

106<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 4904

To express the policy of the United States regarding the United States relationship with Native Hawaiians, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 20, 2000

Mr. ABERCROMBIE introduced the following bill; which was referred to the Committee on Resources

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## A BILL

To express the policy of the United States regarding the United States relationship with Native Hawaiians, and for other purposes.

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

3       **SECTION 1. FINDINGS.**

4       Congress finds that—

5               (1) the Constitution vests Congress with the au-  
6       thority to address the conditions of the indigenous,  
7       native people of the United States;

8               (2) Native Hawaiians, the native people of the  
9       State of Hawaii are indigenous, native people of the  
10      United States;

1           (3) the United States has a special trust rela-  
2           tionship to promote the welfare of the native people  
3           of the United States, including Native Hawaiians;

4           (4) under the treaty-making power of the  
5           United States, Congress exercised its constitutional  
6           authority to confirm a treaty between the United  
7           States and the government that represented the Ha-  
8           waiian people, and from 1826 until 1893, the United  
9           States recognized the independence of the Kingdom  
10          of Hawaii, extended full diplomatic recognition to  
11          the Hawaiian Government, and entered into treaties  
12          and conventions with the Hawaiian monarchs to gov-  
13          ern commerce and navigation in 1826, 1842, 1849,  
14          1875, and 1887;

15          (5) pursuant to the provisions of the Hawaiian  
16          Homes Commission Act, 1920 (42 Stat. 108, chap-  
17          ter 42), the United States set aside 200,000 acres  
18          of land in the Federal territory that later became  
19          the State of Hawaii in order to establish a homeland  
20          for the native people of Hawaii, Native Hawaiians;

21          (6) by setting aside 200,000 acres of land for  
22          Native Hawaiian homesteads and farms, the Act as-  
23          sists the Native Hawaiian community in maintaining  
24          distinct native settlements throughout the State of  
25          Hawaii;

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

7           (8) the Hawaiian Home Lands continue to pro-  
8       vide an important foundation for the ability of the  
9       Native Hawaiian community to maintain the prac-  
10      tice of Native Hawaiian culture, language, and tradi-  
11      tions, and Native Hawaiians have maintained other  
12      distinctly native areas in Hawaii;

13          (9) on November 23, 1993, Public Law 103-  
14      150 (107 Stat. 1510) (commonly known as the Apol-  
15      ogy Resolution) was enacted into law, extending an  
16      apology on behalf of the United States to the Native  
17      people of Hawaii for the United States role in the  
18      overthrow of the Kingdom of Hawaii;

19          (10) the Apology Resolution acknowledges that  
20      the overthrow of the Kingdom of Hawaii occurred  
21      with the active participation of agents and citizens  
22      of the United States and further acknowledges that  
23      the Native Hawaiian people never directly relin-  
24      quished their claims to their inherent sovereignty as  
25      a people over their national lands to the United

1 States, either through their monarchy or through a  
2 plebiscite or referendum;

3 (11) the Apology Resolution expresses the com-  
4 mitment of Congress and the President to acknowl-  
5 edge the ramifications of the overthrow of the King-  
6 dom of Hawaii and to support reconciliation efforts  
7 between the United States and Native Hawaiians;  
8 and to have Congress and the President, through the  
9 President's designated officials, consult with Native  
10 Hawaiians on the reconciliation process as called for  
11 under the Apology Resolution;

12 (12) despite the overthrow of the Hawaiian gov-  
13 ernment, Native Hawaiians have continued to main-  
14 tain their separate identity as a distinct native com-  
15 munity through the formation of cultural, social, and  
16 political institutions, and to give expression to their  
17 rights as native people to self-determination and  
18 self-governance as evidenced through their participa-  
19 tion in the Office of Hawaiian Affairs;

20 (13) Native Hawaiians also maintain a distinct  
21 Native Hawaiian community through the provision  
22 of governmental services to Native Hawaiians, in-  
23 cluding the provision of health care services, edu-  
24 cational programs, employment and training pro-  
25 grams, children's services, conservation programs,

1 fish and wildlife protection, agricultural programs,  
2 native language immersion programs and native lan-  
3 guage immersion schools from kindergarten through  
4 high school, as well as college and master's degree  
5 programs in native language immersion instruction,  
6 and traditional justice programs, and by continuing  
7 their efforts to enhance Native Hawaiian self-deter-  
8 mination and local control;

9 (14) Native Hawaiians are actively engaged in  
10 Native Hawaiian cultural practices, traditional agri-  
11 cultural methods, fishing and subsistence practices,  
12 maintenance of cultural use areas and sacred sites,  
13 protection of burial sites, and the exercise of their  
14 traditional rights to gather medicinal plants and  
15 herbs, and food sources;

