

107TH CONGRESS  
1ST SESSION

# S. 1783

Expressing the policy of the United States regarding the United States relationship with Native Hawaiians and to provide a process for the recognition by the United States of the Native Hawaiian governing entity, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

DECEMBER 7, 2001

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

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## A BILL

Expressing the policy of the United States regarding the United States relationship with Native Hawaiians and to provide a process for the recognition by the United States of the Native Hawaiian governing entity, and for other purposes.

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

3 **SECTION 1. FINDINGS.**

4 Congress makes the following findings:

5 (1) The Constitution vests Congress with ple-  
6 nary authority to address the conditions of the in-  
7 digenous, native people of the United States.

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

5           (3) The United States has a special responsi-  
6 bility to promote the welfare of the native people of  
7 the United States, including Native Hawaiians.

8           (4) Under the treaty making power of the  
9 United States, Congress exercised its constitutional  
10 authority to confirm a treaty between the United  
11 States and the government that represented the Ha-  
12 waiian people, and from 1826 until 1893, the United  
13 States recognized the independence of the Kingdom  
14 of Hawaii, extended full diplomatic recognition to  
15 the Hawaiian Government, and entered into treaties  
16 and conventions with the Hawaiian monarchs to gov-  
17 ern commerce and navigation in 1826, 1842, 1849,  
18 1875, and 1887.

19           (5) Pursuant to the provisions of the Hawaiian  
20 Homes Commission Act, 1920 (42 Stat. 108, chap-  
21 ter 42), the United States set aside 203,500 acres  
22 of land in the Federal territory that later became  
23 the State of Hawaii to address the conditions of Na-  
24 tive Hawaiians.

1           (6) By setting aside 203,500 acres of land for  
2 Native Hawaiian homesteads and farms, the Act as-  
3 sists the Native Hawaiian community in maintaining  
4 distinct native settlements throughout the State of  
5 Hawaii.

6           (7) Approximately 6,800 Native Hawaiian les-  
7 sees and their family members reside on Hawaiian  
8 Home Lands and approximately 18,000 Native Ha-  
9 waiians who are eligible to reside on the Home  
10 Lands are on a waiting list to receive assignments  
11 of land.

12           (8) In 1959, as part of the compact admitting  
13 Hawaii into the United States, Congress established  
14 the Ceded Lands Trust for 5 purposes, 1 of which  
15 is the betterment of the conditions of Native Hawai-  
16 ians. Such trust consists of approximately 1,800,000  
17 acres of land, submerged lands, and the revenues de-  
18 rived from such lands, the assets of which have  
19 never been completely inventoried or segregated.

20           (9) Throughout the years, Native Hawaiians  
21 have repeatedly sought access to the Ceded Lands  
22 Trust and its resources and revenues in order to es-  
23 tablish and maintain native settlements and distinct  
24 native communities throughout the State.

1           (10) The Hawaiian Home Lands and the Ceded  
2 Lands provide an important foundation for the abil-  
3 ity of the Native Hawaiian community to maintain  
4 the practice of Native Hawaiian culture, language,  
5 and traditions, and for the survival of the Native  
6 Hawaiian people.

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

9           (12) On November 23, 1993, Public Law 103–  
10 150 (107 Stat. 1510) (commonly known as the Apol-  
11 ogy Resolution) was enacted into law, extending an  
12 apology on behalf of the United States to the Native  
13 people of Hawaii for the United States role in the  
14 overthrow of the Kingdom of Hawaii.

15           (13) The Apology Resolution acknowledges that  
16 the overthrow of the Kingdom of Hawaii occurred  
17 with the active participation of agents and citizens  
18 of the United States and further acknowledges that  
19 the Native Hawaiian people never directly relin-  
20 quished their claims to their inherent sovereignty as  
21 a people over their national lands to the United  
22 States, either through their monarchy or through a  
23 plebiscite or referendum.

24           (14) The Apology Resolution expresses the com-  
25 mitment of Congress and the President to acknowl-

1 edge the ramifications of the overthrow of the King-  
2 dom of Hawaii and to support reconciliation efforts  
3 between the United States and Native Hawaiians;  
4 and to have Congress and the President, through the  
5 President's designated officials, consult with Native  
6 Hawaiians on the reconciliation process as called for  
7 under the Apology Resolution.

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

16 (16) Native Hawaiians also give expression to  
17 their rights as native people to self-determination  
18 and self-governance through the provision of govern-  
19 mental services to Native Hawaiians, including the  
20 provision of health care services, educational pro-  
21 grams, employment and training programs, chil-  
22 dren's services, conservation programs, fish and  
23 wildlife protection, agricultural programs, native lan-  
24 guage immersion programs and native language im-  
25 mersion schools from kindergarten through high

1 school, as well as college and master's degree pro-  
2 grams in native language immersion instruction, and  
3 traditional justice programs, and by continuing their  
4 efforts to enhance Native Hawaiian self-determina-  
5 tion and local control.

