

111TH CONGRESS
2^D SESSION

S. 3945

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

IN THE SENATE OF THE UNITED STATES

NOVEMBER 15, 2010

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

A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Native Hawaiian Gov-
5 ernment Reorganization Act of 2010”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

1 (1) the Constitution vests Congress with the au-
2 thority to address the conditions of the indigenous,
3 native people of the United States and the Supreme
4 Court has held that under the Indian Commerce,
5 Treaty, Supremacy, and Property Clauses, and the
6 War Powers, Congress may exercise that power to
7 rationally promote the welfare of the native peoples
8 of the United States so long as the native people are
9 a “distinctly native community”;

10 (2) Native Hawaiians, the native people of the
11 Hawaiian archipelago that is now part of the United
12 States, are 1 of the indigenous, native peoples of the
13 United States, and the Native Hawaiian people are
14 a distinctly native community;

15 (3) the United States has a special political and
16 legal relationship with, and has long enacted legisla-
17 tion to promote the welfare of, the native peoples of
18 the United States, including the Native Hawaiian
19 people;

20 (4) under the authority of the Constitution, the
21 United States concluded a number of treaties with
22 the Kingdom of Hawaii, and from 1826 until 1893,
23 the United States—

24 (A) recognized the sovereignty of the King-
25 dom of Hawaii as a nation;

1 (B) accorded full diplomatic recognition to
2 the Kingdom of Hawaii; and

3 (C) entered into treaties and conventions
4 of peace, friendship and commerce with the
5 Kingdom of Hawaii to govern trade, commerce,
6 and navigation in 1826, 1842, 1849, 1875, and
7 1887;

8 (5) pursuant to the Hawaiian Homes Commis-
9 sion Act, 1920 (42 Stat. 108, chapter 42), the
10 United States set aside approximately 203,500 acres
11 of land in trust to better address the conditions of
12 Native Hawaiians in the Federal territory that later
13 became the State of Hawaii and in enacting the Ha-
14 waiian Homes Commission Act, 1920, Congress ac-
15 knowledged the Native Hawaiian people as a native
16 people of the United States, as evidenced by the
17 Committee Report, which notes that Congress relied
18 on the Indian affairs power and the War Powers, in-
19 cluding the power to make peace;

20 (6) by setting aside 203,500 acres of land in
21 trust for Native Hawaiian homesteads and farms,
22 the Hawaiian Homes Commission Act, 1920, assists
23 the members of the Native Hawaiian community in
24 maintaining distinctly native communities through-
25 out the State of Hawaii;

1 (7) approximately 9,800 Native Hawaiian fami-
2 lies reside on the Hawaiian Home Lands, and ap-
3 proximately 25,000 Native Hawaiians who are eligi-
4 ble to reside on the Hawaiian Home Lands are on
5 a waiting list to receive assignments of Hawaiian
6 Home Lands;

7 (8)(A) in 1959, as part of the compact with the
8 United States admitting Hawaii into the Union,
9 Congress delegated the authority and responsibility
10 to administer the Hawaiian Homes Commission Act,
11 1920, lands in trust for Native Hawaiians and es-
12 tablished a new public trust (commonly known as
13 the “ceded lands trust”), for 5 purposes, 1 of which
14 is the betterment of the conditions of Native Hawai-
15 ians, and Congress thereby reaffirmed its recogni-
16 tion of the Native Hawaiians as a distinctly native
17 community with a direct lineal and historical succes-
18 sion to the aboriginal, indigenous people of Hawaii;

19 (B) the public trust consists of lands, including
20 submerged lands, natural resources, and the reve-
21 nues derived from the lands; and

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

24 (9) Native Hawaiians have continuously sought
25 access to the ceded lands in order to establish and

1 maintain native settlements and distinct native com-
2 munities throughout the State;

3 (10) the Hawaiian Home Lands and other
4 ceded lands provide important native land reserves
5 and resources for the Native Hawaiian community
6 to maintain the practice of Native Hawaiian culture,
7 language, and traditions, and for the continuity, sur-
8 vival, and economic self-sufficiency of the Native
9 Hawaiian people as a distinctly native political com-
10 munity;

11 (11) Native Hawaiians continue to maintain
12 other distinctly native areas in Hawaii, including na-
13 tive lands that date back to the ali'i and kuleana
14 lands reserved under the Kingdom of Hawaii;

15 (12) through the Sovereign Council of Hawaiian
16 Homelands Assembly and Native Hawaiian home-
17 stead associations, Native Hawaiian civic associa-
18 tions, charitable trusts established by the Native Ha-
19 waiian ali'i, nonprofit native service providers and
20 other community associations, the Native Hawaiian
21 people have actively maintained native traditions and
22 customary usages throughout the Native Hawaiian
23 community and the Federal and State courts have
24 continuously recognized the right of the Native Ha-

1 waiian people to engage in certain customary prac-
2 tices and usages on public lands;

3 (13) on November 23, 1993, Public Law 103–
4 150 (107 Stat. 1510) (commonly known as the
5 “Apology Resolution”) was enacted into law, extend-
6 ing an apology to Native Hawaiians on behalf of the
7 people of the United States for the United States’
8 role in the overthrow of the Kingdom of Hawaii;

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

18 (15)(A) the Apology Resolution expresses the
19 commitment of Congress and the President—

20 (i) to acknowledge the ramifications of the
21 overthrow of the Kingdom of Hawaii; and

22 (ii) to support reconciliation efforts be-
23 tween the United States and Native Hawaiians;

24 (B) Congress established the Office of Hawai-
25 ian Relations within the Department of the Interior

1 with 1 of its purposes being to consult with Native
2 Hawaiians on the reconciliation process; and

3 (C) the United States has the duty to reconcile
4 and reaffirm its friendship with the Native Hawaiian
5 people because, among other things, the United
6 States Minister and United States naval forces par-
7 ticipated in the overthrow of the Kingdom of Ha-
8 waii;

9 (16)(A) despite the overthrow of the Govern-
10 ment of the Kingdom of Hawaii, Native Hawaiians
11 have continued to maintain their separate identity as
12 a single distinctly native political community
13 through cultural, social, and political institutions,
14 and to give expression to their rights as native peo-
15 ple to self-determination, self-governance, and eco-
16 nomic self-sufficiency; and

17 (B) there is clear continuity between the ab-
18 original, indigenous, native people of the Kingdom of
19 Hawaii and their successors, the Native Hawaiian
20 people today;

21 (17) Native Hawaiians have also given expres-
22 sion to their rights as native people to self-deter-
23 mination, self-governance, and economic self-suffi-
24 ciency—