16 (15) the Native Hawaiian people wish to pre-  
17 serve, develop, and transmit to future Native Hawai-  
18 ian generations their ancestral lands and Native Ha-  
19 waiian political and cultural identity in accordance  
20 with their traditions, beliefs, customs and practices,  
21 language, and social and political institutions, and to  
22 achieve greater self-determination over their own af-  
23 fairs;

24 (16) this Act responds to the desire of the Na-  
25 tive Hawaiian people for enhanced self-determination

1 by establishing a process within the framework of  
2 Federal law for the Native Hawaiian people to exer-  
3 cise their inherent rights as a distinct aboriginal, in-  
4 digenous, native community to reorganize a Native  
5 Hawaiian governing body for the purpose of giving  
6 expression to their rights as native people to self-de-  
7 termination and self-governance;

8 (17) the United States has declared that—

9 (A) the United States has a special respon-  
10 sibility for the welfare of the native peoples of  
11 the United States, including Native Hawaiians;

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

17 (C) Congress has also delegated broad au-  
18 thority to administer a portion of the federal  
19 trust responsibility to the State of Hawaii;

20 (18) the United States has recognized and re-  
21 affirmed the special trust relationship with the Na-  
22 tive Hawaiian people through—

23 (A) the enactment of the Act entitled “An  
24 Act to provide for the admission of the State of

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

3 (i) ceding to the State of Hawaii title  
4 to the public lands formerly held by the  
5 United States, and mandating that those  
6 lands be held in public trust for the better-  
7 ment of the conditions of Native Hawai-  
8 ians; and

9 (ii) transferring the United States re-  
10 sponsibility for the administration of the  
11 Hawaiian Home Lands to the State of Ha-  
12 waii, but retaining the authority to enforce  
13 the trust, including the exclusive right of  
14 the United States to consent to any actions  
15 affecting the lands which comprise the cor-  
16 pus of the trust and any amendments to  
17 the Hawaiian Homes Commission Act,  
18 1920 (42 Stat. 108, chapter 42) that are  
19 enacted by the legislature of the State of  
20 Hawaii affecting the beneficiaries under  
21 the Act;

22 (19) the United States continually has recog-  
23 nized and reaffirmed that—

24 (A) Native Hawaiians have a cultural, his-  
25 toric, and land-based link to the aboriginal, na-

1           tive people who exercised sovereignty over the  
2           Hawaiian Islands;

3           (B) Native Hawaiians have never relin-  
4           quished their claims to sovereignty or their sov-  
5           ereign lands;

6           (C) the United States extends services to  
7           Native Hawaiians because of their unique sta-  
8           tus as the aboriginal, native people of a once  
9           sovereign nation with whom the United States  
10          has a political and legal relationship; and

11          (D) the special trust relationship of Amer-  
12          ican Indians, Alaska Natives, and Native Ha-  
13          waiians to the United States arises out of their  
14          status as aboriginal, indigenous, native people  
15          of the United States.

16 **SEC. 2. DEFINITIONS.**

17          In this Act:

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

1           (2) ADULT MEMBERS.—The term “adult mem-  
2           bers” means those Native Hawaiians who have at-  
3           tained the age of 18 at the time the Secretary pub-  
4           lishes the initial roll in the Federal Register, as pro-  
5           vided in section 7(a)(4) of this Act.

6           (3) APOLOGY RESOLUTION.—The term “Apol-  
7           ogy Resolution” means Public Law 103–150 (107  
8           Stat. 1510), a joint resolution offering an apology to  
9           Native Hawaiians on behalf of the United States for  
10          the participation of agents of the United States in  
11          the January 17, 1893 overthrow of the Kingdom of  
12          Hawaii.

13          (4) COMMISSION.—The term “Commission”  
14          means the commission established in section 7 of  
15          this Act to certify that the adult members of the Na-  
16          tive Hawaiian community contained on the roll de-  
17          veloped under that section meet the definition of Na-  
18          tive Hawaiian, as defined in paragraph (6)(A).

