

New Hampshire (Mrs. SHAHEEN) were added as cosponsors of amendment No. 116 intended to be proposed to H.R. 1, a bill making supplemental appropriations for job preservation and creation, infrastructure investment, energy efficiency and science, assistance to the unemployed, and State and local fiscal stabilization, for fiscal year ending September 30, 2009, and for other purposes.

## AMENDMENT NO. 138

At the request of Mr. DORGAN, the name of the Senator from Hawaii (Mr. INOUE) was added as a cosponsor of amendment No. 138 intended to be proposed to H.R. 1, a bill making supplemental appropriations for job preservation and creation, infrastructure investment, energy efficiency and science, assistance to the unemployed, and State and local fiscal stabilization, for fiscal year ending September 30, 2009, and for other purposes.

## AMENDMENT NO. 139

At the request of Mr. DORGAN, the name of the Senator from Hawaii (Mr. INOUE) was added as a cosponsor of amendment No. 139 intended to be proposed to H.R. 1, a bill making supplemental appropriations for job preservation and creation, infrastructure investment, energy efficiency and science, assistance to the unemployed, and State and local fiscal stabilization, for fiscal year ending September 30, 2009, and for other purposes.

## AMENDMENT NO. 140

At the request of Mr. FEINGOLD, the name of the Senator from Tennessee (Mr. CORKER) was added as a cosponsor of amendment No. 140 proposed to H.R. 1, a bill making supplemental appropriations for job preservation and creation, infrastructure investment, energy efficiency and science, assistance to the unemployed, and State and local fiscal stabilization, for fiscal year ending September 30, 2009, and for other purposes.

## AMENDMENT NO. 145

At the request of Mr. REID, his name was added as a cosponsor of amendment No. 145 proposed to H.R. 1, a bill making supplemental appropriations for job preservation and creation, infrastructure investment, energy efficiency and science, assistance to the unemployed, and State and local fiscal stabilization, for fiscal year ending September 30, 2009, and for other purposes.

## AMENDMENT NO. 161

At the request of Mr. BOND, the names of the Senator from Ohio (Mr. VOINOVICH), the Senator from Alaska (Mr. BEGICH) and the Senator from Massachusetts (Mr. KENNEDY) were added as cosponsors of amendment No. 161 proposed to H.R. 1, a bill making supplemental appropriations for job preservation and creation, infrastructure investment, energy efficiency and science, assistance to the unemployed, and State and local fiscal stabilization, for fiscal year ending September 30, 2009, and for other purposes.

At the request of Mr. KERRY, his name was added as a cosponsor of amendment No. 161 proposed to H.R. 1, supra.

## AMENDMENT NO. 171

At the request of Mr. CARPER, the name of the Senator from New Jersey (Mr. MENENDEZ) was added as a cosponsor of amendment No. 171 intended to be proposed to H.R. 1, a bill making supplemental appropriations for job preservation and creation, infrastructure investment, energy efficiency and science, assistance to the unemployed, and State and local fiscal stabilization, for fiscal year ending September 30, 2009, and for other purposes.

## AMENDMENT NO. 173

At the request of Mr. LEVIN, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of amendment No. 173 intended to be proposed to H.R. 1, a bill making supplemental appropriations for job preservation and creation, infrastructure investment, energy efficiency and science, assistance to the unemployed, and State and local fiscal stabilization, for fiscal year ending September 30, 2009, and for other purposes.

## AMENDMENT NO. 189

At the request of Mr. DEMINT, the names of the Senator from Louisiana (Mr. VITTER), the Senator from Kansas (Mr. BROWNBACK), the Senator from South Dakota (Mr. THUNE) and the Senator from Oklahoma (Mr. INHOFE) were added as cosponsors of amendment No. 189 proposed to H.R. 1, a bill making supplemental appropriations for job preservation and creation, infrastructure investment, energy efficiency and science, assistance to the unemployed, and State and local fiscal stabilization, for fiscal year ending September 30, 2009, and for other purposes.

## AMENDMENT NO. 197

At the request of Mr. THUNE, the names of the Senator from Arizona (Mr. KYL), the Senator from South Carolina (Mr. DEMINT) and the Senator from Nebraska (Mr. JOHANN) were added as cosponsors of amendment No. 197 proposed to H.R. 1, a bill making supplemental appropriations for job preservation and creation, infrastructure investment, energy efficiency and science, assistance to the unemployed, and State and local fiscal stabilization, for fiscal year ending September 30, 2009, and for other purposes.

## AMENDMENT NO. 204

At the request of Ms. LANDRIEU, the name of the Senator from Florida (Mr. NELSON) was added as a cosponsor of amendment No. 204 intended to be proposed to H.R. 1, a bill making supplemental appropriations for job preservation and creation, infrastructure investment, energy efficiency and science, assistance to the unemployed, and State and local fiscal stabilization, for fiscal year ending September 30, 2009, and for other purposes.

## AMENDMENT NO. 206

At the request of Ms. LANDRIEU, the name of the Senator from Florida (Mr.

NELSON) was added as a cosponsor of amendment No. 206 intended to be proposed to H.R. 1, a bill making supplemental appropriations for job preservation and creation, infrastructure investment, energy efficiency and science, assistance to the unemployed, and State and local fiscal stabilization, for fiscal year ending September 30, 2009, and for other purposes.

## STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. REED (for himself, Mr. DODD, Mr. KERRY, Mr. SCHUMER, Ms. STABENOW, and Mr. KENNEDY):

S. 376. A bill to provide rules for the modification or disposition of certain assets by real estate mortgage investment conduits pursuant to division A of the Emergency Economic Stabilization Act of 2008, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

Mr. REED. Mr. President, today I introduce, along with Senators DODD, KERRY, SCHUMER, and STABENOW, the Real Estate Mortgage Investment Conduit, REMIC, Improvement Act. This legislation could provide one of the keys to solving our national foreclosure crisis by unlocking mortgage securitization trusts so that more homeowners can stay in their homes.