1 (A) through the provision of governmental
2 services to Native Hawaiians, including the pro-
3 vision of—

4 (i) health care services;

5 (ii) educational programs;

6 (iii) employment and training pro-
7 grams;

8 (iv) economic development assistance
9 programs;

10 (v) children's services;

11 (vi) conservation programs;

12 (vii) fish and wildlife protection;

13 (viii) agricultural programs;

14 (ix) native language immersion pro-
15 grams;

16 (x) native language immersion schools
17 from kindergarten through high school;

18 (xi) college and master's degree pro-
19 grams in native language immersion in-
20 struction; and

21 (xii) traditional justice programs; and

22 (B) by continuing their efforts to enhance
23 Native Hawaiian self-determination and local
24 control;

1 (18) Native Hawaiian people are actively en-
2 gaged in Native Hawaiian cultural practices, tradi-
3 tional agricultural methods, fishing and subsistence
4 practices, maintenance of cultural use areas and sa-
5 cred sites, protection of burial sites, and the exercise
6 of their traditional rights to gather medicinal plants
7 and herbs, and food sources;

8 (19) the Native Hawaiian people wish to pre-
9 serve, develop, and transmit to future generations of
10 Native Hawaiians their lands and Native Hawaiian
11 political and cultural identity in accordance with
12 their traditions, beliefs, customs and practices, lan-
13 guage, and social and political institutions, to con-
14 trol and manage their own lands, including ceded
15 lands, and to achieve greater self-determination over
16 their own affairs;

17 (20) this Act provides a process within the
18 framework of Federal law for the Native Hawaiian
19 people to exercise their inherent rights as a distinct,
20 indigenous, native community to reorganize a single
21 unified Native Hawaiian governing entity for the
22 purpose of giving expression to their rights as a na-
23 tive people to self-determination and self-governance;

24 (21) Congress—

1 (A) has declared that the United States
2 has a special political and legal relationship for
3 the welfare of the native peoples of the United
4 States, including Native Hawaiians;

5 (B) has identified Native Hawaiians as an
6 indigenous, distinctly native people of the
7 United States within the scope of its authority
8 under the Constitution, and has enacted scores
9 of statutes on their behalf; and

10 (C) has delegated broad authority to the
11 State of Hawaii to administer some of the
12 United States' responsibilities as they relate to
13 the Native Hawaiian people and their lands;

14 (22) the United States has recognized and re-
15 affirmed the special political and legal relationship
16 with the Native Hawaiian people through the enact-
17 ment of the Act entitled, "An Act to provide for the
18 admission of the State of Hawaii into the Union",
19 approved March 18, 1959 (Public Law 86-3; 73
20 Stat. 4), by—

21 (A) ceding to the State of Hawaii title to
22 the public lands formerly held by the United
23 States, and mandating that those lands be held
24 as a public trust for 5 purposes, 1 of which is

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

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

13 (23) the United States has continually recog-
14 nized and reaffirmed that—

15 (A) Native Hawaiians have a direct genea-
16 logical, cultural, historic, and land-based con-
17 nection to their forebears, the aboriginal, indig-
18 enous, native people who exercised original sov-
19 ereignty over the Hawaiian Islands;

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

23 (C) the United States extends services to
24 Native Hawaiians because of their unique sta-
25 tus as the native people of a prior-sovereign na-

1 tion with whom the United States has a special
2 political and legal relationship; and

3 (D) the special relationship of American
4 Indians, Alaska Natives, and Native Hawaiians
5 to the United States arises out of their status
6 as aboriginal, indigenous, native people of the
7 United States; and

8 (24) the State of Hawaii supports the reaffir-
9 mation of the special political and legal relationship
10 between the Native Hawaiian governing entity and
11 the United States, as evidenced by 2 unanimous res-
12 olutions enacted by the Hawaii State Legislature in
13 the 2000 and 2001 sessions of the Legislature and
14 by the testimony of the Governor of the State of Ha-
15 waii before the Committee on Indian Affairs of the
16 Senate on February 25, 2003, and March 1, 2005.

17 **SEC. 3. DEFINITIONS.**

18 In this Act:

19 (1) ABORIGINAL, INDIGENOUS, NATIVE PEO-
20 PLE.—The term “aboriginal, indigenous, native peo-
21 ple” means a people whom Congress has recognized
22 as the original inhabitants of the lands that later be-
23 came part of the United States and who exercised
24 sovereignty in the areas that later became part of
25 the United States.

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

8 (3) COMMISSION.—The term “Commission”
9 means the Commission established under section
10 8(b).

11 (4) COUNCIL.—The term “Council” means the
12 Native Hawaiian Interim Governing Council estab-
13 lished under section 8(c)(2).

14 (5) INDIAN PROGRAM OR SERVICE.—

15 (A) IN GENERAL.—The term “Indian pro-
16 gram or service” means any federally funded or
17 authorized program or service provided to an
18 Indian tribe (or member of an Indian tribe) be-
19 cause of the status of the members of the In-
20 dian tribe as Indians.

21 (B) INCLUSIONS.—The term “Indian pro-
22 gram or service” includes a program or service
23 provided by the Bureau of Indian Affairs, the
24 Indian Health Service, or any other Federal
25 agency.

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

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

9 (8) INTERAGENCY COORDINATING GROUP.—The
10 term “Interagency Coordinating Group” means the
11 Native Hawaiian Interagency Coordinating Group
12 established under section 6.

13 (9) NATIVE HAWAIIAN GOVERNING ENTITY.—
14 The term “Native Hawaiian governing entity”
15 means the governing entity organized pursuant to
16 this Act by the qualified Native Hawaiian constitu-
17 ents.

18 (10) NATIVE HAWAIIAN MEMBERSHIP ORGANI-
19 ZATION.—The term “Native Hawaiian membership
20 organization” means an organization that—

21 (A) serves and represents the interests of
22 Native Hawaiians, has as a primary and stated
23 purpose the provision of services to Native Ha-
24 waiians, and has expertise in Native Hawaiian
25 affairs;

1 (B) has leaders who are elected democrat-
2 ically, or selected through traditional Native
3 leadership practices, by members of the Native
4 Hawaiian community;

5 (C) advances the cause of Native Hawai-
6 ians culturally, socially, economically, or politi-
7 cally;

8 (D) is a membership organization or asso-
9 ciation; and

10 (E) has an accurate and reliable list of Na-
11 tive Hawaiian members.

12 (11) OFFICE.—The term “Office” means the
13 United States Office of Hawaiian Relations estab-
14 lished by section 5(a).