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

23          (6) NATIVE HAWAIIAN.—

24                  (A) Prior to the recognition by the United  
25          States of a Native Hawaiian governing body

1 under the authority of section 7(d) of this Act,  
2 the term “Native Hawaiian” means the indige-  
3 nous, native people of Hawaii who are the lineal  
4 descendants of the aboriginal, indigenous, na-  
5 tive people who resided in the islands that now  
6 comprise the State of Hawaii on January 1,  
7 1893, and who occupied and exercised sov-  
8 ereignty in the Hawaiian archipelago, including  
9 the area that now constitutes the State of Ha-  
10 waii, as evidenced by (but not limited to)—

11 (i) genealogical records;

12 (ii) Native Hawaiian kupuna (elders)  
13 verification or affidavits;

14 (iii) church or census records; or

15 (iv) government birth or death certifi-  
16 cates or other vital statistics records;

17 (B) Following the recognition by the  
18 United States of the Native Hawaiian gov-  
19 erning body under section 7(d) of this Act, the  
20 term “Native Hawaiian” shall have the mean-  
21 ing given to such term in the organic governing  
22 documents of the Native Hawaiian governing  
23 body.

24 (7) NATIVE HAWAIIAN GOVERNING BODY.—The  
25 term “Native Hawaiian governing body” means the

1 adult members of the governing body of the Native  
2 Hawaiian people that is recognized by the United  
3 States under the authority of section 7(d) of this  
4 Act.

5 (8) NATIVE HAWAIIAN INTERIM GOVERNING  
6 COUNCIL.—The term “Native Hawaiian Interim  
7 Governing Council” means the interim governing  
8 council that is authorized to exercise the powers and  
9 authorities recognized in section 7(b) of this Act.

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

13 (10) SECRETARY.—The term “Secretary”  
14 means the Secretary of the Department of the Inte-  
15 rior.

16 (11) TASK FORCE.—The term “Task Force”  
17 means the Native Hawaiian Interagency Task Force  
18 established under the authority of section 6 of this  
19 Act.

20 **SEC. 3. UNITED STATES POLICY.**

21 The United States reaffirms that—

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

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

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

7                   (A) the Hawaiian Homes Commission Act,  
8                   1920 (42 Stat. 108, chapter 42);

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

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

15           (4) Native Hawaiians have—

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

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

20                   (C) the right to reorganize a Native Ha-  
21                   waiian governing body; and

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

1 **SEC. 4. ESTABLISHMENT OF THE OFFICE OF SPECIAL**  
2 **TRUSTEE FOR NATIVE HAWAIIAN AFFAIRS.**

3 (a) **IN GENERAL.**—There is established within the  
4 Office of the Secretary of the Department of the Interior  
5 the Office of Special Trustee for Native Hawaiian Affairs.

6 (b) **DUTIES OF THE OFFICE.**—The Office of Special  
7 Trustee for Native Hawaiian Affairs shall—

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

12 (2) upon the recognition of the Native Hawai-  
13 ian governing body by the United States as provided  
14 for in section 7(d) of this Act, effectuate and coordi-  
15 nate the special trust relationship between the Na-  
16 tive Hawaiian governing body and the United States  
17 through the Secretary, and with all other Federal  
18 agencies;

19 (3) fully integrate the principle and practice of  
20 meaningful, regular, and appropriate consultation  
21 with the Native Hawaiian people by providing timely  
22 notice to, and consulting with the Native Hawaiian  
23 people prior to taking any actions that may have the  
24 potential to significantly or uniquely affect Native  
25 Hawaiian resources, rights, or lands, and upon the  
26 recognition of the Native Hawaiian governing body

1 as provided for in section 7(d) of this Act, fully inte-  
2 grate the principle and practice of meaningful, reg-  
3 ular, and appropriate consultation with the Native  
4 Hawaiian governing body by providing timely notice  
5 to, and consulting with the Native Hawaiian people  
6 prior to taking any actions that may have the poten-  
7 tial to significantly affect Native Hawaiian re-  
8 sources, rights, or lands;

9 (4) consult with the Native Hawaiian Inter-  
10 agency Task Force, other Federal agencies, and with  
11 relevant agencies of the State of Hawaii on policies,  
12 practices, and proposed actions affecting Native Ha-  
13 waiian resources, rights, or lands;

14 (5) be responsible for the preparation and sub-  
15 mittal to the Committee on Indian Affairs of the  
16 Senate, the Committee on Energy and Natural Re-  
17 sources of the Senate, and the Committee on Re-  
18 sources of the House of Representatives of an an-  
19 nual report detailing the activities of the Interagency  
20 Task Force established under section 6 of this Act  
21 that are undertaken with respect to the continuing  
22 process of reconciliation and to effect meaningful  
23 consultation with the Native Hawaiian people and  
24 the Native Hawaiian governing body and providing  
25 recommendations for any necessary changes to exist-