In my own state of Rhode Island, 7.30 percent of all outstanding home loans are delinquent and 5.33 percent of all home loans are in the foreclosure process. This is the 10th highest foreclosure rate in the Nation, and the highest in New England. I have heard story after story of how difficult it is to get a loan modified or restructured if it is part of a mortgage securitization pool. As we have learned, part of the reason we are in the worst housing crisis since the Depression is that Wall Street firms packaged mortgages into pools and then sold different tranches of these pools to investors from all over the world. This diverse and convoluted ownership structure has made it difficult to get investor approval to modify or restructure them. Unlike in the movie "It's a Wonderful Life," most families can no longer walk into their local bank to talk to George Bailey about modifying or restructuring their loan.

The Emergency Economic Stabilization Act of 2008 required the Treasury Department to use its new authorities to incentivize servicers toward more loan restructurings. However, it has become clear that additional legislation is needed to free servicers of these loan pools from conflicting requirements regarding modifications and provide them with the ability to sell mortgages to Treasury for foreclosure avoidance.

Many servicers, managing pools of loans for investors, are constrained by the trust agreements from modifying loans to a level that families can afford to pay or from selling the underlying

mortgage loans. In other cases, servicers must obtain the approval of a significant number of the trust's beneficiaries or third parties in order to make changes to how loans within the pool are handled. However, the trust agreements also provide that servicers must amend the agreements if doing so would be helpful or necessary to stay in compliance with tax rules under the REMIC statute; REMIC status frees these securitization trusts from taxation at the entity level and therefore provides important benefits to its investors.

Under the REMIC Improvement Act, in order to keep their preferred tax status under the REMIC provisions of the Internal Revenue Code, servicers would need to modify their trust agreements to remove artificial restrictions that keep them from modifying loans that provide a greater return to investors as a whole than foreclosing would, and keep families in their homes to prevent entirely unnecessary foreclosures at the same time. This is a practical way for servicers to modify loans without undue fear of legal sanctions. This also would allow servicers to sell loans to Treasury for restructuring without having to obtain an affirmative response by a significant number of the beneficiaries of the trust if it was for the good of the overall trust. Participation in any Treasury program would be voluntary, but some of the key legal impediments to participation would be removed.

Additionally, the Treasury Department has not put in place a loan modification program, even after Congress gave it the authority to do so in the Emergency Economic Stabilization Act. Many experts believe such a program would be helpful in helping resolve the current housing crisis. The REMIC Improvement Act will ensure that Treasury uses its authority to set up a program to achieve broad-scale modifications and, where necessary, dispositions of foreclosed property.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 376

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Real Estate Mortgage Investment Conduit Improvement Act of 2009".

#### SEC. 2. SPECIAL RULES FOR MODIFICATION OR DISPOSITION OF QUALIFIED MORTGAGES OR FORECLOSURE PROPERTY BY REAL ESTATE MORTGAGE INVESTMENT CONDUITS.

(a) IN GENERAL.—If a REMIC (as defined in section 860D(a) of the Internal Revenue Code of 1986) modifies or disposes of a troubled asset under the Troubled Asset Relief Program established by the Secretary of the Treasury under section 101(a) of the Emergency Economic Stabilization Act of 2008 or under rules established by the Secretary under section 3 of this Act—

(1) such modification or disposition shall not be treated as a prohibited transaction under section 860F(a)(2) of such Code, and

(2) for purposes of part IV of subchapter M of chapter 1 of such Code—

(A) an interest in the REMIC shall not fail to be treated as a regular interest (as defined in section 860G(a)(1) of such Code) solely because of such modification or disposition, and

(B) any proceeds resulting from such modification or disposition shall be treated as amounts received under qualified mortgages.

(b) TERMINATION OF REMIC.—For purposes of the Internal Revenue Code of 1986, an entity which is a REMIC (as defined in section 860D(a) of the Internal Revenue Code of 1986) shall cease to be a REMIC if the instruments governing the conduct of servicers or trustees with respect to qualified mortgages (as defined in section 860G(a)(3) of such Code) or foreclosure property (as defined in section 860G(a)(8) of such Code)—

(1) prohibit or restrict (including restrictions on the type, number, percentage, or frequency of modifications or dispositions) such servicers or trustees from reasonably modifying or disposing of such qualified mortgages or such foreclosure property in order to participate in the Troubled Asset Relief Program established by the Secretary of the Treasury under section 101(a) of the Emergency Economic Stabilization Act of 2008 or under rules established by the Secretary under section 3 of this Act,

(2) commit to a person other than the servicer or trustee the authority to prevent the reasonable modification or disposition of any such qualified mortgage or foreclosure property,

(3) require a servicer or trustee to purchase qualified mortgages which are in default or as to which default is reasonably foreseeable for the purposes of reasonably modifying such mortgages or as a consequence of such reasonable modification, or

(4) fail to provide that any duty a servicer or trustee owes when modifying or disposing of qualified mortgages or foreclosure property shall be to the trust in the aggregate and not to any individual or class of investors.

(c) EFFECTIVE DATES.—

(1) SUBSECTION (a).—Subsection (a) shall apply to modification and dispositions after the date of the enactment of this Act, in taxable years ending on or after such date.

(2) SUBSECTION (b).—

(A) IN GENERAL.—Except as provided in subparagraph (B), subsection (b) shall take effect on the date that is 3 months after the date of the enactment of this Act.

(B) EXCEPTION.—The Secretary of the Treasury may waive the application of subsection (b) in whole or in part for any period of time with respect to any entity if—

(i) the Secretary determines that such entity is unable to comply with the requirements of such subsection in a timely manner, or

(ii) the Secretary determines that such waiver would further the purposes of this Act.

#### SEC. 3. ESTABLISHMENT OF A HOME MORTGAGE LOAN RELIEF PROGRAM UNDER THE TROUBLED ASSET RELIEF PROGRAM AND RELATED AUTHORITIES.

(a) ESTABLISHMENT.—Not later than 30 days after the date of enactment of this Act, the Secretary of the Treasury shall establish and implement a program under the Troubled Asset Relief Program and related authorities established under section 101(a) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5211(a))—

(1) to achieve appropriate broad-scale modifications or dispositions of troubled home mortgage loans; and

(2) to achieve appropriate broad-scale dispositions of foreclosure property.

(b) RULES.—The Secretary of the Treasury shall promulgate rules governing the—

(1) reasonable modification of any home mortgage loan pursuant to the requirements of this Act; and

(2) disposition of any such home mortgage loan or foreclosed property pursuant to the requirements of this Act.

