (xii) traditional justice programs; and

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

15                  (17) Native Hawaiians are actively engaged in  
16                  Native Hawaiian cultural practices, traditional agri-  
17                  cultural methods, fishing and subsistence practices,  
18                  maintenance of cultural use areas and sacred sites,  
19                  protection of burial sites, and the exercise of their tra-  
20                  ditional rights to gather medicinal plants and herbs,  
21                  and food sources;

22                  (18) the Native Hawaiian people wish to pre-  
23                  serve, develop, and transmit to future Native Hawai-  
24                  ian generations their lands and Native Hawaiian po-  
25                  litical and cultural identity in accordance with their

1 *traditions, beliefs, customs and practices, language,*  
2 *and social and political institutions, to control and*  
3 *manage their own lands, including ceded lands, and*  
4 *to achieve greater self-determination over their own*  
5 *affairs;*

6 *(19) this Act provides for a process within the*  
7 *framework of Federal law for the Native Hawaiian*  
8 *people to exercise their inherent rights as a distinct*  
9 *aboriginal, indigenous, native community to reorga-*  
10 *nize a Native Hawaiian governing entity for the pur-*  
11 *pose of giving expression to their rights as native peo-*  
12 *ple to self-determination and self-governance;*

13 *(20) Congress—*

14 *(A) has declared that the United States has*  
15 *a special responsibility for the welfare of the na-*  
16 *tive peoples of the United States, including Na-*  
17 *tive Hawaiians;*

18 *(B) has identified Native Hawaiians as a*  
19 *distinct indigenous group within the scope of its*  
20 *Indian affairs power, and has enacted dozens of*  
21 *statutes on their behalf pursuant to its recog-*  
22 *nized trust responsibility; and*

23 *(C) has delegated broad authority to admin-*  
24 *ister a portion of the Federal trust responsibility*  
25 *to the State of Hawaii;*

1           (21) *the United States has recognized and re-*  
2 *affirmed the special political and legal relationship*  
3 *with the Native Hawaiian people through the enact-*  
4 *ment of the Act entitled “An Act to provide for the*  
5 *admission of the State of Hawaii into the Union”,*  
6 *approved March 18, 1959 (Public Law 86–3; 73 Stat.*  
7 *4), by—*

8           (A) *ceding to the State of Hawaii title to*  
9 *the public lands formerly held by the United*  
10 *States, and mandating that those lands be held*  
11 *in public trust for 5 purposes, 1 of which is for*  
12 *the betterment of the conditions of Native Ha-*  
13 *waiians; and*

14           (B) *transferring the United States responsi-*  
15 *bility for the administration of the Hawaiian*  
16 *Home Lands to the State of Hawaii, but retain-*  
17 *ing the authority to enforce the trust, including*  
18 *the exclusive right of the United States to consent*  
19 *to any actions affecting the lands that comprise*  
20 *the corpus of the trust and any amendments to*  
21 *the Hawaiian Homes Commission Act, 1920 (42*  
22 *Stat. 108, chapter 42) that are enacted by the*  
23 *legislature of the State of Hawaii affecting the*  
24 *beneficiaries under that Act;*

1           (22) *the United States continually has recog-*  
2 *nized and reaffirmed that—*

3           (A) *Native Hawaiians have a cultural, his-*  
4 *toric, and land-based link to the aboriginal, na-*  
5 *tive people who exercised sovereignty over the*  
6 *Hawaiian Islands;*

7           (B) *Native Hawaiians have never relin-*  
8 *quished their claims to sovereignty or their sov-*  
9 *ereign lands;*

10          (C) *the United States extends services to*  
11 *Native Hawaiians because of their unique status*  
12 *as the aboriginal, native people of a once sov-*  
13 *ereign nation with whom the United States has*  
14 *a political and legal relationship; and*

15          (D) *the special trust relationship of Amer-*  
16 *ican Indians, Alaska Natives, and Native Ha-*  
17 *waiians to the United States arises out of their*  
18 *status as aboriginal, indigenous, native people of*  
19 *the United States; and*