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

3 (6) be responsible for continuing the process of  
4 reconciliation with the Native Hawaiian people, and  
5 upon the recognition of the Native Hawaiian gov-  
6 erning body by the United States as provided for in  
7 section 7(d) of this Act, be responsible for con-  
8 tinuing the process of reconciliation with the Native  
9 Hawaiian governing body; and

10 (7) assist the Native Hawaiian people in facili-  
11 tating a process for self-determination, including but  
12 not limited to the provision of technical assistance in  
13 the development of the roll under section 7(a) of this  
14 Act, the organization of the Native Hawaiian In-  
15 terim Governing Council as provided for in section  
16 7(b) of this Act, and the reorganization of the Na-  
17 tive Hawaiian governing body as provided for in sec-  
18 tion 7(c) of this Act.

19 **SEC. 5. DESIGNATION OF DEPARTMENT OF JUSTICE REP-**  
20 **RESENTATIVE.**

21 The Attorney General shall designate an appropriate  
22 official within the Department of Justice to assist the Of-  
23 fice of the Special Trustee for Native Hawaiian Affairs  
24 in the implementation and protection of the rights of Na-  
25 tive Hawaiians and their political and legal relationship

1 with the United States, and upon the recognition of the  
2 Native Hawaiian governing body as provided for in section  
3 7(d) of this Act, in the implementation and protection of  
4 the rights of the Native Hawaiian governing body and its  
5 political and legal relationship with the United States.

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

7 (a) ESTABLISHMENT.—There is established an inter-  
8 agency task force to be known as the “Native Hawaiian  
9 Interagency Task Force”.

10 (b) COMPOSITION.—The Task Force shall be com-  
11 posed of officials, to be appointed by the President,  
12 from—

13 (1) each Federal agency that establishes or im-  
14 plements policies that affect Native Hawaiians or  
15 whose actions may significantly or uniquely impact  
16 on Native Hawaiian resources, rights, or lands;

17 (2) the Office of the Special Trustee for Native  
18 Hawaiian Affairs established under section 4 of this  
19 Act; and

20 (3) the Executive Office of the President.

21 (c) LEAD AGENCIES.—The Department of the Inte-  
22 rior and the Department of Justice shall serve as the lead  
23 agencies of the Task Force, and meetings of the Task  
24 Force shall be convened at the request of the lead agen-  
25 cies.

1           (d) CO-CHAIRS.—The Task Force representative of  
2 the Office of Special Trustee for Native Hawaiian Affairs  
3 established under the authority of section 4 of this Act  
4 and the Attorney General’s designee under the authority  
5 of section 5 of this Act shall serve as co-chairs of the Task  
6 Force.

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

9                   (1) the coordination of Federal policies that af-  
10           fect Native Hawaiians or actions by any agency or  
11           agencies of the Federal Government which may sig-  
12           nificantly or uniquely impact on Native Hawaiian re-  
13           sources, rights, or lands;

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

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

1 **SEC. 7. PROCESS FOR THE DEVELOPMENT OF A ROLL FOR**  
2 **THE ORGANIZATION OF A NATIVE HAWAIIAN**  
3 **INTERIM GOVERNING COUNCIL, FOR THE OR-**  
4 **GANIZATION OF A NATIVE HAWAIIAN IN-**  
5 **TERIM GOVERNING COUNCIL AND A NATIVE**  
6 **HAWAIIAN GOVERNING BODY, AND FOR THE**  
7 **RECOGNITION OF THE NATIVE HAWAIIAN**  
8 **GOVERNING BODY.**

9 (a) ROLL.—

10 (1) PREPARATION OF ROLL.—The adult mem-  
11 bers of the Native Hawaiian community who wish to  
12 participate in the reorganization of a Native Hawai-  
13 ian governing body shall prepare a roll for the pur-  
14 pose of the organization of a Native Hawaiian In-  
15 terim Governing Council. The roll shall include the  
16 names of—

17 (A) the adult members of the Native Ha-  
18 waiian community who wish to become mem-  
19 bers of a Native Hawaiian governing body and  
20 who are the lineal descendants of the aborigi-  
21 nal, indigenous, native people who resided in  
22 the islands that now comprise the State of Ha-  
23 waii on January 1, 1893, and who occupied and  
24 exercised sovereignty in the Hawaiian archi-  
25 pelago, including the area that now constitutes

1 the State of Hawaii, as evidenced by (but not  
2 limited to)—

3 (i) genealogical records;

4 (ii) Native Hawaiian kupuna (elders)  
5 verification or affidavits;

6 (iii) church or census records; or

7 (iv) government birth or death certifi-  
8 cates or other vital statistics records; and

9 (B) the children of the adult members list-  
10 ed on the roll prepared under this subsection.