(c) CONSIDERATIONS.—In developing the rules required under subsection (b), the Secretary of the Treasury shall take into consideration—

(1) the debt-to-income ratio, loan-to-value ratio, or payment history of the mortgagors of such home mortgage loans; and

(2) any other factors consistent with the intent to streamline modifications of troubled home mortgage loans into sustainable home mortgage loans.

(d) USE OF BROAD AUTHORITY.—The Secretary of the Treasury shall use all available authorities to implement the home mortgage loan relief program established under this section, including, as appropriate—

(1) home mortgage loan purchases;

(2) home mortgage loan guarantees;

(3) making and funding commitments to purchase home mortgage loans or mortgage-backed securities;

(4) buying down interest rates and principal on home mortgage loans;

(5) principal forbearance; and

(6) developing standard home mortgage loan modification and disposition protocols, which shall include ratifying that servicer action taken in anticipation of any necessary changes to the instruments governing the conduct of servicers or trustees with respect to qualified mortgages or foreclosure property are consistent with the Secretary of the Treasury's standard home mortgage loan modification and disposition protocols.

(e) PAYMENTS AUTHORIZED.—The Secretary of the Treasury is authorized to pay servicers for home mortgage loan modifications or other dispositions consistent with any rules established under subsection (b).

(f) RULE OF CONSTRUCTION.—Any standard home mortgage loan modification and disposition protocols developed by the Secretary of the Treasury under this section shall be construed to constitute standard industry practice.

By Mr. LEAHY (for himself, Mr. HATCH, Mrs. FEINSTEIN, Mr. CORKER, and Mrs. BOXER):

S. 379. A bill to provide fair compensation to artists for use of their sound recordings; to the Committee on the Judiciary.

Mr. LEAHY. Mr. President, today, Senator HATCH and I renew our bipartisan effort to improve and modernize our intellectual property laws. We are reintroducing the Performance Rights Act to ensure artists are compensated fairly when their works are used. I am pleased that performance rights legislation will be introduced in the House today, as well.

When radio stations broadcast music, listeners are enjoying the intellectual property of two creative artists—the songwriter and the performer. The success, and the artistic quality, of any recorded song depends on both. Radio stations pay songwriters for a license to broadcast the music they have composed. The songwriters' work is promoted by the air play, but no one seriously questions that the songwriter

should be paid for the use of his or her work. The performing artist, however, is not paid by the radio station.

The time has come to end this inequity. Its historical justification has been overtaken by technological change. In the digital world, we enjoy music transmitted over a variety of platforms. When webcasters, satellite radio companies, or cable companies play music, and profit from its use, they compensate the performing artists. Terrestrial broadcast radio is the only platform that still does not pay for the use of sound recordings.

Radio play surely has promotional value to the artists, but there is a property right in the sound recording, and those that create the content should be compensated for their work. The United States is behind the times in this regard. Ours is the only Nation that is a member of the Organization for Economic Cooperation and Development but still does not compensate artists. An unfortunate result of the lack of a performance rights in the United States is that American artists are not compensated when their recordings are played abroad.

Artists should have the same rights regardless of the platform over which their work is used. All platforms promote artists and all platforms profit off the artists' work. Today, different rate standards and restrictions are applied to different music delivery platforms, with broadcast radio stations being uniquely and completely exempt. In the last Congress, Senator FEINSTEIN chaired a hearing in the Judiciary Committee that addressed whether the time has come to achieve platform parity by harmonizing the terms and conditions for use of the statutory copyright license. Senator FEINSTEIN has been a leader on this issue, and I am pleased to accept her offer to lead negotiations this year to develop a new standard that can be applied across platforms.

We also need to make certain that songwriters are protected in this process. Songwriters currently do receive compensation from radio stations. The changes made by this legislation, which will ensure performing artists are compensated, should not have any negative effect on songwriters. I will work closely with the songwriters and we will make sure that is the case.

In introducing the Performance Rights Act today, we are sensitive to the needs of broadcast radio stations; we are sensitive to the regulatory regime under which they operate; and we are particularly sensitive to the fact that it is not just artists, but also broadcasters that are facing a difficult economic climate. Rather than require all radio stations to pay fair market value to artists for the songs they play, the legislation includes special provisions for noncommercial and all but the largest commercial stations. In addition, every radio station can use a statutory copyright license to transmit sound recordings, instead of negoti-

ating licenses separately in the marketplace.

Noncommercial stations have a different mission than do commercial stations and they require a different status. Our legislation, appropriately, permits noncommercial stations to take advantage of the statutory copyright license subject only to a nominal annual payment to the artists.

Similarly, we intend to nurture, not threaten, small commercial broadcasters. Smaller music stations are working hard to serve their local communities while finding the right formula to increase their audience size. We intend to foster the growth of these stations—nearly 85 percent of the radio stations in Vermont—and the legislation does that by also providing a flat fee option for use of the statutory license to the more than 75 percent of commercial music stations earning less than \$1.25 million a year. This payment may only provide minimal compensation to the artists whose music is used by the vast majority of commercial music stations, particularly when viewed against the fair market value of the music, but by helping radio stations grow, artists, the stations, and the public will all benefit.

I am an avid music fan and much of the music I enjoy I first heard on the radio. There is no question that radio play promotes artists and their sound recordings; there is also no doubt that radio stations profit directly from playing the artists' recordings.

Traditional, over-the-air radio remains vital to the vibrancy of our music culture, and I want to continue to see it prosper as it transitions to digital. But I also want to ensure that the performing artist, the one whose sound recordings drive the success of broadcast radio, is compensated fairly. I will continue to work with the broadcasters—large and small, commercial and noncommercial—to strike the right balance.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 379

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Performance Rights Act".

**SEC. 2. EQUITABLE TREATMENT FOR TERRESTRIAL BROADCASTS.**

(a) PERFORMANCE RIGHT APPLICABLE TO RADIO TRANSMISSIONS GENERALLY.—Section 106(6) of title 17, United States Code, is amended to read as follows:

"(6) in the case of sound recordings, to perform the copyrighted work publicly by means of an audio transmission."

(b) INCLUSION OF TERRESTRIAL BROADCASTS IN EXISTING PERFORMANCE RIGHT.—Section 114(d)(1) of title 17, United States Code, is amended—

(1) in the matter preceding subparagraph (A), by striking "a digital" and inserting "an"; and

(2) by striking subparagraph (A).

