

**Calendar No. 101**109<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION**S. 147****[Report No. 109-68]**

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

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**IN THE SENATE OF THE UNITED STATES**

JANUARY 25, 2005

Mr. AKAKA (for himself, Mr. INOUE, Mr. SMITH, Ms. CANTWELL, Ms. MURKOWSKI, Mr. COLEMAN, Mr. DORGAN, Mr. STEVENS, and Mr. GRAHAM) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

MAY 16, 2005

Reported by Mr. MCCAIN, with an amendment

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

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**A BILL**

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

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Native Hawaiian Gov-  
3 ernment Reorganization Act of 2005”.

4 **SEC. 2. FINDINGS.**

5 Congress finds that—

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

9 (2) Native Hawaiians, the native people of the  
10 Hawaiian archipelago that is now part of the United  
11 States, are indigenous, native people of the United  
12 States;

13 (3) the United States has a special political and  
14 legal responsibility to promote the welfare of the na-  
15 tive people of the United States, including Native  
16 Hawaiians;

17 (4) under the treaty making power of the  
18 United States, Congress exercised its constitutional  
19 authority to confirm treaties between the United  
20 States and the Kingdom of Hawaii, and from 1826  
21 until 1893, the United States—

22 (A) recognized the sovereignty of the King-  
23 dom of Hawaii;

24 (B) accorded full diplomatic recognition to  
25 the Kingdom of Hawaii; and

1           (C) entered into treaties and conventions  
2           with the Kingdom of Hawaii to govern com-  
3           merce and navigation in 1826, 1842, 1849,  
4           1875, and 1887;

5           (5) pursuant to the Hawaiian Homes Commis-  
6           sion Act, 1920 (42 Stat. 108, chapter 42), the  
7           United States set aside approximately 203,500 acres  
8           of land to address the conditions of Native Hawai-  
9           ians in the Federal territory that later became the  
10          State of Hawaii;

11          (6) by setting aside 203,500 acres of land for  
12          Native Hawaiian homesteads and farms, the Hawai-  
13          ian Homes Commission Act assists the members of  
14          the Native Hawaiian community in maintaining dis-  
15          tinct native settlements throughout the State of Ha-  
16          wahi;

17          (7) approximately 6,800 Native Hawaiian fami-  
18          lies reside on the Hawaiian Home Lands and ap-  
19          proximately 18,000 Native Hawaiians who are eligi-  
20          ble to reside on the Hawaiian Home Lands are on  
21          a waiting list to receive assignments of Hawaiian  
22          Home Lands;

23          (8)(A) in 1959, as part of the compact with the  
24          United States admitting Hawaii into the Union,  
25          Congress established a public trust (commonly

1 known as the “ceded lands trust”); for 5 purposes,  
2 1 of which is the betterment of the conditions of Na-  
3 tive Hawaiians;

4 (B) the public trust consists of lands, including  
5 submerged lands, natural resources, and the reve-  
6 nues derived from the lands; and

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

9 (9) Native Hawaiians have continuously sought  
10 access to the ceded lands in order to establish and  
11 maintain native settlements and distinct native com-  
12 munities throughout the State;

13 (10) the Hawaiian Home Lands and other  
14 ceded lands provide an important foundation for the  
15 ability of the Native Hawaiian community to main-  
16 tain the practice of Native Hawaiian culture, lan-  
17 guage, and traditions, and for the survival and eco-  
18 nomic self-sufficiency of the Native Hawaiian people;

19 (11) Native Hawaiians continue to maintain  
20 other distinctly native areas in Hawaii;

21 (12) on November 23, 1993, Public Law 103-  
22 150 (107 Stat. 1510) (commonly known as the  
23 “Apology Resolution”) was enacted into law, extend-  
24 ing an apology on behalf of the United States to the

1 native people of Hawaii for the United States' role  
2 in the overthrow of the Kingdom of Hawaii;

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

12 ~~(14) the Apology Resolution expresses the com-~~  
13 ~~mitment of Congress and the President—~~

14 ~~(A) to acknowledge the ramifications of the~~  
15 ~~overthrow of the Kingdom of Hawaii;~~

16 ~~(B) to support reconciliation efforts be-~~  
17 ~~tween the United States and Native Hawaiians;~~  
18 ~~and~~

19 ~~(C) to consult with Native Hawaiians on~~  
20 ~~the reconciliation process as called for in the~~  
21 ~~Apology Resolution;~~