11 (2) CERTIFICATION AND SUBMISSION.—

12 (A) COMMISSION.—There is authorized to  
13 be established a Commission to be composed of  
14 9 members for the purpose of certifying that  
15 the adult members of the Native Hawaiian com-  
16 munity on the roll meet the definition of Native  
17 Hawaiian, as defined in section 2(6)(A) of this  
18 Act. The members of the Commission shall have  
19 expertise in the certification of Native Hawaiian  
20 ancestry.

21 (B) CERTIFICATION.—The Commission  
22 shall certify to the Secretary that the individ-  
23 uals listed on the roll developed under the au-  
24 thority of this subsection are Native Hawaiians,

1 as defined in section 2(6)(A) of this Act, and  
2 shall submit such roll to the Secretary.

3 (3) NOTIFICATION.—The Commission shall  
4 promptly provide notice to the Secretary if any of  
5 the individuals listed on the roll should be removed  
6 from the roll on account of death.

7 (4) PUBLICATION.—Within 45 days of the re-  
8 ceipt by the Secretary of the roll developed under  
9 the authority of this subsection and certified by the  
10 Commission under the authority of paragraph (2),  
11 the Secretary shall certify that the roll is consistent  
12 with applicable Federal law by publishing the roll in  
13 the Federal Register.

14 (5) EFFECT OF PUBLICATION.—The publication  
15 of the roll developed under the authority of this sub-  
16 section shall be for the purpose of providing any  
17 member of the public with an opportunity to—

18 (A) petition the Secretary to add to the  
19 roll the name of an individual who meets the  
20 definition of Native Hawaiian, as defined in  
21 section 2(6)(A) of this Act, and who is not list-  
22 ed on the roll; or

23 (B) petition the Secretary to remove from  
24 the roll the name of an individual who does not  
25 meet such definition.

1           (6) DEADLINE FOR PETITIONS.—Any petition  
2 described in paragraph (5) shall be filed with the  
3 Secretary within 90 days of the date of the publica-  
4 tion of the roll in the Federal Register, as author-  
5 ized under paragraph (4).

6           (7) CERTIFICATION OF ADDITIONAL NATIVE  
7 HAWAIIANS FOR INCLUSION ON THE ROLL.—

8           (A) SUBMISSION.—Within 30 days of re-  
9 ceiving a petition to add the name of an indi-  
10 vidual to the roll, the Secretary shall submit the  
11 name of each individual who is the subject of a  
12 petition to add his or her name to the roll to  
13 the Commission for certification that the indi-  
14 vidual meets the definition of Native Hawaiian,  
15 as defined in section 2(6)(A) of this Act.

16           (B) CERTIFICATION.—Within 30 days of  
17 receiving a petition from the Secretary to have  
18 a name added to or removed from the roll, the  
19 Commission shall certify to the Secretary  
20 that—

21           (i) the individual meets the definition  
22 of Native Hawaiian, as defined in section  
23 2(6)(A) of this Act; or

1                   (ii) the individual does not meet the  
2                   definition of Native Hawaiian, as so de-  
3                   fined.

4                   Upon such certification, the Secretary shall add  
5                   or remove the name of the individual on the  
6                   roll, as appropriate.

7                   (8) HEARING.—

8                   (A) IN GENERAL.—The Secretary shall  
9                   conduct a hearing on the record within 45 days  
10                  of the receipt by the Secretary of—

11                  (i) a certification by the Commission  
12                  that an individual does not meet the defini-  
13                  tion of Native Hawaiian, as defined in sec-  
14                  tion 2(6)(A) of this Act; or

15                  (ii) a petition to remove the name of  
16                  any individual listed on the roll submitted  
17                  to the Secretary by the Commission.

18                  (B) TESTIMONY.—At the hearing con-  
19                  ducted in accordance with this paragraph, the  
20                  Secretary may receive testimony from the peti-  
21                  tioner, a representative of the Commission, the  
22                  individual whose name is the subject of the pe-  
23                  tition, and any other individuals who may have  
24                  the necessary expertise to provide the Secretary  
25                  with relevant information regarding whether the

1 individual whose name is the subject of a peti-  
2 tion meets the definition of Native Hawaiian, as  
3 defined in section 2(6)(A) of this Act.

4 (C) FINAL DETERMINATION.—Within 30  
5 days of the date of the conclusion of the hear-  
6 ing conducted in accordance with this para-  
7 graph, the Secretary shall make a determina-  
8 tion regarding whether the individual whose  
9 name is the subject of a petition meets the defi-  
10 nition of Native Hawaiian, as defined in section  
11 2(6)(A) of this Act. Such a determination shall  
12 be a final determination for purposes of judicial  
13 review.