(c) INCLUSION OF TERRESTRIAL BROADCASTS IN EXISTING STATUTORY LICENSE SYSTEM.—Section 114(j)(6) of title 17, United States Code, is amended by striking "digital".

(d) ELIMINATING REGULATORY BURDENS FOR TERRESTRIAL BROADCAST STATIONS.—Section 114(d)(2) of title 17, United States Code, is amended in the matter preceding subparagraph (A) by striking "subsection (f) if" and inserting "subsection (f) if, other than for a nonsubscription and noninteractive broadcast transmission,".

**SEC. 3. SPECIAL TREATMENT FOR SMALL, NONCOMMERCIAL, EDUCATIONAL, AND RELIGIOUS STATIONS AND CERTAIN USES.**

(a) SMALL, NONCOMMERCIAL, EDUCATIONAL, AND RELIGIOUS RADIO STATIONS.—

(1) IN GENERAL.—Section 114(f)(2) of title 17, United States Code, is amended by adding at the end the following:

"(D) Notwithstanding the provisions of subparagraphs (A) through (C), each individual terrestrial broadcast station that has gross revenues in any calendar year of less than \$1,250,000 may elect to pay for its over-the-air nonsubscription broadcast transmissions a royalty fee of \$5,000 per year, in lieu of the amount such station would otherwise be required to pay under this paragraph. Such royalty fee shall not be taken into account in determining royalty rates in a proceeding under chapter 8, or in any other administrative, judicial, or other Federal Government proceeding.

"(E) Notwithstanding the provisions of subparagraphs (A) through (C), each individual terrestrial broadcast station that is a public broadcasting entity as defined in section 118(f) may elect to pay for its over-the-air nonsubscription broadcast transmissions a royalty fee of \$1,000 per year, in lieu of the amount such station would otherwise be required to pay under this paragraph. Such royalty fee shall not be taken into account in determining royalty rates in a proceeding under chapter 8, or in any other administrative, judicial, or other Federal Government proceeding."

(2) PAYMENT DATE.—A payment under subparagraph (D) or (E) of section 114(f)(2) of title 17, United States Code, as added by paragraph (1), shall not be due until the due date of the first royalty payments for nonsubscription broadcast transmissions that are determined, after the date of the enactment of this Act, under such section 114(f)(2) by reason of the amendment made by section 2(b)(2) of this Act.

(b) TRANSMISSION OF RELIGIOUS SERVICES; INCIDENTAL USES OF MUSIC.—Section 114(d)(1) of title 17, United States Code, as amended by section 2(b), is further amended by inserting the following before subparagraph (B):

"(A) an eligible nonsubscription transmission of—

"(i) services at a place of worship or other religious assembly; and

"(ii) an incidental use of a musical sound recording;"

**SEC. 4. AVAILABILITY OF PER PROGRAM LICENSE.**

Section 114(f)(2)(B) of title 17, United States Code, is amended by inserting after the second sentence the following new sentence: "Such rates and terms shall include a per program license option for terrestrial broadcast stations that make limited feature uses of sound recordings."

**SEC. 5. NO HARMFUL EFFECTS ON SONGWRITERS.**

(a) PRESERVATION OF ROYALTIES ON UNDERLYING WORKS.—Section 114(i) of title 17, United States Code, is amended in the second sentence by striking "It is the intent of Congress that royalties" and inserting "Royalties".

(b) PUBLIC PERFORMANCE RIGHTS AND ROYALTIES.—Nothing in this Act shall adversely affect in any respect the public performance rights of or royalties payable to songwriters or copyright owners of musical works.

Mr. HATCH. Mr. President, I rise today to express my support for the Performance Rights Act, S. 379, introduced today by Senate Judiciary Committee chairman, PATRICK LEAHY, and myself. It is time to amend copyright law to establish performance rights on sound recordings. I believe that artists should be compensated for their work. This is an issue of fairness and equity.

I agree with the position of the Department of Commerce Working Group on Intellectual Property Rights: the lack of a performance right in sound recordings is “an historical anomaly that does not have a strong policy justification—and certainly not a legal one.”

This legislation would ensure that musical performers and songwriters receive fair compensation from all companies across the broadcast spectrum, not just from Web casters, satellite radio providers, and cable companies. The proposed legislation attempts to strike a harmonious balance between fair compensation for artists and a vibrant radio industry in the U.S.

By amending sections 106 and 114 of the Copyright Act, the Performance Rights Act would apply the performance right in a sound recording to all audio transmissions thereby removing the exemption on paying performance royalties currently in place for over-the-air broadcasters.

The legislation also provides for a blanket license of \$5,000 for small commercial broadcasters whose gross revenues do not exceed \$1.25 million a year. In addition, noncommercial broadcasters as defined by section 118 of the Copyright Act, such as public, educational and religious stations, would have a blanket license of \$1,000 per year. No payment would be due until the Copyright Royalty Board determines the rates for large commercial broadcasters. The proposed language provides that sound recordings used only incidentally by a broadcaster and sound recordings used in the transmission of a religious service are exempt.

Finally, the legislation strengthens the provision in section 114 that preserves the rights of songwriters and clarifies that nothing in the Performance Rights Act shall adversely affect the public performance rights of songwriters or copyright owners of musical works.

Let me repeat, this provision is to ensure that songwriters are not adversely affected by enactment of this bill. I understand the concerns of the songwriting community and the difficulty some have in recouping royalties on infringed works. We must ensure that our songwriters are not placed in situations where their property rights are ignored by infringers. Chairman LEAHY agrees that additional

work to address the issue of willful infringement is necessary before enactment, and I look forward to working with him.

I want the broadcasting community to know that I am committed to working with them throughout the legislative process. I continue to have an open-door policy and welcome a productive dialogue on this issue. There is no question that radio play promotes artists and their sound recordings. There is also no question that radio stations profit directly from playing the artists' recordings. Indeed, we must strike a fair balance, one that fosters a vibrant broadcast radio community and compensates artists for their work.