15 (12) QUALIFIED NATIVE HAWAIIAN CON-
16 STITUENT.—For the purposes of establishing the
17 roll authorized under section 8, and prior to the rec-
18 ognition by the United States of the Native Hawai-
19 ian governing entity, the term “qualified Native Ha-
20 waiian constituent” means an individual who the
21 Commission determines has satisfied the following
22 criteria and who makes a written statement certi-
23 fying that he or she—

24 (A) is—

1 (i) an individual who is 1 of the indig-
2 enous, native people of Hawaii and who is
3 a direct lineal descendant of the aboriginal,
4 indigenous, native people who—

5 (I) resided in the islands that
6 now comprise the State of Hawaii on
7 or before January 1, 1893; and

8 (II) occupied and exercised sov-
9 ereignty in the Hawaiian archipelago,
10 including the area that now con-
11 stitutes the State of Hawaii; or

12 (ii) an individual who is 1 of the in-
13 digenous, native people of Hawaii and who
14 was eligible in 1921 for the programs au-
15 thorized by the Hawaiian Homes Commis-
16 sion Act, 1920 (42 Stat. 108, chapter 42),
17 or a direct lineal descendant of that indi-
18 vidual;

19 (B) wishes to participate in the reorganiza-
20 tion of the Native Hawaiian governing entity;

21 (C) is 18 years of age or older;

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

23 (E) maintains a significant cultural, social,
24 or civic connection to the Native Hawaiian com-

1 munity, as evidenced by satisfying 2 or more of
2 the following 10 criteria:

3 (i) Resides in the State of Hawaii.

4 (ii) Resides outside the State of Ha-
5 waii and—

6 (I)(aa) currently serves or served
7 as (or has a parent or spouse who
8 currently serves or served as) a mem-
9 ber of the Armed Forces or as an em-
10 ployee of the Federal Government;
11 and

12 (bb) resided in the State of Ha-
13 waii prior to the time he or she (or
14 such parent or spouse) left the State
15 of Hawaii to serve as a member of the
16 Armed Forces or as an employee of
17 the Federal Government; or

18 (II)(aa) currently is or was en-
19 rolled (or has a parent or spouse who
20 currently is or was enrolled) in an ac-
21 credited institution of higher edu-
22 cation outside the State of Hawaii;
23 and

24 (bb) resided in the State of Ha-
25 waii prior to the time he or she (or

1 such parent or spouse) left the State
2 of Hawaii to attend such institution.

3 (iii)(I) Is or was eligible to be a bene-
4 ficiary of the programs authorized by the
5 Hawaiian Homes Commission Act, 1920
6 (42 Stat. 108, chapter 42), and resides or
7 resided on land set aside as “Hawaiian
8 home lands”, as defined in such Act; or

9 (II) Is a child or grandchild of an in-
10 dividual who is or was eligible to be a ben-
11 eficiary of the programs authorized by
12 such Act and who resides or resided on
13 land set aside as “Hawaiian home lands”,
14 as defined in such Act.

15 (iv) Is or was eligible to be a bene-
16 ficiary of the programs authorized by the
17 Hawaiian Homes Commission Act, 1920
18 (42 Stat. 108, chapter 42).

19 (v) Is a child or grandchild of an indi-
20 vidual who is or was eligible to be a bene-
21 ficiary of the programs authorized by the
22 Hawaiian Homes Commission Act, 1920
23 (42 Stat. 108, chapter 42).

24 (vi) Resides on or has an ownership
25 interest in, or has a parent or grandparent

1 who resides on or has an ownership inter-
2 est in, “kuleana land” that is owned in
3 whole or in part by a person who, accord-
4 ing to a genealogy verification by the Of-
5 fice of Hawaiian Affairs or by court order,
6 is a lineal descendant of the person or per-
7 sons who received the original title to such
8 “kuleana land”, defined as lands granted
9 to native tenants pursuant to Haw. L.
10 1850, p. 202, entitled “An Act Confirming
11 Certain Resolutions of the King and Privy
12 Council Passed on the 21st day of Decem-
13 ber, A.D. 1849, Granting to the Common
14 People Allodial Titles for Their Own Lands
15 and House Lots, and Certain Other Privi-
16 leges”, as amended by Haw. L. 1851, p.
17 98, entitled “An Act to Amend An Act
18 Granting to the Common People Allodial
19 Titles for Their Own Lands and House
20 Lots, and Certain Other Privileges” and as
21 further amended by any subsequent legis-
22 lation.

23 (vii) Is, or is the child or grandchild
24 of, an individual who has been or was a
25 student for at least 1 school year at a

1 school or program taught through the me-
2 dium of the hawaiian language under sec-
3 tion 302H–6, Hawaii Revised Statutes, or
4 at a school founded and operated primarily
5 or exclusively for the benefit of Native Ha-
6 waiians.

7 (viii) Has been a member since Sep-
8 tember 30, 2009, of at least 1 Native Ha-
9 waiian membership organization.

10 (ix) Has been a member since Sep-
11 tember 30, 2009, of at least 2 Native Ha-
12 waiian membership organizations.

13 (x) Is regarded as Native Hawaiian
14 and whose mother or father is (or if de-
15 ceased, was) regarded as Native Hawaiian
16 by the Native Hawaiian community, as evi-
17 denced by sworn affidavits from 2 or more
18 qualified Native Hawaiian constituents cer-
19 tified by the Commission as possessing ex-
20 pertise in the social, cultural, and civic af-
21 fairs of the Native Hawaiian community.

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

24 (14) SPECIAL POLITICAL AND LEGAL RELA-
25 TIONSHIP.—The term “special political and legal re-

1 relationship” shall refer, except where differences are
2 specifically indicated elsewhere in the Act, to the
3 type of and nature of relationship the United States
4 has with the several federally recognized Indian
5 tribes.

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

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

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

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

15 (3)(A) Congress possesses and hereby exercises
16 the authority under the Constitution, including but
17 not limited to Article I, Section 8, Clause 3, to enact
18 legislation to better the conditions of Native Hawai-
19 ians and has exercised this authority through the en-
20 actment of—

21 (i) the Hawaiian Homes Commission
22 Act, 1920 (42 Stat. 108, chapter 42);

23 (ii) the Act entitled “an Act to pro-
24 vide for the admission of the State of Ha-

1 waii into the Union”, approved March 18,
2 1959 (Public Law 86–3; 73 Stat. 4); and

3 (iii) more than 150 other Federal laws
4 addressing the conditions of Native Hawai-
5 ians;

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

14 (C) the Constitution’s original Apportion-
15 ment Clause and the 14th Amendment Citizen-
16 ship and amended Apportionment Clauses also
17 acknowledge the propriety of legislation on be-
18 half of the native peoples of the United States,
19 including Native Hawaiians;

20 (4) Native Hawaiians have—

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

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

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

3 (D) the right to become economically self-
4 sufficient; and

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

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

15 **SEC. 5. UNITED STATES OFFICE OF HAWAIIAN RELATIONS.**

16 (a) ESTABLISHMENT.—There is established within
17 the Office of the Secretary the United States Office of Ha-
18 waiian Relations.