14 (9) JUDICIAL REVIEW.—

15 (A) FINAL JUDGMENT.—The United  
16 States District Court for the District of Hawaii  
17 shall have jurisdiction to review the record of  
18 the decision developed by the Secretary and the  
19 Secretary's final determination under para-  
20 graph (8) and shall make a final judgment re-  
21 garding such determination.

22 (B) NOTICE.—If the district court deter-  
23 mines that an individual's name should be  
24 added to the roll because that individual meets  
25 the definition of Native Hawaiian, as defined in

1 section 2(6)(A) of this Act, or that an individ-  
2 ual's name should be removed from the roll be-  
3 cause that individual does not meet such defini-  
4 tion, the district court shall so advise the Sec-  
5 retary and the Secretary shall add or remove  
6 the individual's name from the roll, consistent  
7 with the instructions of the district court.

8 (10) PUBLICATION OF FINAL ROLL.—Except  
9 for those petitions which remain the subject of judi-  
10 cial review under the authority of paragraph (9), the  
11 Secretary shall—

12 (A) publish a final roll in the Federal Reg-  
13 ister within 290 days of the receipt by the Sec-  
14 retary of the roll prepared under the authority  
15 of paragraph (1); and

16 (B) subsequently publish in the Federal  
17 Register the names of any individuals that the  
18 district court directs be added or removed from  
19 the roll.

20 (11) EFFECT OF PUBLICATION.—The publica-  
21 tion of the final roll shall serve as the basis for the  
22 eligibility of adult members listed on the roll to par-  
23 ticipate in all referenda and elections associated with  
24 the organization of a Native Hawaiian Interim Gov-  
25 erning Council.

1 (b) ORGANIZATION OF THE NATIVE HAWAIIAN IN-  
2 TERIM GOVERNING COUNCIL.—

3 (1) ORGANIZATION.—

4 (A) DATE OF GENERAL MEETING.—Within  
5 90 days of the date of the publication of the  
6 final roll in the Federal Register, the Secretary  
7 shall announce the date of a general meeting of  
8 the adult members of those listed on the roll to  
9 nominate candidates from among the adult  
10 members listed on the roll for election to the  
11 Native Hawaiian Interim Governing Council.  
12 The criteria for candidates to serve on the Na-  
13 tive Hawaiian Interim Governing Council shall  
14 be developed by the adult members listed on the  
15 roll at the general meeting. The general meet-  
16 ing may consist of meetings on each island or  
17 at such sites as to secure the maximum partici-  
18 pation of the adult members listed on the roll.  
19 Such general meeting (or meetings) shall be  
20 held within 30 days of the Secretary's an-  
21 nouncement.

22 (B) ELECTION.—Within 45 days of the  
23 general meeting (or meetings), the Secretary  
24 shall assist the Native Hawaiian community in  
25 holding an election by secret ballot (absentee

1 and mail balloting permitted), to elect the mem-  
2 bership of the Native Hawaiian Interim Gov-  
3 erning Council from among the nominees sub-  
4 mitted to the Secretary from the general meet-  
5 ing. The ballots shall provide for write-in votes.

6 (C) APPROVAL.—The Secretary shall ap-  
7 prove the Native Hawaiian Interim Governing  
8 Council elected pursuant to this subsection if  
9 the requirements of this section relating to the  
10 nominating and election process have been met.

11 (2) POWERS.—

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

17 (B) TERMINATION.—The Native Hawaiian  
18 Interim Governing Council shall have no power  
19 or authority under this Act after the time which  
20 the duly elected officers of the Native Hawaiian  
21 governing body take office.

22 (3) DUTIES.—

23 (A) REFERENDUM.—The Native Hawaiian  
24 Interim Governing Council shall conduct a ref-  
25 erendum of the adult members listed on the roll

1 for the purpose of determining (but not limited  
2 to) the following:

3 (i) The proposed elements of the or-  
4 ganic governing documents of a Native  
5 Hawaiian governing body.

6 (ii) The proposed powers and authori-  
7 ties to be exercised by a Native Hawaiian  
8 governing body, as well as the proposed  
9 privileges and immunities of a Native Ha-  
10 waiian governing body.

11 (iii) The proposed civil rights and pro-  
12 tection of such rights of the members of a  
13 Native Hawaiian governing body and all  
14 persons subject to the authority of a Na-  
15 tive Hawaiian governing body.