By Mr. AKAKA (for himself, Mr. INOUE, and Ms. MURKOWSKI):

S. 381. A bill to express the policy of the United States regarding the United States relationship with Native Hawaiians, to provide a process for the reorganization of a Native Hawaiian government and the recognition by the United States of the Native Hawaiian government, and for other purposes; to the Committee on Indian Affairs.

Mr. AKAKA. Mr. President. Today I introduce the Native Hawaiian Government Reorganization Act of 2009. While this legislation is especially significant to Native Hawaiians, I introduce this measure for all the people of Hawaii. This bill authorizes a process to extend federal recognition to Hawaii's indigenous people for the purposes of a government-to-government relationship with the United States. This benefits all the people of Hawaii, as they will now have a structured, formal process to come together to address many unresolved issues confronting our state and our residents.

Unlike our Nation's other indigenous people, the Federal policy of self-governance and self-determination has not been extended to Native Hawaiians. The bill addresses this need and establishes parity. It provides Native Hawaiians a formal opportunity to participate in making policy decisions and empowers them to interact at the State and Federal levels through a government-to-government relationship. The legislation is consistent with federal and state law and allows Native Hawaiians to be treated the same way as our country's other indigenous people.

The United States has recognized and upheld a responsibility for the wellbeing of indigenous, native people, including Native Hawaiians. Congress has enacted more than 160 statutes to address the needs of Native Hawaiians. In 1993, I sponsored a measure commonly known as the Apology Resolution that was enacted into law. The Resolution outlined the history prior to and following the overthrow of the Kingdom of Hawaii, including involvement in the overthrow by agents of the United States. Further, in the Resolution the United States apologized for its involvement in the overthrow and

committed itself to acknowledge the ramifications of the overthrow and support reconciliation efforts between the United States and the Native Hawaiian people. This was a historic declaration that has initiated a healing process. However, additional Congressional action is needed to continue this process.

The legislation allows us to take the necessary next step in the reconciliation process. The bill does three things. First, it authorizes an office in the Department of the Interior to serve as a liaison between Native Hawaiians and the United States. Second, it forms an interagency task force chaired by the Departments of Justice and Interior, as well as composed of officials from federal agencies who currently administer programs and services impacting Native Hawaiians. Third, it authorizes a process for the reorganization of the Native Hawaiian government for the purposes of a federally recognized government-to-government relationship. Once the Native Hawaiian government is recognized, the bill establishes an inclusive democratic negotiations process representing both Native Hawaiians and non-Native Hawaiians. There are many checks and balances in this process and any agreements reached will require implementing legislation at the State and Federal levels.

This legislation is needed to address issues present in my home state. It is a reality that there are longstanding and unresolved issues resulting from the overthrow. Despite good faith efforts to address these issues, the lack of a government-to-government relationship has limited progress. Building on the constitutionally sound and deliberate efforts of Congress and the State of Hawaii, it is necessary that Native Hawaiians be able to reorganize a government and enter into discussions with the Federal and State governments. My bill would ensure there is a structured process by which Native Hawaiians and the people of Hawaii can come together, resolve such complicated issues, and move forward together as a State.

The legislation I introduce today is identical to language passed by the House of Representatives in the 106th Congress. This bill is the product of five working groups the Hawaii Congressional Delegation created to assist with the drafting of this legislation. The working groups were composed of individuals from the Native Hawaiian community, elected officials from the State of Hawaii, representatives from federal agencies, Members of Congress, as well as leaders from Indian Country and experts in constitutional law. This ensured that all parties that had expertise and would work to implement the legislation had an opportunity to collectively and collaboratively participate in the drafting process.

The Hawaii Congressional delegation has carefully considered the significant public input and Congressional oversight on this bill over the last 9 years.

To date, there have been a total of 9 Congressional hearings, including 6 joint hearings held by the Senate Indian Affairs Committee and House Natural Resources Committee, 5 of which were held in Hawaii. From the beginning, the National Congress of American Indians and Alaska Federation of Natives have joined Native Hawaiians in their pursuit for federal recognition. In the 110th Congress, the Senate Committee on Indian Affairs explored the legal aspects of the bill where Hawaii's State Attorney General expressed his support and spoke to the constitutionality of this measure. In addition to the bipartisan support at the Federal and State level for the bill, national organizations such as the American Bar Association, Japanese American Citizens League, and National Indian Education Association have also urged Congress to pass legislation establishing a process to provide federal recognition to Native Hawaiians.

It is clear this legislation is constitutional and provides a framework respectful of the needs of Native Hawaiians and non-Native Hawaiians. Their combined efforts will be needed as each will play an active role in reaching agreements and enacting implementing legislation at the state and federal levels. I ask my colleagues to join Senator INOUE and I, in enacting this legislation.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 381

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. FINDINGS.

Congress makes the following findings:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(17) Native Hawaiians are actively engaged in Native Hawaiian cultural practices, traditional agricultural methods, fishing and sub-

sistence practices, maintenance of cultural use areas and sacred sites, protection of burial sites, and the exercise of their traditional rights to gather medicinal plants and herbs, and food sources.

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

(19) This Act provides for a process within the framework of Federal law for the Native Hawaiian people to exercise their inherent rights as a distinct aboriginal, indigenous, native community to reorganize a Native Hawaiian government for the purpose of giving expression to their rights as native people to self-determination and self-governance.

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

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

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

(21) The United States has recognized and reaffirmed the special trust relationship with the Native Hawaiian people through—

(A) the enactment of the Act entitled "An Act to provide for the admission of the State of Hawaii into the Union", approved March 18, 1959 (Public Law 86-3; 73 Stat. 4) by—

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

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

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

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

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

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

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

#### SEC. 2. DEFINITIONS.

In this Act:

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

(2) **ADULT MEMBERS.**—The term “adult members” means those Native Hawaiians who have attained the age of 18 at the time the Secretary publishes the final roll, as provided in section 7(a)(3) of this Act.

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

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

(5) **COMMISSION.**—The term “Commission” means the commission established in section 7 of this Act to certify that the adult members of the Native Hawaiian community contained on the roll developed under that section meet the definition of Native Hawaiian, as defined in paragraph (7)(A).