20          (23) *the State of Hawaii supports the recogni-*  
21 *tion of the Native Hawaiian governing entity by the*  
22 *United States as evidenced by 2 unanimous resolu-*  
23 *tions enacted by the Hawaii State Legislature in the*  
24 *2000 and 2001 sessions of the Legislature and by the*  
25 *testimony of the Governor of the State of Hawaii be-*

1       *fore the Committee on Indian Affairs of the Senate on*  
2       *February 25, 2003.*

3   **SEC. 3. DEFINITIONS.**

4       *In this Act:*

5           (1) *ABORIGINAL, INDIGENOUS, NATIVE PEO-*  
6       *PLE.—The term “aboriginal, indigenous, native peo-*  
7       *ple” means people whom Congress has recognized as*  
8       *the original inhabitants of the lands and who exer-*  
9       *cised sovereignty prior to Western contact in the areas*  
10       *that later became part of the United States.*

11           (2) *ADULT MEMBER.—The term “adult member”*  
12       *means a Native Hawaiian who has attained the age*  
13       *of 18 at the time the preparation of the roll author-*  
14       *ized under section 7(b)(1)(A) is initiated.*

15           (3) *APOLOGY RESOLUTION.—The term “Apology*  
16       *Resolution” means Public Law 103–150 (107 Stat.*  
17       *1510), a Joint Resolution extending an apology to*  
18       *Native Hawaiians on behalf of the United States for*  
19       *the participation of agents of the United States in the*  
20       *January 17, 1893, overthrow of the Kingdom of Ha-*  
21       *waii.*

22           (4) *COUNCIL.—The term “council” means the*  
23       *Native Hawaiian Interim Governing Council estab-*  
24       *lished under section 7(b)(2).*

1           (5) *INDIGENOUS, NATIVE PEOPLE.*—*The term*  
2           *“indigenous, native people” means the lineal descend-*  
3           *ants of the aboriginal, indigenous, native people of the*  
4           *United States.*

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

9           (7) *NATIVE HAWAIIAN.*—*For the purpose of es-*  
10          *tablishing the roll authorized under section 7(b)(1)*  
11          *and before the recognition by the United States of the*  
12          *Native Hawaiian governing entity, the term “Native*  
13          *Hawaiian” means—*

14                 (A) *an individual who is a member of the*  
15                 *indigenous, native people of Hawaii who are the*  
16                 *direct lineal descendants of the aboriginal, indig-*  
17                 *enous, native people who—*

18                         (i) *resided on or before January 1,*  
19                         *1893, in the islands that now comprise the*  
20                         *State of Hawaii; and*

21                         (ii) *occupied and exercised sovereignty*  
22                         *in the Hawaiian archipelago, including the*  
23                         *area that now constitutes the State of Ha-*  
24                         *waii; and*



1           (B) *an individual who was a Native Ha-*  
 2           *waiian eligible during 1921 for the programs au-*  
 3           *thorized by the Hawaiian Homes Commission*  
 4           *Act (42 Stat. 108, chapter 42) (including lineal*  
 5           *descendants of that individual).*

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

10          (9) *OFFICE.—The term “Office” means the*  
 11          *United States Office for Native Hawaiian Relations*  
 12          *established under section 5(a).*

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

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

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

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

20               (2) *the United States has a special political and*  
 21               *legal responsibility to promote the welfare of Native*  
 22               *Hawaiians;*

23               (3) *Congress possesses the authority under the*  
 24               *Constitution to enact legislation to address the condi-*

1        *tions of Native Hawaiians and has exercised this au-*  
2        *thority 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                *ressing 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 Hawai-*  
17                *ian governing entity; and*

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

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

23                *(b) PURPOSE.—The purpose of this Act is to provide*  
24                *a process for the recognition by the United States of the*

1 *Native Hawaiian governing entity for purposes of con-*  
2 *tinuing a government-to-government relationship.*

3 **SEC. 5. UNITED STATES OFFICE FOR NATIVE HAWAIIAN RE-**  
4 **LATIONS.**

5 (a) *ESTABLISHMENT.*—*There is established within the*  
6 *Office of the Secretary the United States Office for Native*  
7 *Hawaiian Relations.*