16 (B) DEVELOPMENT OF ORGANIC GOV-  
17 ERNING DOCUMENTS.—Based upon the ref-  
18 erendum authorized in subparagraph (A), the  
19 Native Hawaiian Interim Governing Council  
20 shall develop proposed organic governing docu-  
21 ments for a Native Hawaiian governing body.

22 (C) DISTRIBUTION.—The Council shall  
23 distribute to all adult members of those listed  
24 on the roll, a copy of the proposed organic gov-  
25 erning documents, as drafted by the Native Ha-

1           waiian Interim Governing Council, along with a  
2           brief impartial description of the proposed or-  
3           ganic governing documents.

4           (D) CONSULTATION.—The Native Hawai-  
5           ian Interim Governing Council shall freely con-  
6           sult with those listed on the roll concerning the  
7           text and description of the proposed organic  
8           governing documents.

9           (4) ELECTIONS.—

10           (A) IN GENERAL.—Upon the request of  
11           the Native Hawaiian Interim Governing Coun-  
12           cil, the Secretary shall hold an election for the  
13           purpose of ratifying the proposed organic gov-  
14           erning documents. If the Secretary fails to act  
15           within 45 days of the request by the Council,  
16           the Council is authorized to conduct the elec-  
17           tion.

18           (B) FAILURE TO ADOPT GOVERNING DOCU-  
19           MENTS.—If the proposed organic governing  
20           documents are not adopted by a majority vote  
21           of the adult members listed on the roll, the Na-  
22           tive Hawaiian Interim Governing Council shall  
23           consult with the adult members listed on the  
24           roll to determine which elements of the pro-  
25           posed organic governing documents were found

1 to be unacceptable, and based upon such con-  
2 sultation, the Council shall propose changes to  
3 the proposed organic governing documents.

4 (C) ELECTION.—Upon the request of the  
5 Native Hawaiian Interim Governing Council,  
6 the Secretary shall hold a second election for  
7 the purpose of ratifying the proposed organic  
8 governing documents. If the Secretary fails to  
9 act within 45 days of the request by the Coun-  
10 cil, the Council is authorized to conduct the sec-  
11 ond election.

12 (c) ORGANIZATION OF THE NATIVE HAWAIIAN GOV-  
13 ERNING BODY.—

14 (1) RECOGNITION OF RIGHTS.—The right of  
15 the Native Hawaiian governing body of the indige-  
16 nous, native people of Hawaii to organize for its  
17 common welfare, and to adopt appropriate organic  
18 governing documents is hereby recognized by the  
19 United States.

20 (2) RATIFICATION.—The organic governing  
21 documents of the Native Hawaiian governing body  
22 shall become effective when ratified by a majority  
23 vote of the adult members listed on the roll, and ap-  
24 proved by the Secretary upon the Secretary's deter-  
25 mination that the organic governing documents are

1 consistent with applicable Federal law and the spe-  
2 cial trust relationship between the United States and  
3 its native people. If the Secretary fails to make such  
4 a determination within 45 days of the ratification of  
5 the organic governing documents by the adult mem-  
6 bers listed on the roll, the organic governing docu-  
7 ments shall be deemed to have been approved by the  
8 Secretary.

9 (3) ELECTION OF GOVERNING OFFICERS.—  
10 Within 45 days after the Secretary has approved the  
11 organic governing documents or the organic gov-  
12 erning documents are deemed approved, the Sec-  
13 retary shall assist the Native Hawaiian Interim Gov-  
14 erning Council in holding an election by secret ballot  
15 for the purpose of determining the individuals who  
16 will serve as governing body officers as provided in  
17 the organic governing documents.

18 (4) VOTING ELIGIBILITY.—For the purpose of  
19 this initial election and notwithstanding any provi-  
20 sion in the organic governing documents to the con-  
21 trary, absentee balloting shall be permitted and all  
22 adult members of the Native Hawaiian governing  
23 body shall be entitled to vote in the election.

24 (5) FUTURE ELECTIONS.—All further elections  
25 of governing body officers shall be conducted as pro-

1 vided for in the organic governing documents and  
2 ordinances adopted in accordance with this Act.

3 (6) REVOCATION; RATIFICATION OF AMEND-  
4 MENTS.—When ratified by a majority vote of the  
5 adult members of those listed on the roll, the organic  
6 governing documents shall be revocable by an elec-  
7 tion open to the adult members of the Native Ha-  
8 waiian governing body, and amendments to the or-  
9 ganic governing documents may be ratified by the  
10 same process.