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

(7) **NATIVE HAWAIIAN.**—

(A) Prior to the recognition by the United States of a Native Hawaiian government under the authority of section 7(d)(2) of this Act, the term “Native Hawaiian” means the indigenous, native people of Hawaii who are the lineal descendants of the aboriginal, indigenous, native people who resided in the islands that now comprise the State of Hawaii on or before January 1, 1893, and who occupied and exercised sovereignty in the Hawaiian archipelago, including the area that now constitutes the State of Hawaii, and includes all Native Hawaiians who were eligible in 1921 for the programs authorized by the Hawaiian Homes Commission Act (42 Stat. 108, chapter 42) and their lineal descendants.

(B) Following the recognition by the United States of the Native Hawaiian government under section 7(d)(2) of this Act, the term “Native Hawaiian” shall have the meaning given to such term in the organic governing documents of the Native Hawaiian government.

(8) **NATIVE HAWAIIAN GOVERNMENT.**—The term “Native Hawaiian government” means the citizens of the government of the Native Hawaiian people that is recognized by the United States under the authority of section 7(d)(2) of this Act.

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

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

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

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

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

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

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

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

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

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

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

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

(4) Native Hawaiians have—

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

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

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

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

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

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

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

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

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

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

(2) upon the recognition of the Native Hawaiian government by the United States as provided for in section 7(d)(2) of this Act, effectuate and coordinate the special trust relationship between the Native Hawaiian government and the United States through the Secretary, and with all other Federal agencies;

(3) fully integrate the principle and practice of meaningful, regular, and appropriate consultation with the Native Hawaiian people by providing timely notice to, and consulting with the Native Hawaiian people prior to taking any actions that may affect traditional or current Native Hawaiian practices and matters that may have the potential to significantly or uniquely affect Native Hawaiian resources, rights, or lands, and upon the recognition of the Native Hawaiian government as provided for in section 7(d)(2) of this Act, fully integrate the principle and practice of meaningful, regular, and appropriate consultation with the Native Hawaiian government by providing timely notice to, and consulting with the Native Hawaiian people and the Native Hawaiian government prior to taking any actions that may have the potential to significantly affect Native Hawaiian resources, rights, or lands;

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

(5) be responsible for the preparation and submittal to the Committee on Indian Affairs of the Senate, the Committee on Energy and Natural Resources of the Senate, and the Committee on Resources of the House of Representatives of an annual report detailing the activities of the Interagency Task Force established under section 6 of this Act that are undertaken with respect to the continuing process of reconciliation and to effect meaningful consultation with the Native Hawaiian people and the Native Hawaiian government and providing recommendations for any necessary changes to existing Federal statutes or regulations promulgated under the authority of Federal law;

(6) be responsible for continuing the process of reconciliation with the Native Hawaiian people, and upon the recognition of the Native Hawaiian government by the United States as provided for in section 7(d)(2) of this Act, be responsible for continuing the process of reconciliation with the Native Hawaiian government; and

(7) assist the Native Hawaiian people in facilitating a process for self-determination, including but not limited to the provision of technical assistance in the development of the roll under section 7(a) of this Act, the organization of the Native Hawaiian Interim Governing Council as provided for in section 7(c) of this Act, and the recognition of the Native Hawaiian government as provided for in section 7(d) of this Act.

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

### SEC. 5. DESIGNATION OF DEPARTMENT OF JUSTICE REPRESENTATIVE.

The Attorney General shall designate an appropriate official within the Department of Justice to assist the United States Office for Native Hawaiian Affairs in the implementation and protection of the rights of Native Hawaiians and their political, legal, and trust relationship with the United States, and upon the recognition of the Native Hawaiian government as provided for in section 7(d)(2) of this Act, in the implementation and protection of the rights of the Native Hawaiian government and its political, legal, and trust relationship with the United States.

### SEC. 6. NATIVE HAWAIIAN INTERAGENCY TASK FORCE.

(a) **ESTABLISHMENT.**—There is established an interagency task force to be known as the “Native Hawaiian Interagency Task Force”.

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

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

(2) the United States Office for Native Hawaiian Affairs established under section 4 of this Act; and

(3) the Executive Office of the President.

(c) **LEAD AGENCIES.**—The Department of the Interior and the Department of Justice shall serve as the lead agencies of the Task Force, and meetings of the Task Force shall be convened at the request of either of the lead agencies.

(d) CO-CHAIRS.—The Task Force representative of the United States Office for Native Hawaiian Affairs established under the authority of section 4 of this Act and the Attorney General's designee under the authority of section 5 of this Act shall serve as co-chairs of the Task Force.

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

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

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

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

**SEC. 7. PROCESS FOR THE DEVELOPMENT OF A ROLL FOR THE ORGANIZATION OF A NATIVE HAWAIIAN INTERIM GOVERNING COUNCIL, FOR THE ORGANIZATION OF A NATIVE HAWAIIAN INTERIM GOVERNING COUNCIL AND A NATIVE HAWAIIAN GOVERNMENT, AND FOR THE RECOGNITION OF THE NATIVE HAWAIIAN GOVERNMENT.**

(a) ROLL.—

(1) PREPARATION OF ROLL.—The United States Office for Native Hawaiian Affairs shall assist the adult members of the Native Hawaiian community who wish to participate in the reorganization of a Native Hawaiian government in preparing a roll for the purpose of the organization of a Native Hawaiian Interim Governing Council. The roll shall include the names of the—

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

(i) the lineal descendants of the aboriginal, indigenous, native people who resided in the islands that now comprise the State of Hawaii on or before January 1, 1893, and who occupied and exercised sovereignty in the Hawaiian archipelago; or

(ii) Native Hawaiians who were eligible in 1921 for the programs authorized by the Hawaiian Homes Commission Act (42 Stat. 108, chapter 42) or their lineal descendants; and

(B) the children of the adult members listed on the roll prepared under this subsection.

(2) CERTIFICATION AND SUBMISSION.—

(A) COMMISSION.—

(i) IN GENERAL.—There is authorized to be established a Commission to be composed of 9 members for the purpose of certifying that the adult members of the Native Hawaiian community on the roll meet the definition of Native Hawaiian, as defined in section 2(7)(A) of this Act.

(ii) MEMBERSHIP.—

(I) APPOINTMENT.—The Secretary shall appoint the members of the Commission in accordance with subclause (II). Any vacancy on the Commission shall not affect its powers and shall be filled in the same manner as the original appointment.