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

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

21 (19) This Act provides for a process within the  
22 framework of Federal law for the Native Hawaiian  
23 people to exercise their inherent rights as a distinct  
24 aboriginal, indigenous, native community to reorga-  
25 nize a Native Hawaiian governing entity for the pur-

1 pose of giving expression to their rights as native  
2 people to self-determination and self-governance.

3 (20) The United States has declared that—

4 (A) the United States has a special respon-  
5 sibility for the welfare of the native peoples of  
6 the United States, including Native Hawaiians;

7 (B) Congress has identified Native Hawai-  
8 ians as a distinct indigenous group within the  
9 scope of its Indian affairs power, and has en-  
10 acted dozens of statutes on their behalf pursu-  
11 ant to its recognized trust responsibility; and

12 (C) Congress has also delegated broad au-  
13 thority to administer a portion of the Federal  
14 trust responsibility to the State of Hawaii.

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

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

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

3 (B) transferring the United States respon-  
4 sibility for the administration of the Hawaiian  
5 Home Lands to the State of Hawaii, but retain-  
6 ing the authority to enforce the trust, including  
7 the exclusive right of the United States to con-  
8 sent to any actions affecting the lands which  
9 comprise the corpus of the trust and any  
10 amendments to the Hawaiian Homes Commis-  
11 sion Act, 1920 (42 Stat. 108, chapter 42) that  
12 are enacted by the legislature of the State of  
13 Hawaii affecting the beneficiaries under the  
14 Act.

15 (22) The United States continually has recog-  
16 nized and reaffirmed that—

17 (A) Native Hawaiians have a cultural, his-  
18 toric, and land-based link to the aboriginal, na-  
19 tive people who exercised sovereignty over the  
20 Hawaiian Islands;

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

24 (C) the United States extends services to  
25 Native Hawaiians because of their unique sta-



1           tus as the aboriginal, native people of a once  
2           sovereign nation with whom the United States  
3           has a political and legal relationship; and

4           (D) the special political and legal relation-  
5           ship of American Indians, Alaska Natives, and  
6           Native Hawaiians to the United States arises  
7           out of their status as aboriginal, indigenous, na-  
8           tive people of the United States.

9 **SEC. 2. DEFINITIONS.**

10         In this Act:

11           (1) **ABORIGINAL, INDIGENOUS, NATIVE PEO-**  
12           **PLE.**—The term “aboriginal, indigenous, native peo-  
13           ple” means those people whom Congress has recog-  
14           nized as the original inhabitants of the lands and  
15           who exercised sovereignty prior to European contact  
16           in the areas that later became part of the United  
17           States.

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

1           (3) CEDED LANDS.—The term “ceded lands”  
2 means those lands which were ceded to the United  
3 States by the Republic of Hawaii under the Joint  
4 Resolution to provide for annexing the Hawaiian Is-  
5 lands to the United States of July 7, 1898 (30 Stat.  
6 750), and which were later transferred to the State  
7 of Hawaii in the Act entitled “An Act to provide for  
8 the admission of the State of Hawaii into the  
9 Union” approved March 18, 1959 (Public Law 86–  
10 3; 73 Stat. 4).

11           (4) INDIGENOUS, NATIVE PEOPLE.—The term  
12 “indigenous, native people” means the lineal de-  
13 scendants of the aboriginal, indigenous, native peo-  
14 ple of the United States.

15           (5) NATIVE HAWAIIAN.—

16           (A) Prior to the recognition by the United  
17 States of the Native Hawaiian governing entity,  
18 the term “Native Hawaiian” means all Native  
19 Hawaiian people who were eligible in 1921 for  
20 the programs authorized by the Hawaiian  
21 Homes Commission Act (42 Stat. 108, chapter  
22 42) and their lineal descendants.

23           (B) Following the recognition by the  
24 United States of the Native Hawaiian gov-  
25 erning entity, the term “Native Hawaiian” shall

1           have the meaning given to such term in the or-  
 2           ganic governing documents of the Native Ha-  
 3           waiian governing entity.

4           (6) NATIVE HAWAIIAN GOVERNING ENTITY.—  
 5           The term “Native Hawaiian governing entity”  
 6           means the sole governing entity organized by the  
 7           Native Hawaiian people through a process which in-  
 8           volves the maximum participation of Native Hawai-  
 9           ians.