8 (b) *DUTIES.*—*The Office shall—*

9 (1) *effectuate and coordinate the special political*  
10 *and legal responsibility between the Native Hawaiian*  
11 *people and the United States, and on the recognition*  
12 *of the Native Hawaiian governing entity by the*  
13 *United States, between the Native Hawaiian gov-*  
14 *erning entity and the United States through the Sec-*  
15 *retary, and with all other Federal agencies;*

16 (2) *continue the process of reconciliation with*  
17 *the Native Hawaiian people, and on the recognition*  
18 *of the Native Hawaiian governing entity by the*  
19 *United States, continue the process of reconciliation*  
20 *with the Native Hawaiian governing entity;*

21 (3) *fully integrate the principle and practice of*  
22 *meaningful, regular, and appropriate consultation*  
23 *with the Native Hawaiian governing entity by pro-*  
24 *viding timely notice to, and consulting with, the Na-*  
25 *tive Hawaiian people and the Native Hawaiian gov-*

1 *erning entity before taking any actions that may have*  
2 *the potential to significantly affect Native Hawaiian*  
3 *resources, rights, or lands;*

4 *(4) consult with the Interagency Coordinating*  
5 *Group, other Federal agencies, and with relevant*  
6 *agencies of the State of Hawaii on policies, practices,*  
7 *and proposed actions affecting Native Hawaiian re-*  
8 *sources, rights, or lands; and*

9 *(5) prepare and submit to the Committee on In-*  
10 *dian Affairs and the Committee on Energy and Nat-*  
11 *ural Resources of the Senate and the Committee on*  
12 *Resources of the House of Representatives, an annual*  
13 *report detailing the activities of the Interagency Co-*  
14 *ordinating Group that are undertaken with respect to*  
15 *the continuing process of reconciliation and to effect*  
16 *meaningful consultation with the Native Hawaiian*  
17 *governing entity and providing recommendations for*  
18 *any necessary changes to Federal law or regulations*  
19 *promulgated under the authority of Federal law.*

20 **SEC. 6. NATIVE HAWAIIAN INTERAGENCY COORDINATING**  
21 **GROUP.**

22 *(a) ESTABLISHMENT.—In recognition that Federal*  
23 *programs authorized to address the conditions of Native*  
24 *Hawaiians are largely administered by Federal agencies*  
25 *other than the Department of the Interior, there is estab-*

1 lished an interagency coordinating group to be known as  
2 the “Native Hawaiian Interagency Coordinating Group”.

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

6 (1) *each Federal agency that administers Native*  
7 *Hawaiian programs, establishes or implements poli-*  
8 *cies that affect Native Hawaiians, or whose actions*  
9 *may significantly or uniquely impact Native Hawai-*  
10 *ian resources, rights, or lands; and*

11 (2) *the Office.*

12 (c) *LEAD AGENCY.*—

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

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

18 (d) *DUTIES.*—*The Interagency Coordinating Group*  
19 *shall—*

20 (1) *coordinate Federal programs and policies*  
21 *that affect Native Hawaiians or actions by any agen-*  
22 *cy or agencies of the Federal Government that may*  
23 *significantly or uniquely impact on Native Hawaiian*  
24 *resources, rights, or lands;*

1           (2) *ensure that each Federal agency develops a*  
 2           *policy on consultation with the Native Hawaiian peo-*  
 3           *ple, and on recognition of the Native Hawaiian gov-*  
 4           *erning entity by the United States, consultation with*  
 5           *the Native Hawaiian governing entity; and*

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

9   **SEC. 7. PROCESS FOR THE RECOGNITION OF THE NATIVE**  
 10                                   **HAWAIIAN GOVERNING ENTITY.**

11           (a) *RECOGNITION OF THE NATIVE HAWAIIAN GOV-*  
 12           *ERNING ENTITY.—The right of the Native Hawaiian people*  
 13           *to organize for their common welfare and to adopt appro-*  
 14           *priate organic governing documents is recognized by the*  
 15           *United States.*