(II) REQUIREMENTS.—The members of the Commission shall be Native Hawaiian, as defined in section 2(7)(A) of this Act, and shall have expertise in the certification of Native Hawaiian ancestry.

(III) CONGRESSIONAL SUBMISSION OF SUGGESTED CANDIDATES.—In appointing members of the Commission, the Secretary may choose such members from among—

(aa) five suggested candidates submitted by the Majority Leader of the Senate and the Minority Leader of the Senate from a list of

candidates provided to such leaders by the Chairman and Vice Chairman of the Committee on Indian Affairs of the Senate; and

(bb) four suggested candidates submitted by the Speaker of the House of Representatives and the Minority Leader of the House of Representatives from a list provided to the Speaker and the Minority Leader by the Chairman and Ranking member of the Committee on Resources of the House of Representatives.

(iii) EXPENSES.—Each member of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(B) CERTIFICATION.—The Commission shall certify that the individuals listed on the roll developed under the authority of this subsection are Native Hawaiians, as defined in section 2(7)(A) of this Act.

(3) SECRETARY.—

(A) CERTIFICATION.—The Secretary shall review the Commission's certification of the membership roll and determine whether it is consistent with applicable Federal law, including the special trust relationship between the United States and the indigenous, native people of the United States.

(B) PUBLICATION.—Upon making the determination authorized in subparagraph (A), the Secretary shall publish a final roll.

(C) APPEAL.—

(i) ESTABLISHMENT OF MECHANISM.—The Secretary is authorized to establish a mechanism for an appeal of the Commission's determination as it concerns—

(I) the exclusion of the name of a person who meets the definition of Native Hawaiian, as defined in section 2(7)(A) of this Act, from the roll; or

(II) a challenge to the inclusion of the name of a person on the roll on the grounds that the person does not meet the definition of Native Hawaiian, as so defined.

(ii) PUBLICATION; UPDATE.—The Secretary shall publish the final roll while appeals are pending, and shall update the final roll and the publication of the final roll upon the final disposition of any appeal.

(D) FAILURE TO ACT.—If the Secretary fails to make the certification authorized in subparagraph (A) within 90 days of the date that the Commission submits the membership roll to the Secretary, the certification shall be deemed to have been made, and the Commission shall publish the final roll.

(4) EFFECT OF PUBLICATION.—The publication of the final roll shall serve as the basis for the eligibility of adult members listed on the roll to participate in all referenda and elections associated with the organization of a Native Hawaiian Interim Governing Council and the Native Hawaiian government.

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

(c) ORGANIZATION OF THE NATIVE HAWAIIAN INTERIM GOVERNING COUNCIL.—

(1) ORGANIZATION.—The adult members listed on the roll developed under the authority of subsection (a) are authorized to—

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

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

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

(2) ELECTION.—Upon the request of the adult members listed on the roll developed under the authority of subsection (a), the United States Office for Native Hawaiian Af-

fairs may assist the Native Hawaiian community in holding an election by secret ballot (absentee and mail balloting permitted), to elect the membership of the Native Hawaiian Interim Governing Council.

(3) POWERS.—

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

(B) FUNDING.—The Native Hawaiian Interim Governing Council is authorized to enter into a contract or grant with any Federal agency, including but not limited to, the United States Office for Native Hawaiian Affairs within the Department of the Interior and the Administration for Native Americans within the Department of Health and Human Services, to carry out the activities set forth in subparagraph (C).

(C) ACTIVITIES.—

(i) IN GENERAL.—The Native Hawaiian Interim Governing Council is authorized to conduct a referendum of the adult members listed on the roll developed under the authority of subsection (a) for the purpose of determining (but not limited to) the following:

(I) The proposed elements of the organic governing documents of a Native Hawaiian government.

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

(III) The proposed civil rights and protection of such rights of the citizens of a Native Hawaiian government and all persons subject to the authority of a Native Hawaiian government.

(ii) DEVELOPMENT OF ORGANIC GOVERNING DOCUMENTS.—Based upon the referendum, the Native Hawaiian Interim Governing Council is authorized to develop proposed organic governing documents for a Native Hawaiian government.

(iii) DISTRIBUTION.—The Native Hawaiian Interim Governing Council is authorized to distribute to all adult members of those listed on the roll, a copy of the proposed organic governing documents, as drafted by the Native Hawaiian Interim Governing Council, along with a brief impartial description of the proposed organic governing documents.

(iv) CONSULTATION.—The Native Hawaiian Interim Governing Council is authorized to freely consult with those members listed on the roll concerning the text and description of the proposed organic governing documents.

(D) ELECTIONS.—

(i) IN GENERAL.—The Native Hawaiian Interim Governing Council is authorized to hold elections for the purpose of ratifying the proposed organic governing documents, and upon ratification of the organic governing documents, to hold elections for the officers of the Native Hawaiian government.

(ii) ASSISTANCE.—Upon the request of the Native Hawaiian Interim Governing Council, the United States Office of Native Hawaiian Affairs may assist the Council in conducting such elections.

(4) TERMINATION.—The Native Hawaiian Interim Governing Council shall have no power or authority under this Act after the time at which the duly elected officers of the Native Hawaiian government take office.

(d) RECOGNITION OF THE NATIVE HAWAIIAN GOVERNMENT.—

(1) PROCESS FOR RECOGNITION.—

(A) SUBMITTAL OF ORGANIC GOVERNING DOCUMENTS.—The duly elected officers of the Native Hawaiian government shall submit the

organic governing documents of the Native Hawaiian government to the Secretary.

(B) CERTIFICATIONS.—Within 90 days of the date that the duly elected officers of the Native Hawaiian government submit the organic governing documents to the Secretary, the Secretary shall certify that the organic governing documents—

(i) were adopted by a majority vote of the adult members listed on the roll prepared under the authority of subsection (a);

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

(iii) provide for the exercise of those governmental authorities that are recognized by the United States as the powers and authorities that are exercised by other governments representing the indigenous, native people of the United States;

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

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

(vi) establish the criteria for citizenship in the Native Hawaiian government; and

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

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

(D) RESUBMISSION IN CASE OF NONCOMPLIANCE WITH FEDERAL LAW.—

(i) RESUBMISSION BY THE SECRETARY.—If the Secretary determines that the organic governing documents, or any part thereof, are not consistent with applicable Federal law, the Secretary shall resubmit the organic governing documents to the duly elected officers of the Native Hawaiian government along with a justification for each of the Secretary's findings as to why the provisions are not consistent with such law.