19 (b) DUTIES.—The Office shall—

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

23 (2) upon the reaffirmation of the government-
24 to-government relationship between the single Native
25 Hawaiian governing entity and the United States,

1 effectuate and coordinate the special political and
2 legal relationship between the Native Hawaiian gov-
3 erning entity and the United States through the
4 Secretary, and with all other Federal agencies;

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

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

15 (5) prepare and submit to the Committee on
16 Indian Affairs and the Committee on Energy and
17 Natural Resources of the Senate and the Committee
18 on Natural Resources of the House of Representa-
19 tives an annual report detailing the activities of the
20 Interagency Coordinating Group that are under-
21 taken with respect to the continuing process of rec-
22 onciliation and to effect meaningful consultation
23 with the Native Hawaiian governing entity and may
24 provide recommendations for any necessary changes

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

3 (c) APPLICABILITY TO DEPARTMENT OF DE-
4 FENSE.—This section shall have no applicability to the
5 Department of Defense or to any agency or component
6 of the Department of Defense, but the Secretary of De-
7 fense may designate 1 or more officials as liaison to the
8 Office.

9 **SEC. 6. NATIVE HAWAIIAN INTERAGENCY COORDINATING**
10 **GROUP.**

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

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

20 (1) each Federal agency whose actions may sig-
21 nificantly or uniquely impact Native Hawaiian pro-
22 grams, resources, rights, or lands; and

23 (2) the Office.

24 (c) LEAD AGENCY.—

1 (1) IN GENERAL.—The Department of the Inte-
2 rior and the White House Office of Intergovern-
3 mental Affairs shall serve as the leaders of the
4 Interagency Coordinating Group.

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

7 (d) DUTIES.—The Interagency Coordinating Group
8 shall—

9 (1) coordinate Federal programs and policies
10 that affect Native Hawaiians or actions by any agen-
11 cy or agencies of the Federal Government that may
12 significantly or uniquely affect Native Hawaiian re-
13 sources, rights, or lands;

14 (2) consult with the Native Hawaiian governing
15 entity, through the coordination referred to in para-
16 graph (1), but the consultation obligation established
17 in this provision shall apply only after the satisfac-
18 tion of all of the conditions referred to in section
19 8(c)(8); and

20 (3) ensure the participation of each Federal
21 agency in the development of the report to Congress
22 authorized in section 5(b)(5).

23 (e) APPLICABILITY TO DEPARTMENT OF DE-
24 FENSE.—This section shall have no applicability to the
25 Department of Defense or to any agency or component

1 of the Department of Defense, but the Secretary of De-
 2 fense may designate 1 or more officials as liaison to the
 3 Interagency Coordinating Group.

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

6 The Attorney General shall designate an appropriate
 7 official within the Department of Justice to assist the Of-
 8 fice in the implementation and protection of the rights of
 9 Native Hawaiians and their political and legal relationship
 10 with the United States, and upon the recognition of the
 11 Native Hawaiian governing entity as provided for in sec-
 12 tion 8, in the implementation and protection of the rights
 13 of the Native Hawaiian governing entity and its political
 14 and legal relationship with the United States.

15 **SEC. 8. PROCESS FOR REORGANIZATION OF NATIVE HA-**
 16 **WAIIAN GOVERNING ENTITY AND REAFFIR-**
 17 **MATION OF SPECIAL POLITICAL AND LEGAL**
 18 **RELATIONSHIP BETWEEN UNITED STATES**
 19 **AND NATIVE HAWAIIAN GOVERNING ENTITY.**

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

1 (b) COMMISSION.—

2 (1) IN GENERAL.—There is authorized to be es-
3 tablished a Commission to be composed of 9 mem-
4 bers for the purposes of—

5 (A) preparing and maintaining a roll of
6 qualified Native Hawaiian constituents; and

7 (B) certifying that the individuals on the
8 roll of qualified Native Hawaiian constituents
9 meet the definition of qualified Native Hawai-
10 ian constituent set forth in section 3.

11 (2) MEMBERSHIP.—

12 (A) APPOINTMENT.—

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

18 (ii) CONSIDERATION.—In making an
19 appointment under clause (i), the Sec-
20 retary may take into consideration a rec-
21 ommendation made by any Native Hawai-
22 ian membership organization or other enti-
23 ty with expertise and experience in the de-
24 termination of Native Hawaiian ancestry
25 and lineal descendancy.

1 (B) REQUIREMENTS.—Each member of
2 the Commission shall demonstrate, as deter-
3 mined by the Secretary—

4 (i) not less than 10 years of experi-
5 ence in the study and determination of Na-
6 tive Hawaiian genealogy (traditional cul-
7 tural experience shall be given due consid-
8 eration); and

9 (ii) an ability to read and translate
10 into English documents written in the Ha-
11 waiian language.

12 (C) VACANCIES.—A vacancy on the Com-
13 mission—

14 (i) shall not affect the powers of the
15 Commission; and

16 (ii) shall be filled in the same manner
17 as the original appointment.

18 (3) EXPENSES.—Each member of the Commis-
19 sion shall be allowed travel expenses, including per
20 diem in lieu of subsistence, at rates authorized for
21 employees of agencies under subchapter I of chapter
22 57 of title 5, United States Code, while away from
23 their homes or regular places of business in the per-
24 formance of services for the Commission.

25 (4) DUTIES.—The Commission shall—

1 (A) prepare and maintain a roll of quali-
2 fied Native Hawaiian constituents as set forth
3 in subsection (c); and

4 (B) certify that the individuals on the roll
5 of qualified Native Hawaiian constituents meet
6 the definition of that term as set forth in sec-
7 tion 3.

8 (5) STAFF.—

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

15 (B) COMPENSATION.—

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

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

1 other personnel shall not exceed the rate
2 payable for level V of the Executive Sched-
3 ule under section 5316 of title 5, United
4 States Code.

5 (6) DETAIL OF FEDERAL GOVERNMENT EM-
6 PLOYEES.—

7 (A) IN GENERAL.—An employee of the
8 Federal Government may be detailed to the
9 Commission without reimbursement.