16           (b) *PROCESS FOR RECOGNITION.—*

17                           (1) *ROLL.—*

18                                   (A) *PREPARATION OF ROLL.—*

19   (i) *IN GENERAL.—The Office, in con-*  
 20   *sultation with the adult members of the Na-*  
 21   *tive Hawaiian community who elect to par-*  
 22   *ticipate in the reorganization of the Native*  
 23   *Hawaiian governing entity, shall prepare*  
 24   *and maintain a roll for the purpose of the*

1                    *reorganization of the Native Hawaiian gov-*  
2                    *erning entity.*

3                    *(ii) CONTENTS.—The roll shall include*  
4                    *the names of the adult members of the Na-*  
5                    *tive Hawaiian community who elect to par-*  
6                    *ticipate in the reorganization of the Native*  
7                    *Hawaiian governing entity.*

8                    *(B) CERTIFICATION OF ROLL.—*

9                    *(i) IN GENERAL.—The adult members*  
10                   *of the Native Hawaiian community, in con-*  
11                   *sultation with the Office, shall certify to the*  
12                   *Secretary that the individuals listed on the*  
13                   *roll meet the definition of section 3(7).*

14                   *(ii) PUBLICATION.—On certification of*  
15                   *the roll, the Secretary shall publish the roll.*

16                   *(C) APPEAL.—The Secretary may establish*  
17                   *a mechanism for an appeal for any person whose*  
18                   *name is excluded from the roll who meets the def-*  
19                   *inition under section 3(7).*

20                   *(D) PUBLICATION; UPDATE.—The Secretary*  
21                   *shall—*

22                   *(i) publish the roll regardless of wheth-*  
23                   *er appeals are pending; and*

1                   (ii) update the roll and the publication  
2                   of the roll on the final disposition of any  
3                   appeal.

4                   (E) *FAILURE TO ACT.*—If the Secretary  
5                   fails to publish the roll, not later than 90 days  
6                   after the date on which the roll is submitted to  
7                   the Secretary, the Office shall publish the roll  
8                   notwithstanding any order or directive issued by  
9                   the Secretary or any other official of the Depart-  
10                  ment of the Interior to the contrary.

11                  (F) *EFFECT OF PUBLICATION.*—The publi-  
12                  cation of the roll shall serve as the basis for the  
13                  eligibility of adult members of the Native Ha-  
14                  waiian community whose names are listed on  
15                  the roll to participate in all referenda and elec-  
16                  tions associated with the reorganization of the  
17                  Native Hawaiian governing entity.

18                  (2) *ORGANIZATION OF THE NATIVE HAWAIIAN IN-*  
19                  *TERIM GOVERNING COUNCIL.*—

20                  (A) *ORGANIZATION.*—The adult members of  
21                  the Native Hawaiian community listed on the  
22                  roll published under this subsection may—

23                         (i) develop criteria for candidates to be  
24                         elected to serve on the Native Hawaiian In-  
25                         terim Governing Council;



1                   (ii) determine the structure of the  
2                   Council; and

3                   (iii) elect members from individuals  
4                   listed on the roll published under this sub-  
5                   section to the Council.

6                   (B) *ELECTION.*—On the request of the adult  
7                   members of the Native Hawaiian community  
8                   listed on the roll published under this subsection,  
9                   the Office may assist individuals listed on the  
10                  roll in holding an election by secret ballot (in-  
11                  cluding, at the option of the Office, absentee and  
12                  mail balloting) to elect the membership of the  
13                  Council.

14                  (C) *POWERS.*—

15                  (i) *IN GENERAL.*—The Council may—

16                          (I) represent individuals on the  
17                          roll published under this subsection in  
18                          the implementation of this Act; and

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

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

1 (iii) *ACTIVITIES.*—

2 (I) *IN GENERAL.*—*The Council*  
3 *may conduct a referendum among the*  
4 *adult members of the Native Hawaiian*  
5 *community listed on the roll published*  
6 *under this subsection for the purpose of*  
7 *determining—*

8 (aa) *the proposed elements of*  
9 *the organic governing documents*  
10 *of the Native Hawaiian governing*  
11 *entity;*

12 (bb) *the proposed criteria for*  
13 *citizenship of the Native Hawai-*  
14 *ian governing entity;*