11 (7) ADDITIONAL RIGHTS AND POWERS.—In ad-  
12 dition to all powers vested in the Native Hawaiian  
13 governing body by the duly ratified organic gov-  
14 erning documents, the organic governing documents  
15 shall also vest in the Native Hawaiian governing  
16 body the rights and powers to—

17 (A) exercise those governmental authorities  
18 that are recognized by the United States as the  
19 powers and authorities that are exercised by  
20 other governments representing the indigenous,  
21 native people of the United States;

22 (B) provide for the protection of the civil  
23 rights of the members of the Native Hawaiian  
24 governing body and all persons subject to the  
25 authority of the Native Hawaiian governing

1 body, and to assure that the Native Hawaiian  
2 governing body exercises its authority consistent  
3 with the requirements of section 202 of the Act  
4 of April 11, 1968 (25 U.S.C. 1302);

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

10 (D) determine the membership in the Na-  
11 tive Hawaiian governing body; and

12 (E) negotiate with Federal, State, and  
13 local governments, and other entities.

14 (d) FEDERAL RECOGNITION.—

15 (1) RECOGNITION.—Notwithstanding any other  
16 provision of law, upon the approval by the Secretary  
17 of the organic governing documents of the Native  
18 Hawaiian governing body and the election of officers  
19 of the Native Hawaiian governing body, Federal rec-  
20 ognition is hereby extended to the Native Hawaiian  
21 governing body as the representative governing body  
22 of the Native Hawaiian people.

23 (2) NO DIMINISHMENT OF RIGHTS OR PRIVI-  
24 LEGES.—Nothing contained in this Act shall dimin-  
25 ish, alter, or amend any existing rights or privileges

1       enjoyed by the Native Hawaiian people which are  
2       not inconsistent with the provisions of this Act.

3       (e) INCORPORATION OF THE NATIVE HAWAIIAN GOV-  
4       ERNING BODY.—

5               (1) CHARTER OF INCORPORATION.—Upon peti-  
6       tion of the Native Hawaiian governing body, the  
7       Secretary may issue a charter of incorporation to  
8       the Native Hawaiian governing body. Upon the  
9       issuance of such charter of incorporation, the Native  
10      Hawaiian governing body shall have the same status  
11      under Federal law when acting in its corporate ca-  
12      pacity as the status of Indian tribes that have been  
13      issued a charter of incorporation under the authority  
14      of section 17 of the Indian Reorganization Act (25  
15      U.S.C. 477).

16              (2) ENUMERATED POWERS.—Such charter may  
17      authorize the incorporated Native Hawaiian gov-  
18      erning body to exercise the power to purchase, take  
19      by gift, bequest, or otherwise, own, hold, manage,  
20      operate, and dispose of property of every description,  
21      real and personal, including the power to purchase  
22      lands and to issue an exchange of interests in cor-  
23      porate property, and such further powers as may be  
24      incidental to the conduct of corporate business, and  
25      that are not inconsistent with law.

1 **SEC. 8. AUTHORIZATION OF APPROPRIATIONS.**

2       There is authorized to be appropriated such sums as  
3 may be necessary to carry out the activities authorized in  
4 sections 4, 6, and 7 of this Act.

5 **SEC. 9. REAFFIRMATION OF DELEGATION OF FEDERAL AU-**  
6 **THORITY; NEGOTIATIONS.**

7       (a) REAFFIRMATION.—The delegation by the United  
8 States of authority to the State of Hawaii to address the  
9 conditions of Native Hawaiians contained in the Act enti-  
10 tled “An Act to provide for the admission of the State  
11 of Hawaii into the Union” approved March 18, 1959  
12 (Public Law 86–3; 73 Stat. 5) is hereby reaffirmed.

13       (b) NEGOTIATIONS.—Upon the Federal recognition  
14 of the Native Hawaiian governing body pursuant to sec-  
15 tion 7(d) of this Act, the United States is authorized to  
16 negotiate and enter into an agreement with the State of  
17 Hawaii and the Native Hawaiian governing body regard-  
18 ing the transfer of lands, resources, and assets dedicated  
19 to Native Hawaiian use under existing law as in effect  
20 on the date of enactment of this Act to the Native Hawai-  
21 ian governing body.

22 **SEC. 10. DISCLAIMER.**

23       Nothing in this Act is intended to serve as a settle-  
24 ment of any claims against the United States.

1 **SEC. 11. REGULATIONS.**

2       The Secretary is authorized to make such rules and  
3 regulations and such delegations of authority as the Sec-  
4 retary deems necessary to carry out the provisions of this  
5 Act.

6 **SEC. 12. SEVERABILITY.**

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

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