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

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

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

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

17           (2) the United States has a special responsi-  
 18           bility to promote the welfare of Native Hawaiians;

19           (3) Congress possesses the authority under the  
 20           Constitution to enact legislation to address the con-  
 21           ditions of Native Hawaiians and has exercised this  
 22           authority through the enactment of—

23           (A) the Hawaiian Homes Commission Act,  
 24           1920 (42 Stat. 108, chapter 42);

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

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

7 (4) Native Hawaiians have—

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

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

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

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

17 (b) PURPOSE.—It is the intent of Congress that the  
18 purpose of this Act is to provide a process for the recogni-  
19 tion by the United States of a Native Hawaiian governing  
20 entity for purposes of continuing a government-to-govern-  
21 ment relationship.

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

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

6 (b) **DUTIES OF THE OFFICE.**—The United States Of-  
7 fice for Native Hawaiian Relations shall—

8 (1) effectuate and coordinate the special polit-  
9 ical and legal relationship between the Native Ha-  
10 waiian people and the United States, and upon the  
11 recognition of the Native Hawaiian governing entity  
12 by the United States, between the Native Hawaiian  
13 governing entity and the United States through the  
14 Secretary, and with all other Federal agencies;

15 (2) continue the process of reconciliation with  
16 the Native Hawaiian people, and upon the recogni-  
17 tion of the Native Hawaiian governing entity by the  
18 United States, continue the process of reconciliation  
19 with the Native Hawaiian governing entity;

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

1 have the potential to significantly affect Native Ha-  
 2 waiian resources, rights, or lands;

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

7 (5) prepare and submit to the Committee on  
 8 Indian Affairs and the Committee on Energy and  
 9 Natural Resources of the Senate, and the Committee  
 10 on Resources of the House of Representatives an an-  
 11 nual report detailing the activities that are under-  
 12 taken with respect to the continuing process of rec-  
 13 onciliation and to effect meaningful consultation  
 14 with the Native Hawaiian governing entity and pro-  
 15 viding recommendations for any necessary changes  
 16 to existing Federal statutes or regulations promul-  
 17 gated under the authority of Federal law.

18 **SEC. 5. PROCESS FOR THE RECOGNITION OF THE NATIVE**

19 **HAWAIIAN GOVERNING ENTITY.**

20 (a) **RECOGNITION OF RIGHT TO ORGANIZE.**—The  
 21 right of the Native Hawaiian people to organize for their  
 22 common welfare and to adopt appropriate organic gov-  
 23 erning documents is hereby recognized by the United  
 24 States.

25 (b) **PROCESS.**—

1           (1) SUBMITTAL OF ORGANIC GOVERNING DOCU-  
2           MENTS.—Following the organization of the Native  
3           Hawaiian governing entity, the adoption of organic  
4           governing documents, and the election of officers of  
5           the Native Hawaiian governing entity, the duly elect-  
6           ed officers of the Native Hawaiian governing entity  
7           shall submit the organic governing documents of the  
8           Native Hawaiian governing entity—

9                     (A) to the Secretary; and

10                    (B) to the State of Hawaii for purposes of  
11           advising the State that the Native Hawaiian  
12           governing entity has been reorganized.

13           (2) CERTIFICATIONS.—

14                    (A) IN GENERAL.—Within 120 days of the  
15           date that the duly elected officers of the Native  
16           Hawaiian governing entity submit the organic  
17           governing documents to the Secretary, the Sec-  
18           retary shall certify that the organic governing  
19           documents—

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

22                             (ii) were adopted through a process  
23                             that provided for the maximum participa-  
24                             tion of Native Hawaiians;

1 (iii) provide for the exercise of govern-  
2 mental authorities by the Native Hawaiian  
3 governing entity;

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

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

13 (vi) provide for the protection of the  
14 civil rights of the citizens of the Native  
15 Hawaiian governing entity and all persons  
16 subject to the authority of the Native Ha-  
17 waiian governing entity, and ensure that  
18 the Native Hawaiian governing entity exer-  
19 cises its authority consistent with the re-  
20 quirements of section 202 of the Act of  
21 April 11, 1968 (25 U.S.C. 1302); and

22 (vii) are consistent with applicable  
23 Federal law and the special political and  
24 legal relationship between the United



1 States and the indigenous native people of  
2 the United States.

3 (B) BY THE SECRETARY.—Within 120  
4 days of the date that the duly elected officers  
5 of the Native Hawaiian governing entity submit  
6 the organic governing documents to the Sec-  
7 retary, the Secretary shall certify that the State  
8 of Hawaii supports the recognition of the Na-  
9 tive Hawaiian governing entity by the United  
10 States as evidenced by a resolution or act of the  
11 Hawaii State legislature.