15 (cc) *the proposed powers and*  
16 *authorities to be exercised by the*  
17 *Native Hawaiian governing enti-*  
18 *ty, as well as the proposed privi-*  
19 *leges and immunities of the Na-*  
20 *tive Hawaiian governing entity;*

21 (dd) *the proposed civil rights*  
22 *and protection of the rights of the*  
23 *citizens of the Native Hawaiian*  
24 *governing entity and all persons*  
25 *subject to the authority of the Na-*

1           *tive Hawaiian governing entity;*  
2           *and*

3                     *(ee) other issues determined*  
4                     *appropriate by the Council.*

5                     (II) *DEVELOPMENT OF ORGANIC*  
6                     *GOVERNING DOCUMENTS.—Based on*  
7                     *the referendum, the Council may de-*  
8                     *velop proposed organic governing docu-*  
9                     *ments for the Native Hawaiian gov-*  
10                    *erning entity.*

11                    (III) *DISTRIBUTION.—The Coun-*  
12                    *cil may distribute to all adult members*  
13                    *of the Native Hawaiian community*  
14                    *listed on the roll published under this*  
15                    *subsection—*

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

19                             *(bb) a brief impartial de-*  
20                             *scription of the proposed organic*  
21                             *governing documents.*

22                    (IV) *ELECTIONS.—*

23                             (II) *IN GENERAL.—The*  
24                             *Council may hold elections for the*  
25                             *purpose of ratifying the proposed*

1                   *organic governing documents and,*  
2                   *on certification of the organic gov-*  
3                   *erning documents by the Sec-*  
4                   *retary in accordance with para-*  
5                   *graph (4), hold elections of the of-*  
6                   *ficers of the Native Hawaiian gov-*  
7                   *erning entity.*

8                   *(bb) ASSISTANCE.—On the*  
9                   *request of the Council, the Office*  
10                  *may assist the Council in con-*  
11                  *ducting the elections.*

12                  *(D) TERMINATION.—The Council shall cease*  
13                  *to exist, and shall have no power or authority*  
14                  *under this Act, after the duly elected officers of*  
15                  *the Native Hawaiian governing entity take of-*  
16                  *fice.*

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

23                  *(4) CERTIFICATIONS.—*

24                  *(A) IN GENERAL.—Not later than 90 days*  
25                  *after the date on which the Council submits the*

1           *organic governing documents to the Secretary,*  
2           *the Secretary shall certify that the organic gov-*  
3           *erning documents—*

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

6                     *(ii) were adopted by a majority vote of*  
7                     *adult members of the Native Hawaiian*  
8                     *community whose names are listed on the*  
9                     *roll published by the Secretary;*

10                    *(iii) provide for the exercise of govern-*  
11                    *mental authorities by the Native Hawaiian*  
12                    *governing entity;*

13                    *(iv) provide authority for the Native*  
14                    *Hawaiian governing entity to negotiate*  
15                    *with Federal, State, and local governments,*  
16                    *and other entities;*

17                    *(v) prevent the sale, disposition, lease,*  
18                    *or encumbrance of lands, interests in lands,*  
19                    *or other assets of the Native Hawaiian gov-*  
20                    *erning entity without the consent of the Na-*  
21                    *tive Hawaiian governing entity;*

22                    *(vi) provide for the protection of the*  
23                    *civil rights of the citizens of the Native Ha-*  
24                    *waiian governing entity and all persons*  
25                    *subject to the authority of the Native Ha-*

1            *waiian governing entity, and ensure that*  
 2            *the Native Hawaiian governing entity exer-*  
 3            *cises its authority in a manner consistent*  
 4            *with section 202 of the Act of April 11,*  
 5            *1968 (25 U.S.C. 1302); and*

6            *(vii) are consistent with applicable*  
 7            *Federal law and the special political and*  
 8            *legal relationship between the United States*  
 9            *and the indigenous native people of the*  
 10           *United States.*