10 (B) CIVIL SERVICE STATUS.—The detail of
11 the employee shall be without interruption or
12 loss of civil service status or privilege.

13 (7) PROCUREMENT OF TEMPORARY AND INTER-
14 MITTENT SERVICES.—The Commission may procure
15 temporary and intermittent services in accordance
16 with section 3109(b) of title 5, United States Code,
17 at rates for individuals that do not exceed the daily
18 equivalent of the annual rate of basic pay prescribed
19 for level V of the Executive Schedule under section
20 5316 of that title.

21 (8) EXPIRATION.—The Secretary shall dissolve
22 the Commission upon the reaffirmation of the spe-
23 cial political and legal relationship between the Na-
24 tive Hawaiian governing entity and the United
25 States.

1 (c) PROCESS FOR REORGANIZATION OF NATIVE HA-
2 WAIAN GOVERNING ENTITY.—

3 (1) ROLL.—

4 (A) CONTENTS.—The roll shall include the
5 names of the qualified Native Hawaiian con-
6 stituents who are certified by the Commission
7 to be qualified Native Hawaiian constituents, as
8 defined in section 3.

9 (B) FORMATION OF ROLL.—Each indi-
10 vidual claiming to be a qualified Native Hawai-
11 ian constituent shall submit to the Commission
12 documentation in the form established by the
13 Commission that is sufficient to enable the
14 Commission to determine whether the individual
15 meets the definition set forth in section 3; pro-
16 vided that an individual presenting evidence
17 that he or she satisfies the definition in section
18 2 of Public Law 103–150 shall be presumed to
19 meet the requirement of section 3(12)(A)(i).

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

22 (i)(I) identify the types of documenta-
23 tion that may be submitted to the Commis-
24 sion that would enable the Commission to
25 determine whether an individual meets the

1 definition of qualified Native Hawaiian
2 constituent set forth in section 3;

3 (II) recognize an individual's identi-
4 fication of lineal ancestors on the 1890
5 Census by the Kingdom of Hawaii as a re-
6 liable indicia of lineal descent from the ab-
7 original, indigenous, native people who re-
8 sided in the islands that now comprise the
9 State of Hawaii on or before January 1,
10 1893; and

11 (III) permit elderly Native Hawaiians
12 and other qualified Native Hawaiian con-
13 stituents lacking birth certificates or other
14 documentation due to birth on Hawaiian
15 Home Lands or other similar cir-
16 cumstances to establish lineal descent by
17 sworn affidavits from 2 or more qualified
18 Native Hawaiian constituents;

19 (ii) establish a standard format for
20 the submission of documentation and a
21 process to ensure veracity; and

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

24 (D) CONSULTATION.—In making deter-
25 minations that each individual proposed for in-

1 clusion on the roll of qualified Native Hawaiian
2 constituents meets the definition of qualified
3 Native Hawaiian constituent in section 3, the
4 Commission may consult with bona fide Native
5 Hawaiian membership organizations, agencies
6 of the State of Hawaii, including but not lim-
7 ited to, the Department of Hawaiian Home
8 Lands, the Office of Hawaiian Affairs, and the
9 State Department of Health, and other entities
10 with expertise and experience in the determina-
11 tion of Native Hawaiian ancestry and lineal
12 descendancy.

13 (E) NOTIFICATION.—The Commission
14 shall—

15 (i) inform an individual whether they
16 have been deemed by the Commission a
17 qualified Native Hawaiian constituent; and

18 (ii) inform an individual of a right to
19 appeal the decision if deemed not to be a
20 qualified Native Hawaiian constituent.

21 (F) CERTIFICATION AND SUBMITTAL OF
22 ROLL TO SECRETARY.—The Commission
23 shall—

24 (i) submit the roll containing the
25 names of those individuals who meet the

1 definition of qualified Native Hawaiian
2 constituent in section 3 to the Secretary
3 within 2 years from the date on which the
4 Commission is fully composed; and

5 (ii) certify to the Secretary that each
6 of the qualified Native Hawaiian constitu-
7 ents proposed for inclusion on the roll
8 meets the definition set forth in section 3.

9 (G) PUBLICATION.—Upon certification by
10 the Commission to the Secretary that those list-
11 ed on the roll meet the definition of qualified
12 Native Hawaiian constituent set forth in section
13 3, the Commission shall publish the notice of
14 the certification of the roll in the Federal Reg-
15 ister, notwithstanding pending appeals pursuant
16 to subparagraph (H).

17 (H) APPEAL.—The Secretary, in consulta-
18 tion with the Commission, shall establish a
19 mechanism for an administrative appeal for any
20 person whose name is excluded from the roll
21 who claims to meet the definition of qualified
22 Native Hawaiian constituent in section 3.

23 (I) PUBLICATION; UPDATE.—The Commis-
24 sion shall—

1 (i) publish the notice of the certifi-
2 cation of the roll regardless of whether ap-
3 peals are pending;

4 (ii) update the roll and provide notice
5 of the updated roll on the final disposition
6 of any appeal;

7 (iii) update the roll to include any
8 person who has been certified by the Com-
9 mission as meeting the definition of quali-
10 fied Native Hawaiian constituent in section
11 3 after the initial publication of the roll or
12 after any subsequent publications of the
13 roll; and

14 (iv) provide a copy of the roll and any
15 updated rolls to the Council.

16 (J) EFFECT OF PUBLICATION.—The publi-
17 cation of the initial and updated roll shall serve
18 as the basis for the eligibility of qualified Na-
19 tive Hawaiian constituents whose names are
20 listed on those rolls to participate in the reorga-
21 nization of the Native Hawaiian governing enti-
22 ty.

23 (2) ORGANIZATION OF COUNCIL.—

24 (A) ORGANIZATION.—The Commission, in
25 consultation with the Secretary, shall hold a

1 minimum of 3 meetings, and each meeting shall
2 be at least 2 working days, of the qualified Na-
3 tive Hawaiian constituents listed on the roll es-
4 tablished under this section—

5 (i) to develop criteria for candidates
6 to be elected to serve on the Council;

7 (ii) to determine the structure of the
8 Council, including the number of Council
9 members; and

10 (iii) to elect members from individuals
11 listed on the roll established under this
12 subsection to the Council.