22 ~~(15) despite the overthrow of the government of~~  
23 ~~the Kingdom of Hawaii, Native Hawaiians have con-~~  
24 ~~tinued to maintain their separate identity as a dis-~~  
25 ~~tinct native community through cultural, social, and~~

1 political institutions, and to give expression to their  
2 rights as native people to self-determination, self-  
3 governance, and economic self-sufficiency;

4 (16) Native Hawaiians have also given expres-  
5 sion to their rights as native people to self-deter-  
6 mination, self-governance, and economic self-suffi-  
7 ciency—

8 (A) through the provision of governmental  
9 services to Native Hawaiians, including the pro-  
10 vision of—

11 (i) health care services;

12 (ii) educational programs;

13 (iii) employment and training pro-  
14 grams;

15 (iv) economic development assistance  
16 programs;

17 (v) children's services;

18 (vi) conservation programs;

19 (vii) fish and wildlife protection;

20 (viii) agricultural programs;

21 (ix) native language immersion pro-  
22 grams;

23 (x) native language immersion schools  
24 from kindergarten through high school;

1                   (xi) college and master's degree pro-  
2                   grams in native language immersion in-  
3                   struction; and

4                   (xii) traditional justice programs; and  
5                   (B) by continuing their efforts to enhance  
6                   Native Hawaiian self-determination and local  
7                   control;

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

15                  (18) the Native Hawaiian people wish to pre-  
16                  serve, develop, and transmit to future generations of  
17                  Native Hawaiians their lands and Native Hawaiian  
18                  political and cultural identity in accordance with  
19                  their traditions, beliefs, customs and practices, lan-  
20                  guage, and social and political institutions, to con-  
21                  trol and manage their own lands, including ceded  
22                  lands, and to achieve greater self-determination over  
23                  their own affairs;

24                  (19) this Act provides a process within the  
25                  framework of Federal law for the Native Hawaiian

1 people to exercise their inherent rights as a distinct,  
2 indigenous, native community to reorganize a Native  
3 Hawaiian governing entity for the purpose of giving  
4 expression to their rights as native people to self-de-  
5 termination and self-governance;

6 (20) Congress—

7 (A) has declared that the United States  
8 has a special responsibility for the welfare of  
9 the native peoples of the United States, includ-  
10 ing Native Hawaiians;

11 (B) has identified Native Hawaiians as a  
12 distinct group of indigenous, native people of  
13 the United States within the scope of its au-  
14 thority under the Constitution, and has enacted  
15 scores of statutes on their behalf ; and

16 (C) has delegated broad authority to the  
17 State of Hawaii to administer some of the  
18 United States' responsibilities as they relate to  
19 the Native Hawaiian people and their lands;

20 (21) the United States has recognized and re-  
21 affirmed the special political and legal relationship  
22 with the Native Hawaiian people through the enact-  
23 ment of the Act entitled, "An Act to provide for the  
24 admission of the State of Hawaii into the Union",



1 approved March 18, 1959 (Public Law 86-3, 73  
2 Stat. 4), by—

3 (A) ceding to the State of Hawaii title to  
4 the public lands formerly held by the United  
5 States, and mandating that those lands be held  
6 as a public trust for 5 purposes, 1 of which is  
7 for the betterment of the conditions of Native  
8 Hawaiians; and

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

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

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

1           indigenous, native people who exercised sov-  
2           ereignty over the 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 indigenous, 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; and

16          (23) the State of Hawaii supports the reaffir-  
17          mation of the political and legal relationship between  
18          the Native Hawaiian governing entity and the  
19          United States as evidenced by 2 unanimous resolu-  
20          tions enacted by the Hawaii State Legislature in the  
21          2000 and 2001 sessions of the Legislature and by  
22          the testimony of the Governor of the State of Hawaii  
23          before the Committee on Indian Affairs of the Sen-  
24          ate on February 25, 2003.

1 **SEC. 3. DEFINITIONS.**

2 In this Act:

3 (1) **ABORIGINAL, INDIGENOUS, NATIVE PEOP-**  
4 **PLE.**—The term “aboriginal, indigenous, native peo-  
5 ple” means people whom Congress has recognized as  
6 the original inhabitants of the lands that later be-  
7 came part of the United States and who exercised  
8 sovereignty in the areas that later became part of  
9 the United States.