11            *(B) RESUBMISSION IN CASE OF NONCOMPLI-*  
 12            *ANCE WITH FEDERAL LAW.—*

13            *(i) RESUBMISSION BY THE SEC-*  
 14            *RETARY.—If the Secretary determines that*  
 15            *the organic governing documents, or any*  
 16            *part of the documents, are not consistent*  
 17            *with applicable Federal law, the Secretary*  
 18            *shall resubmit the organic governing docu-*  
 19            *ments to the Council, along with a justifica-*  
 20            *tion for each of the Secretary's findings as*  
 21            *to why the provisions are not consistent*  
 22            *with the law.*

23            *(ii) AMENDMENT AND RESUBMISSION*  
 24            *OF ORGANIC GOVERNING DOCUMENTS.—If*  
 25            *the organic governing documents are resub-*

1                   mitted to the Council by the Secretary  
2                   under clause (i), the Council shall—

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

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

11                  (C) *CERTIFICATIONS DEEMED MADE.*—The  
12                  certifications under subparagraph (B) shall be  
13                  deemed to have been made if the Secretary has  
14                  not acted within 90 days after the date on which  
15                  the Council has submitted the organic governing  
16                  documents of the Native Hawaiian governing en-  
17                  tity to the Secretary.

18                  (5) *ELECTIONS.*—On completion of the certifi-  
19                  cations by the Secretary under paragraph (4), the  
20                  Council may hold elections of the officers of the Native  
21                  Hawaiian governing entity.

22                  (6) *FEDERAL RECOGNITION.*—Notwithstanding  
23                  any other provision of law, upon the election of the  
24                  officers of the Native Hawaiian governing entity and  
25                  the certifications by the Secretary required under

1       paragraph (4), the United States extends Federal rec-  
 2       ognition to the Native Hawaiian governing entity as  
 3       the representative governing body of the Native Ha-  
 4       waiian people.

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 admis-  
 11      sion of the State of Hawaii into the Union” approved  
 12      March 18, 1959 (Public Law 86–3; 73 Stat. 5) is re-  
 13      affirmed.

14      (b) *NEGOTIATIONS.*—

15              (1) *IN GENERAL.*—Upon the Federal recognition  
 16      of the Native Hawaiian governing entity by the  
 17      United States, the United States and the State of Ha-  
 18      waii may enter into negotiations with the Native Ha-  
 19      waiian governing entity designed to lead to an agree-  
 20      ment addressing such matters as—

21                      (A) the transfer of lands, natural resources,  
 22                      and other assets; and

23                      (B) the exercise of governmental authority  
 24                      over those lands, natural resources, and other as-  
 25                      sets.



1           (2) *CLAIMS.*—*Nothing in this Act serves as a set-*  
2           *tlement of any claim against the United States.*

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

4           (a) *INDIAN GAMING REGULATORY ACT.*—*Nothing in*  
5 *this Act authorizes the Native Hawaiian governing entity*  
6 *to conduct gaming activities under the Indian Gaming Reg-*  
7 *ulatory Act (25 U.S.C. 2701 et seq.).*

8           (b) *BUREAU OF INDIAN AFFAIRS.*—*Nothing contained*  
9 *in this Act provides an authorization for eligibility to par-*  
10 *ticipate in any programs and services provided by the Bu-*  
11 *reau of Indian Affairs for any persons not otherwise eligible*  
12 *for the programs or services.*

13 **SEC. 10. ETHICS.**

14           *The provisions of section 208(a) of title 18, United*  
15 *States Code, prohibiting involvement by a Federal govern-*  
16 *ment officer or employee in particular matters if the officer*  
17 *or employee, or spouse or minor child of the officer or em-*  
18 *ployee, has a financial interest shall not apply to Native*  
19 *Hawaiians employed by the Office if the financial interest*  
20 *that would be affected by the particular matter involved re-*  
21 *sults solely from the status as a Native Hawaiian of the*  
22 *officer or employee, or of the spouse or minor child.*

1 **SEC. 11. SEVERABILITY.**

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

5 **SEC. 12. AUTHORIZATION OF APPROPRIATIONS**

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



**Calendar No. 185**

108TH CONGRESS  
1ST SESSION

**S. 344**

**[Report No. 108-85]**

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**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.

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JUNE 27, 2003

Reported with an amendment