13 (B) POWERS.—

14 (i) IN GENERAL.—The Council—

15 (I) shall represent those listed on
16 the roll established under this section
17 in the implementation of this Act; and

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

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

25 (iii) ACTIVITIES.—

1 (I) IN GENERAL.—The Council
2 shall conduct, among the qualified
3 Native Hawaiian constituents listed
4 on the roll established under this sub-
5 section, a referendum for the purpose
6 of determining the proposed elements
7 of the organic governing documents of
8 the Native Hawaiian governing entity,
9 including but not limited to—

10 (aa) the proposed criteria
11 for future membership in the Na-
12 tive Hawaiian governing entity,
13 provided that membership is vol-
14 untary and can be relinquished;

15 (bb) the proposed powers
16 and authorities to be exercised by
17 the Native Hawaiian governing
18 entity, as well as the proposed
19 privileges and immunities of the
20 Native Hawaiian governing enti-
21 ty;

22 (cc) the proposed civil rights
23 and protection of the rights of
24 the citizens of the Native Hawai-
25 ian governing entity and all per-

1 sons affected by the exercise of
2 governmental powers and au-
3 thorities of the Native Hawaiian
4 governing entity, including the
5 rights protected under section
6 202 of the Indian Civil Rights
7 Act of 1968 (25 U.S.C. 1302);

8 (dd) the protection and pres-
9 ervation of the rights vested on
10 the date of enactment of this Act
11 of those Native Hawaiians who
12 are eligible to reside on the Ha-
13 waiian homelands under the au-
14 thority of the Hawaiian Homes
15 Commission Act, 1920 (42 Stat.
16 108, chapter 42); and

17 (ee) other issues determined
18 appropriate by the Council.

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

1 draft organic governing documents to
2 ensure that the draft organic gov-
3 erning documents comply with this
4 Act and other Federal law.

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

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

14 (bb) a brief impartial de-
15 scription of the proposed organic
16 governing documents.

17 (IV) ELECTIONS.—

18 (aa) IN GENERAL.—Not
19 sooner than 180 days after the
20 proposed organic governing docu-
21 ments are drafted and distrib-
22 uted, the Council, with the assist-
23 ance of the Secretary, shall hold
24 elections for the purpose of rati-

1 fying the proposed organic gov-
2 erning documents.

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

10 (cc) OFFICERS.—On certifi-
11 cation of the organic governing
12 documents by the Secretary in
13 accordance with paragraph (4),
14 the Council, with the assistance
15 of the Secretary, shall hold elec-
16 tions of the officers of the Native
17 Hawaiian governing entity pursu-
18 ant to paragraph (5).

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

25 (4) CERTIFICATIONS.—

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

13 (i) establish the criteria for member-
14 ship in the Native Hawaiian governing en-
15 tity and provide that membership is vol-
16 untary and can be relinquished;

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

22 (iii) provide authority for the Native
23 Hawaiian governing entity to negotiate
24 with Federal, State, and local govern-
25 ments, and other entities;

1 (iv) provide for the exercise of inher-
2 ent and other appropriate governmental
3 authorities by the Native Hawaiian gov-
4 erning entity;

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

10 (vi) provide for the protection of the
11 civil rights of the citizens of the Native
12 Hawaiian governing entity and all persons
13 affected by the exercise of governmental
14 powers and authorities by the Native Ha-
15 waiian governing entity, including the
16 rights protected under section 202 of the
17 Indian Civil Rights Act of 1968 (25 U.S.C.
18 1302);

19 (vii) provide for the protection and
20 preservation of the rights vested on the
21 date of enactment of this Act of those Na-
22 tive Hawaiians who are eligible to reside
23 on the Hawaiian homelands under the au-
24 thority of the Hawaiian Homes Commis-

1 sion Act, 1920 (42 Stat. 108, chapter 42);

2 and

3 (viii) are consistent with applicable
4 Federal law.

5 (B) RESUBMISSION IN CASE OF NON-
6 COMPLIANCE.—

7 (i) RESUBMISSION BY THE SEC-
8 RETARY.—If the Secretary determines that
9 the organic governing documents, or any
10 part of the documents, do not meet all of
11 the requirements set forth in subparagraph
12 (A), the Secretary shall resubmit the or-
13 ganic governing documents to the Council,
14 along with a justification for each of the
15 Secretary's findings as to why the provi-
16 sions are not in full compliance.

17 (ii) AMENDMENT AND RESUBMISSION
18 OF ORGANIC GOVERNING DOCUMENTS.—If
19 the organic governing documents are re-
20 submitted to the Council by the Secretary
21 under clause (i), the Council shall—

22 (I) amend the organic governing
23 documents to ensure that the docu-
24 ments meet all the requirements set
25 forth in subparagraph (A); and

1 (II) resubmit the amended or-
2 ganic governing documents to the Sec-
3 retary for certification in accordance
4 with this paragraph.

5 (C) CERTIFICATIONS DEEMED MADE.—
6 The certifications under this paragraph shall be
7 deemed to have been made if the Secretary has
8 not acted within 180 days after the date on
9 which the Council has submitted the organic
10 governing documents of the Native Hawaiian
11 governing entity to the Secretary.

12 (5) ELECTIONS.—On completion of the certifi-
13 cations by the Secretary under paragraph (4), the
14 Council, with the assistance of the Secretary, shall
15 hold elections of the officers of the Native Hawaiian
16 governing entity.

17 (6) PROVISION OF ROLL.—The Council shall
18 provide a copy of the roll of qualified Native Hawai-
19 ian constituents to the governing body of the Native
20 Hawaiian governing entity.

21 (7) TERMINATION.—The Council shall cease to
22 exist and shall have no power or authority under
23 this Act after the officers of the governing body who
24 are elected as provided in paragraph (5) are in-
25 stalled.

1 (8) REAFFIRMATION.—Notwithstanding any
 2 other provision of law, the special political and legal
 3 relationship between the United States and the Na-
 4 tive Hawaiian people is hereby reaffirmed and the
 5 United States extends Federal recognition to the
 6 Native Hawaiian governing entity as the representa-
 7 tive sovereign governing body of the Native Hawai-
 8 ian people after—

9 (A) the approval of the organic governing
 10 documents by the Secretary under subpara-
 11 graph (A) or (C) of paragraph (4); and

12 (B) the officers of the Native Hawaiian
 13 governing entity elected under paragraph (5)
 14 have been installed.