10 (2) **ADULT MEMBER.**—The term “adult mem-  
11 ber” means a Native Hawaiian who has attained the  
12 age of 18 and who elects to participate in the reor-  
13 ganization of the Native Hawaiian governing entity.

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

21 (4) **COMMISSION.**—The term “commission”  
22 means the Commission established under section  
23 7(b) to provide for the certification that those adult  
24 members of the Native Hawaiian community listed  
25 on the roll meet the definition of Native Hawaiian  
26 set forth in paragraph (8).

1           (5) COUNCIL.—The term “council” means the  
2 Native Hawaiian Interim Governing Council estab-  
3 lished under section 7(e)(2).

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

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

12           (8) NATIVE HAWAIIAN.—For the purpose of es-  
13 tablishing the roll authorized under section 7(e)(1)  
14 and before the reaffirmation of the political and  
15 legal relationship between the United States and the  
16 Native Hawaiian governing entity, the term “Native  
17 Hawaiian” means—

18           (A) an individual who is one of the indige-  
19 nous, native people of Hawaii and who is a di-  
20 rect lineal descendant of the aboriginal, indige-  
21 nous, native people who—

22           (i) resided in the islands that now  
23 comprise the State of Hawaii on or before  
24 January 1, 1893; and

1                   (ii) occupied and exercised sovereignty  
 2                   in the Hawaiian archipelago, including the  
 3                   area that now constitutes the State of Ha-  
 4                   waii; or

5                   (B) an individual who is one of the indige-  
 6                   nous, native people of Hawaii and who was eli-  
 7                   gible in 1921 for the programs authorized by  
 8                   the Hawaiian Homes Commission Act (42 Stat.  
 9                   108, chapter 42) or a direct lineal descendant  
 10                  of that individual.

11                  (9) NATIVE HAWAIIAN GOVERNING ENTITY.—  
 12                  The term “Native Hawaiian Governing Entity”  
 13                  means the governing entity organized by the Native  
 14                  Hawaiian people pursuant to this Act.

15                  (10) OFFICE.—The term “Office” means the  
 16                  United States Office for Native Hawaiian Relations  
 17                  established by section 5(a).

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

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

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

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

1           (2) the United States has a special political and  
2 legal relationship with the Native Hawaiian people  
3 which includes promoting the welfare of Native Ha-  
4 waiians;

5           (3) Congress possesses the authority under the  
6 Constitution, including but not limited to Article I,  
7 section 8, clause 3, to enact legislation to address  
8 the conditions of Native Hawaiians and has exer-  
9 cised this authority through the enactment of—

10                   (A) the Hawaiian Homes Commission Act,  
11 1920 (42 Stat. 108, chapter 42);

12                   (B) the Act entitled “An Act to provide for  
13 the admission of the State of Hawaii into the  
14 Union”, approved March 18, 1959 (Public Law  
15 86-3, 73 Stat. 4); and

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

18           (4) Native Hawaiians have—

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

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

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

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

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

6           ~~(b) PURPOSE.~~—The purpose of this Act is to provide  
7           a process for the reorganization of the Native Hawaiian  
8           governing entity and the reaffirmation of the political and  
9           legal relationship between the United States and the Na-  
10          tive Hawaiian governing entity for purposes of continuing  
11          a government-to-government relationship.

12   **SEC. 5. UNITED STATES OFFICE FOR NATIVE HAWAIIAN RE-**  
13                                   **LATIONS.**

14          ~~(a) ESTABLISHMENT.~~—There is established within  
15          the Office of the Secretary, the United States Office for  
16          Native Hawaiian Relations.

17          ~~(b) DUTIES.~~—The Office shall—

18                 ~~(1)~~ continue the process of reconciliation with  
19                 the Native Hawaiian people in furtherance of the  
20                 Apology Resolution;

21                 ~~(2)~~ upon the reaffirmation of the political and  
22                 legal relationship between the Native Hawaiian gov-  
23                 erning entity and the United States, effectuate and  
24                 coordinate the special political and legal relationship  
25                 between the Native Hawaiian governing entity and

1 the United States through the Secretary, and with  
2 all other Federal agencies;

3 (3) fully integrate the principle and practice of  
4 meaningful, regular, and appropriate consultation  
5 with the Native Hawaiian governing entity by pro-  
6 viding timely notice to, and consulting with, the Na-  
7 tive Hawaiian people and the Native Hawaiian gov-  
8 erning entity before taking any actions that may  
9 have the potential to significantly affect Native Ha-  
10 waiian resources, rights, or lands;