12 (C) RESUBMISSION IN CASE OF NON-  
13 COMPLIANCE WITH FEDERAL LAW.—

14 (i) RESUBMISSION BY THE SEC-  
15 RETARY.—If the Secretary determines that  
16 the organic governing documents, or any  
17 part thereof, are not consistent with appli-  
18 cable Federal law, the Secretary shall re-  
19 submit the organic governing documents to  
20 the duly elected officers of the Native Ha-  
21 waiian governing entity along with a jus-  
22 tification for each of the Secretary's find-  
23 ings as to why the provisions are not con-  
24 sistent with such law.

1                   (ii) AMENDMENT AND RESUBMISSION  
2                   BY THE NATIVE HAWAIIAN GOVERNING EN-  
3                   TITY.—If the organic governing documents  
4                   are resubmitted to the duly elected officers  
5                   of the Native Hawaiian governing entity by  
6                   the Secretary under clause (i), the duly  
7                   elected officers of the Native Hawaiian  
8                   governing entity shall—

9                   (I) amend the organic governing  
10                  documents to ensure that the docu-  
11                  ments comply with applicable Federal  
12                  law; and

13                  (II) resubmit the amended or-  
14                  ganic governing documents to the Sec-  
15                  retary for certification in accordance  
16                  with the requirements of this para-  
17                  graph.

18                  (D) CERTIFICATIONS DEEMED MADE.—  
19                  The certifications authorized in subparagraph  
20                  (B) shall be deemed to have been made if the  
21                  Secretary has not acted within 180 days of the  
22                  date that the duly elected officers of the Native  
23                  Hawaiian governing entity have submitted or  
24                  resubmitted the organic governing documents of

1           the Native Hawaiian governing entity to the  
2           Secretary.

3           (3) FEDERAL RECOGNITION.—Notwithstanding  
4           any other provision of law, upon the election of the  
5           officers of the Native Hawaiian governing entity and  
6           the certifications by the Secretary required under  
7           paragraph (1), the United States hereby extends  
8           Federal recognition to the Native Hawaiian gov-  
9           erning entity as the representative governing body of  
10          the Native Hawaiian people.

11 **SEC. 6. AUTHORIZATION OF APPROPRIATIONS.**

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

15 **SEC. 7. REAFFIRMATION OF DELEGATION OF FEDERAL AU-**  
16 **THORITY; NEGOTIATIONS.**

17          (a) REAFFIRMATION.—The delegation by the United  
18          States of authority to the State of Hawaii to address the  
19          conditions of the indigenous, native people of Hawaii con-  
20          tained in the Act entitled “An Act to provide for the ad-  
21          mission of the State of Hawaii into the Union” approved  
22          March 18, 1959 (Public Law 86–3; 73 Stat. 5) is hereby  
23          reaffirmed.

24          (b) NEGOTIATIONS.—Upon the Federal recognition  
25          of the Native Hawaiian governing entity by the United

1 States, the United States is authorized to negotiate and  
2 enter into an agreement with the State of Hawaii and the  
3 Native Hawaiian governing entity regarding the transfer  
4 of lands, resources, and assets dedicated to Native Hawai-  
5 ian use to the Native Hawaiian governing entity. Nothing  
6 in this Act is intended to serve as a settlement of any  
7 claims against the United States.

8 **SEC. 8. APPLICABILITY OF CERTAIN FEDERAL LAWS.**

9 (a) INDIAN GAMING REGULATORY ACT.—Nothing  
10 contained in this Act shall be construed as an authoriza-  
11 tion for the Native Hawaiian governing entity to conduct  
12 gaming activities under the authority of the Indian Gam-  
13 ing Regulatory Act (25 U.S.C. 2701 et seq.).

14 (b) INELIGIBILITY FOR INDIAN PROGRAMS.—Noth-  
15 ing contained in this Act shall be construed as an author-  
16 ization for eligibility to participate in any programs and  
17 services provided by the Bureau of Indian Affairs or the  
18 Indian Health Service for any persons not otherwise eligi-  
19 ble for such programs or services.

20 **SEC. 9. ETHICS.**

21 The provisions of section 208(a) of title 18, United  
22 States Code, prohibiting involvement by a Federal Govern-  
23 ment officer or employee in particular matters where the  
24 officer or employee or his or her spouse or minor child  
25 has a financial interest shall not apply to Native Hawai-

1 ians employed by the United States Office for Native Ha-  
2 waiian Relations if the financial interest that would be af-  
3 fected by the particular matter involved is that resulting  
4 solely from the interest of the officer or employee or his  
5 or her spouse or minor child that results from his or her  
6 status as a Native Hawaiian.

7 **SEC. 10. SEVERABILITY.**

8       In the event that any section or provision of this Act  
9 is held invalid, it is the intent of Congress that the remain-  
10 ing sections or provisions of this Act shall continue in full  
11 force and effect.

○