15 **SEC. 9. REAFFIRMATION OF DELEGATION OF FEDERAL AU-**
 16 **THORITY TO STATE OF HAWAII; GOVERN-**
 17 **MENTAL AUTHORITY AND POWER; NEGOTIA-**
 18 **TIONS; CLAIMS.**

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

1 (b) GOVERNMENTAL AUTHORITY AND POWER.—

2 (1) IN GENERAL.—Consistent with the policies
3 of the United States set forth in section 4(a)(4), the
4 Native Hawaiian governing entity shall be vested
5 with the inherent powers and privileges of self-gov-
6 ernment of a native government under existing law,
7 except as set forth in this Act. Said powers and
8 privileges may be modified by agreement between
9 the Native Hawaiian governing entity, the United
10 States, and the State of Hawaii pursuant to the ne-
11 gotiations authorized in subsection (c)(1), and sub-
12 ject to the enactment of implementing legislation
13 and to the limit described by section 10(a).

14 (2) MEMBERSHIP.—Once the United States ex-
15 tends Federal recognition to the Native Hawaiian
16 governing entity, the United States will recognize
17 and affirm the Native Hawaiian governing entity’s
18 inherent power and authority to determine its own
19 membership criteria, to determine its own member-
20 ship, and to grant, deny, revoke, or qualify member-
21 ship without regard to whether any person was or
22 was not deemed to be a qualified Native Hawaiian
23 constituent under this Act. The Native Hawaiian
24 governing entity must provide that membership in

1 the Native Hawaiian governing entity is voluntary
2 and can be relinquished.

3 (c) NEGOTIATIONS.—

4 (1) IN GENERAL.—Upon the reaffirmation of
5 the special political and legal relationship between
6 the United States and the Native Hawaiian gov-
7 erning entity, the United States and the State of
8 Hawaii may enter into negotiations with the Native
9 Hawaiian governing entity designed to lead to an
10 agreement or agreements addressing such matters
11 as—

12 (A) the transfer of State of Hawaii lands
13 and surplus Federal lands, natural resources,
14 and other assets, and the protection of existing
15 rights related to such lands or resources;

16 (B) the exercise of governmental authority
17 over any transferred lands, natural resources,
18 and other assets, including land use;

19 (C) the exercise of civil and criminal juris-
20 diction;

21 (D) the exercise of the authority to tax and
22 other powers and authorities that are recog-
23 nized by the United States as powers and au-
24 thorities typically exercised by governments rep-

1 resenting indigenous, native people of the
2 United States;

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

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

9 (2) AMENDMENTS TO EXISTING LAWS.—Upon
10 agreement on any matter or matters negotiated with
11 the United States or the State of Hawaii, and the
12 Native Hawaiian governing entity, the parties may
13 submit—

14 (A) to the Committee on Indian Affairs of
15 the Senate, the Committee on Energy and Nat-
16 ural Resources of the Senate, and the Com-
17 mittee on Natural Resources of the House of
18 Representatives recommendations for proposed
19 amendments to Federal law that will enable the
20 implementation of agreements reached between
21 the governments; and

22 (B) to the Governor and the legislature of
23 the State of Hawaii, recommendations for pro-
24 posed amendments to State law that will enable

1 the implementation of agreements reached be-
2 tween the governments.

3 (3) During the period between the reaffirmation
4 of the special political and legal relationship between
5 the United States and the Native Hawaiian gov-
6 erning entity, and the subsequent enactment of leg-
7 islation to implement the agreement or agreements
8 negotiated under paragraph (1):

9 (A) There shall be no Indian country with-
10 in the State of Hawaii.

11 (B) The United States shall not take land
12 in trust for the benefit of the Native Hawaiian
13 governing entity or for the benefit of members
14 of the Native Hawaiian governing entity.

15 (C) The United States shall not restrict
16 the alienability of land owned by the Native Ha-
17 waiian governing entity.

18 (D) Members of the Native Hawaiian gov-
19 erning entity shall continue to be subject to the
20 civil and criminal jurisdiction of Federal and
21 State courts.

22 (E) Nothing in this Act alters or preempts
23 the existing legislative, regulatory, or taxation
24 authority of the State of Hawaii over individ-
25 uals who are members of the Native Hawaiian

1 governing entity or over property owned by
2 those individuals.

3 (F) The Native Hawaiian governing entity
4 shall not exercise criminal, civil, adjudicative,
5 legislative, regulatory, or taxation authority or
6 jurisdiction over individuals who are not mem-
7 bers of the Native Hawaiian governing entity
8 without their express consent.

9 (G) The Native Hawaiian governing entity
10 shall not exercise criminal, civil, adjudicative,
11 legislative, regulatory, or taxation authority or
12 jurisdiction over corporations or other associa-
13 tions or entities that are owned wholly or in
14 majority part by persons who are not members
15 of the Native Hawaiian governing entity with-
16 out their express consent.

17 (H) The Native Hawaiian governing entity
18 shall be immune from any lawsuit in any Fed-
19 eral or State court, with the exception described
20 in section 10(c)(3) and the exceptions set forth
21 in clauses (i) through (iv) of this subparagraph.

22 (i) The Native Hawaiian governing
23 entity may waive its sovereign immunity,
24 provided that it does so clearly and un-
25 equivocally.

1 (ii) The Native Hawaiian governing
2 entity shall not be immune from any law-
3 suit brought by the United States in any
4 Federal court.

5 (iii) The Native Hawaiian governing
6 entity shall not be immune from any law-
7 suit brought by the State of Hawaii to en-
8 force the regulatory authority of the State
9 recognized in this Act.

10 (iv) Real property owned in fee simple
11 by the Native Hawaiian governing entity
12 shall not be immune from any in rem ac-
13 tion filed by the State of Hawaii.

14 (I) Governmental, nonbusiness, non-
15 commercial activities undertaken by the Native
16 Hawaiian governing entity, or by a corporation
17 or other association or entity wholly owned by
18 the Native Hawaiian governing entity, shall not
19 be subject to the regulatory or taxation author-
20 ity of the State of Hawaii, except such activities
21 shall be subject to the authority of the State to
22 regulate activities for the protection of the pub-
23 lic health or safety until such time as the Na-
24 tive Hawaiian governing entity and the State of
25 Hawaii come to an interim agreement approved

1 by the Secretary governing the extent of such
2 regulation based on a determination by the Sec-
3 retary that the interim agreement is consistent
4 with applicable Federal law.

5 (J) Commercial or business activities un-
6 dertaken by the Native Hawaiian governing en-
7 tity, or by a corporation or other association or
8 entity owned, operated, or sponsored by the Na-
9 tive Hawaiian governing entity, shall be subject
10 to the regulatory and taxation authority of the
11 State of Hawaii to the same extent as commer-
12 cial or business activities undertaken by others.