11 (4) consult with the Interagency Coordinating  
12 Group, other Federal agencies, the Governor of the  
13 State of Hawaii and relevant agencies of the State  
14 of Hawaii on policies, practices, and proposed ac-  
15 tions affecting Native Hawaiian resources, rights, or  
16 lands; and

17 (5) prepare and submit to the Committee on  
18 Indian Affairs and the Committee on Energy and  
19 Natural Resources of the Senate and the Committee  
20 on Resources of the House of Representatives an an-  
21 nual report detailing the activities of the Interagency  
22 Coordinating Group that are undertaken with re-  
23 spect to the continuing process of reconciliation and  
24 to effect meaningful consultation with the Native  
25 Hawaiian governing entity and providing rec-



1       ommendations for any necessary changes to Federal  
2       law or regulations promulgated under the authority  
3       of Federal law.

4       **SEC. 6. NATIVE HAWAIIAN INTERAGENCY COORDINATING**  
5               **GROUP.**

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

12      (b) **COMPOSITION.**—The Interagency Coordinating  
13      Group shall be composed of officials, to be designated by  
14      the President, from—

15              (1) each Federal agency that administers Na-  
16      tive Hawaiian programs, establishes or implements  
17      policies that affect Native Hawaiians, or whose ac-  
18      tions may significantly or uniquely impact Native  
19      Hawaiian resources, rights, or lands; and

20              (2) the Office.

21      (c) **LEAD AGENCY.**—

22              (1) **IN GENERAL.**—The Department of the Inte-  
23      rior shall serve as the lead agency of the Interagency  
24      Coordinating Group.

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

3           (d) DUTIES.—The Interagency Coordinating Group  
4 shall—

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

10           (2) ensure that each Federal agency develops a  
11 policy on consultation with the Native Hawaiian peo-  
12 ple; and upon the reaffirmation of the political and  
13 legal relationship between the Native Hawaiian gov-  
14 erning entity and the United States; consultation  
15 with the Native Hawaiian governing entity; and

16           (3) ensure the participation of each Federal  
17 agency in the development of the report to Congress  
18 authorized in section 5(b)(5).

1 **SEC. 7. PROCESS FOR THE REORGANIZATION OF THE NA-**  
 2 **TIVE HAWAIIAN GOVERNING ENTITY AND**  
 3 **THE REAFFIRMATION OF THE POLITICAL**  
 4 **AND LEGAL RELATIONSHIP BETWEEN THE**  
 5 **UNITED STATES AND THE NATIVE HAWAIIAN**  
 6 **GOVERNING ENTITY.**

7 (a) **RECOGNITION OF THE NATIVE HAWAIIAN GOV-**  
 8 **ERNING ENTITY.**—The right of the Native Hawaiian peo-  
 9 ple to reorganize the Native Hawaiian governing entity to  
 10 provide for their common welfare and to adopt appropriate  
 11 organic governing documents is recognized by the United  
 12 States.

13 (b) **COMMISSION.**—

14 (1) **IN GENERAL.**—There is authorized to be es-  
 15 tablished a Commission to be composed of nine  
 16 members for the purposes of—

17 (A) preparing and maintaining a roll of the  
 18 adult members of the Native Hawaiian commu-  
 19 nity who elect to participate in the reorganiza-  
 20 tion of the Native Hawaiian governing entity;  
 21 and

22 (B) certifying that the adult members of  
 23 the Native Hawaiian community proposed for  
 24 inclusion on the roll meet the definition of Na-  
 25 tive Hawaiian in paragraph (8) of section 3.

26 (2) **MEMBERSHIP.**—

1           (A) APPOINTMENT.—Within 180 days of  
2           the date of enactment of this Act, the Secretary  
3           shall appoint the members of the Commission  
4           in accordance with subclause (B). Any vacancy  
5           on the Commission shall not affect its powers  
6           and shall be filled in the same manner as the  
7           original appointment.

8           (B) REQUIREMENTS.—The members of the  
9           Commission shall be Native Hawaiian, as de-  
10          fined in section 3(8), and shall have expertise in  
11          the determination of Native Hawaiian ancestry  
12          and lineal descendancy.