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

(I) amend the organic governing documents to ensure that the documents comply with applicable Federal law; and

(II) resubmit the amended organic governing documents to the Secretary for certification in accordance with subparagraphs (B) and (C).

(2) FEDERAL RECOGNITION.—

(A) RECOGNITION.—Notwithstanding any other provision of law, upon the election of the officers of the Native Hawaiian government and the certifications (or deemed certifications) by the Secretary authorized in paragraph (1), Federal recognition is hereby extended to the Native Hawaiian government as the representative governing body of the Native Hawaiian people.

(B) NO DIMINISHMENT OF RIGHTS OR PRIVILEGES.—Nothing contained in this Act shall diminish, alter, or amend any existing rights or privileges enjoyed by the Native Hawaiian

people which are not inconsistent with the provisions of this Act.

#### SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

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

#### SEC. 9. REAFFIRMATION OF DELEGATION OF FEDERAL AUTHORITY; NEGOTIATIONS.

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

(b) NEGOTIATIONS.—Upon the Federal recognition of the Native Hawaiian government pursuant to section 7(d)(2) of this Act, the United States is authorized to negotiate and enter into an agreement with the State of Hawaii and the Native Hawaiian government regarding the transfer of lands, resources, and assets dedicated to Native Hawaiian use under existing law as in effect on the date of enactment of this Act to the Native Hawaiian government.

#### SEC. 10. DISCLAIMER.

Nothing in this Act is intended to serve as a settlement of any claims against the United States, or to affect the rights of the Native Hawaiian people under international law.

#### SEC. 11. REGULATIONS.

The Secretary is authorized to make such rules and regulations and such delegations of authority as the Secretary deems necessary to carry out the provisions of this Act.

#### SEC. 12. SEVERABILITY.

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

### SUBMITTED RESOLUTIONS

#### SENATE RESOLUTION 27—CONGRATULATING THE PITTSBURGH STEELERS ON WINNING SUPER BOWL XLIII

Mr. CASEY (for himself and Mr. SPECTER) submitted the following resolution; which was considered and agreed to:

S. RES. 27

Whereas on February 1, 2009, the Pittsburgh Steelers defeated the Arizona Cardinals to win Super Bowl XLIII;

Whereas the Steelers' 27–23 victory over the Cardinals was the Steelers' sixth Super Bowl win, the most Super Bowl wins in National Football League (NFL) history;

Whereas the Rooney family has exhibited a strong commitment to the Steelers organization, has led the Steelers to win 6 Super Bowl titles, and has created a legacy of dedication to, and integrity in, the NFL;

Whereas Coach Mike Tomlin is to be congratulated for being the youngest coach in the NFL to win a Super Bowl, in only his second season as the head coach of the Steelers;

Whereas "Steeler Nation", which encompasses fans from all over the world, is to be honored for proudly waving "Terrible Towels" in support of the Pittsburgh Steelers;

Whereas the Pittsburgh Steelers are an iconic symbol for hardworking

Pittsburghers, exhibiting the same strong work ethic and ability to fight to the bitter end to achieve success as Pittsburghers;

Whereas the leadership of Steelers quarterback Ben Roethlisberger led the team to wins in the final plays of games throughout the season, and especially during the last 2 minutes and 30 seconds of Super Bowl XLIII;

Whereas Steelers wide receiver Antonio Holmes was named the Most Valuable Player in Super Bowl XLIII for his 6-yard touchdown reception with 35 seconds remaining, which is being called one of the most historic plays in Super Bowl history;

Whereas Steelers linebacker James Harrison, NFL Defensive Player of the Year, intercepted Kurt Warner at the goal line and returned the ball for a 100-yard touchdown, which has been recorded as the longest play in Super Bowl history;

Whereas the Steelers defense, under the leadership of 50-year NFL veteran and Steelers defensive coordinator Dick LeBeau, ranked number 1 in defense in the NFL throughout the 2008 season and carried the Pittsburgh Steelers to a winning season and a Super Bowl victory;

Whereas approximately 400,000 Steelers fans packed the streets of Pittsburgh on February 3, 2009 to honor the Steelers in a parade along Grant Street and the Boulevard of the Allies; Now, therefore, be it

Resolved, That the Senate—

(1) congratulates—

(A) the Pittsburgh Steelers for winning Super Bowl XLIII;

(B) the Rooney family and the Steelers coaching and support staff, whose commitment to the Steelers organization has sustained this proud organization and allowed the team to reach its sixth Super Bowl victory;

(C) all Steelers fans, from around the world, whose enthusiasm for the team earns them recognition as one of the most loyal fan-bases in all sports; and

(D) the Arizona Cardinals on an outstanding season; and

(2) directs the Secretary of the Senate to transmit an enrolled copy of this resolution to—

(A) Steelers Chairman, Dan Rooney;

(B) Steelers President, Art Rooney II; and

(C) Steelers Head Coach Mike Tomlin.

### AMENDMENTS SUBMITTED AND PROPOSED

SA 207. Mr. KYL submitted an amendment intended to be proposed to amendment SA 98 proposed by Mr. INOUE (for himself and Mr. BAUCUS) to the bill H.R. 1, making supplemental appropriations for job preservation and creation, infrastructure investment, energy efficiency and science, assistance to the unemployed, and State and local fiscal stabilization, for fiscal year ending September 30, 2009, and for other purposes; which was ordered to lie on the table.

SA 208. Mr. GRASSLEY submitted an amendment intended to be proposed to amendment SA 98 proposed by Mr. INOUE (for himself and Mr. BAUCUS) to the bill H.R. 1, supra; which was ordered to lie on the table.

SA 209. Mr. GRASSLEY (for himself, Mr. SCHUMER, and Mr. BAYH) submitted an amendment intended to be proposed to amendment SA 98 proposed by Mr. INOUE (for himself and Mr. BAUCUS) to the bill H.R. 1, supra; which was ordered to lie on the table.

SA 210. Mr. CORNYN (for himself, Mr. GRASSLEY, Mr. COBURN, and Mr. MARTINEZ)