13 (K) Subject to subparagraph (I), activities
14 conducted on real property owned by, leased by,
15 or subject to the control of the Native Hawaiian
16 governing entity shall be subject to the regu-
17 latory and taxation authority of the State of
18 Hawaii to the same extent as activities con-
19 ducted on real property owned by, leased by, or
20 subject to the control of others.

21 (L) Subject to subparagraph (O), real
22 property owned by, leased by, or subject to the
23 control of the Native Hawaiian governing enti-
24 ty, and development of such property, shall be
25 subject to the regulatory and taxation authority

1 of the State of Hawaii to the same extent as
2 real property owned by, leased by, or subject to
3 the control of others.

4 (M) Any commercial or business corpora-
5 tion or other commercial or business association
6 or entity owned, operated, or sponsored by the
7 Native Hawaiian governing entity shall be sub-
8 ject to the regulatory and taxation authority of
9 the State of Hawaii to the same extent as com-
10 mercial and business corporations and other
11 commercial and business associations and enti-
12 ties owned, operated, or sponsored by others.

13 (N) Any specific power, authority, or re-
14 striction set forth in this paragraph shall expire
15 upon enactment of legislation that implements
16 an agreement or agreements negotiated under
17 paragraph (1) and that expressly replaces or al-
18 ters such power, authority, or restriction.

19 (O) Nothing in this paragraph diminishes
20 any right or immunity (including any immunity
21 from State or local taxation) granted to Native
22 Hawaiians or their property by the Hawaiian
23 Homes Commission Act, 1920 (42 Stat. 108,
24 chapter 42), the Act entitled "An Act to pro-
25 vide for the admission of the State of Hawaii

1 into the Union”, approved March 18, 1959
2 (Public Law 86–3; 73 Stat. 4), or sections
3 10001 through 10004 of the Department of
4 Defense Appropriations Act, 1994 (sections
5 10001 through 10004 of Public Law 103–139;
6 107 Stat. 1418, 1480 (1993)).

7 (P) Notwithstanding any other provision of
8 this Act—

9 (i) the officers and employees of the
10 Native Hawaiian governing entity shall not
11 be immune from the criminal laws of the
12 State of Hawaii; and

13 (ii) the State of Hawaii shall retain
14 its authority to prosecute any violation of
15 the criminal laws of the State.

16 (4) Nothing in paragraph (3) should be inter-
17 preted as establishing any presumption about the
18 powers or authorities that could properly be exer-
19 cised by the United States, the State of Hawaii, or
20 the Native Hawaiian governing entity after further
21 legislation, including legislation enacted to imple-
22 ment any agreement negotiated under this sub-
23 section.

24 (d) CLAIMS.—Nothing in this Act—

1 (1) alters existing law, including case law, re-
2 garding obligations of the United States or the State
3 of Hawaii relating to events or actions that occurred
4 prior to recognition of the Native Hawaiian gov-
5 erning entity;

6 (2) creates, enlarges, revives, modifies, dimin-
7 ishes, extinguishes, waives, or otherwise alters any
8 Federal or State claim or cause of action against the
9 United States or its officers or the State of Hawaii
10 or its officers or any other person or entity, or any
11 defense (including the defense of statute of limita-
12 tions) to any such claim or cause of action, except
13 in the case of claims or causes of action challenging
14 the constitutionality or legality of programs benefit-
15 ting Native Hawaiians to the extent that this Act
16 creates or enlarges any defense to any such claim or
17 cause of action;

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

1 ganic Act (31 Stat. 141), or any other Federal stat-
2 ute, except as expressly amended by this Act; or

3 (4) alters the sovereign immunity of the United
4 States or of the State of Hawaii.

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

6 (a) INDIAN GAMING REGULATORY ACT.—

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

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

23 (b) SINGLE GOVERNING ENTITY.—This Act will re-
24 sult in the recognition of the single Native Hawaiian gov-
25 erning entity. Additional Native Hawaiian groups shall not

1 be eligible for acknowledgment pursuant to the Federal
2 Acknowledgment Process set forth in part 83 of title 25,
3 Code of Federal Regulations, or any other administrative
4 acknowledgment or recognition process.

5 (c) INDIAN PROGRAMS, SERVICES, AND LAWS.—

6 (1) IN GENERAL.—Notwithstanding any other
7 provision of this Act, nothing in this Act extends eli-
8 gibility for any Indian program or service to the Na-
9 tive Hawaiian governing entity or its members un-
10 less a statute governing such a program or service
11 expressly provides that Native Hawaiians or the Na-
12 tive Hawaiian governing entity is eligible for such
13 program or service. Nothing in this Act affects the
14 eligibility of any person for any program or service
15 under any statute or law in effect before the date of
16 enactment of this Act.

17 (2) APPLICABILITY OF OTHER TERMS.—Subject
18 to paragraph (3), in Federal statutes or regulations
19 in force prior to the United States recognition of the
20 Native Hawaiian governing entity, the terms “In-
21 dian” and “Native American”, and references to In-
22 dian tribes, bands, nations, pueblos, villages, or
23 other organized groups or communities, shall not
24 apply to the Native Hawaiian governing entity or its
25 members, unless the Federal statute or regulation

1 expressly applies to Native Hawaiians or the Native
2 Hawaiian governing entity.

3 (3) INDIAN CIVIL RIGHTS ACT OF 1968.—The
4 Council and the Native Hawaiian governing entity
5 shall be subject to sections 201 through 203 of the
6 Indian Civil Rights Act of 1968 (25 U.S.C. 1301–
7 1303). Nothing in such Act, and nothing in this
8 paragraph, shall be interpreted to expand the powers
9 and authorities of the Council or the Native Hawai-
10 ian governing entity that are described elsewhere in
11 this Act.

12 (d) REAL PROPERTY TRANSFERS.—Section 2116 of
13 the Revised Statutes (commonly known as the “Indian
14 Trade and Intercourse Act”) (25 U.S.C. 177) does not
15 apply to any purchase, grant, lease, or other conveyance
16 of lands, or of any title or claim thereto, from Native Ha-
17 waiians, Native Hawaiian entities, or the Kingdom of Ha-
18 waii that occurred prior to the date of the United States’
19 recognition of the Native Hawaiian governing entity.

20 **SEC. 11. RULE OF CONSTRUCTION.**

21 Nothing in this Act impliedly amends, repeals, super-
22 sedes, abrogates, or overrules any provision of Federal
23 law, including case law, affecting the privileges, immuni-
24 ties, powers, authorities, or jurisdiction of any Indian tribe
25 outside the State of Hawaii.

1 **SEC. 12. SEVERABILITY.**

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

5 **SEC. 13. AUTHORIZATION OF APPROPRIATIONS.**

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

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