13          (3) EXPENSES.—Each member of the Commis-  
14          sion shall be allowed travel expenses, including per  
15          diem in lieu of subsistence, at rates authorized for  
16          employees of agencies under subchapter I of chapter  
17          57 of title 5, United States Code, while away from  
18          their homes or regular places of business in the per-  
19          formance of services for the Commission.

20          (4) DUTIES.—The Commission shall—

21                (A) prepare and maintain a roll of the  
22                adult members of the Native Hawaiian commu-  
23                nity who elect to participate in the reorganiza-  
24                tion of the Native Hawaiian governing entity;  
25                and

1           (B) certify that each of the adult members  
2 of the Native Hawaiian community proposed for  
3 inclusion on the roll meets the definition of Na-  
4 tive Hawaiian in section 3(8).

5           (5) STAFF.—

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

12           (B) COMPENSATION.—

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

21           (ii) MAXIMUM RATE OF PAY.—The  
22 rate of pay for the executive director and  
23 other personnel shall not exceed the rate  
24 payable for level V of the Executive Sched-

1 rule under section 5316 of title 5, United  
2 States Code.

3 (6) ~~DETAIL OF FEDERAL GOVERNMENT EM-~~  
4 ~~PLOYEES.—~~

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

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

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

19 (8) ~~EXPIRATION.—~~The Secretary shall dissolve  
20 the Commission upon the reaffirmation of the polit-  
21 ical and legal relationship between the Native Ha-  
22 waiian governing entity and the United States.

23 (e) ~~PROCESS FOR THE REORGANIZATION OF THE NA-~~  
24 ~~TIVE HAWAIIAN GOVERNING ENTITY.—~~

25 (1) ~~ROLL.—~~

1           (A) CONTENTS.—The roll shall include the  
2 names of the adult members of the Native Ha-  
3 waiian community who elect to participate in  
4 the reorganization of the Native Hawaiian gov-  
5 erning entity and are certified to be Native Ha-  
6 waiian as defined in section 3(8) by the Com-  
7 mission.

8           (B) FORMATION OF ROLL.—Each adult  
9 member of the Native Hawaiian community  
10 who elects to participate in the reorganization  
11 of the Native Hawaiian governing entity shall  
12 submit to the Commission documentation in the  
13 form established by the Commission that is suf-  
14 ficient to enable the Commission to determine  
15 whether the individual meets the definition of  
16 Native Hawaiian in section 3(8).

17           (C) DOCUMENTATION.—The Commission  
18 shall—

19                   (i) identify the types of documentation  
20 that may be submitted to the Commission  
21 that would enable the Commission to de-  
22 termine whether an individual meets the  
23 definition of Native Hawaiian in section  
24 3(8);

1                   (ii) establish a standard format for  
2                   the submission of documentation; and

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

5                   (D) CONSULTATION.—In making deter-  
6                   minations that each of the adult members of  
7                   the Native Hawaiian community proposed for  
8                   inclusion on the roll meets the definition of Na-  
9                   tive Hawaiian in section 3(8), the Commission  
10                  may consult with Native Hawaiian organiza-  
11                  tions, agencies of the State of Hawaii including  
12                  but not limited to the Department of Hawaiian  
13                  Home Lands, the Office of Hawaiian Affairs,  
14                  and the State Department of Health, and other  
15                  entities with expertise and experience in the de-  
16                  termination of Native Hawaiian ancestry and  
17                  lineal descentancy.

18                  (E) CERTIFICATION AND SUBMITTAL OF  
19                  ROLL TO SECRETARY.—The Commission  
20                  shall—

21                   (i) submit the roll containing the  
22                   names of the adult members of the Native  
23                   Hawaiian community who meet the defini-  
24                   tion of Native Hawaiian in section 3(8) to  
25                   the Secretary within two years from the



1 date on which the Commission is fully  
2 composed; and

3 (ii) certify to the Secretary that each  
4 of the adult members of the Native Hawai-  
5 ian community proposed for inclusion on  
6 the roll meets the definition of Native Ha-  
7 waiian in section 3(8).

8 (F) PUBLICATION.—Upon certification by  
9 the Commission to the Secretary that those list-  
10 ed on the roll meet the definition of Native Ha-  
11 waiian in section 3(8), the Secretary shall pub-  
12 lish the roll in the Federal Register.

13 (G) APPEAL.—The Secretary may estab-  
14 lish a mechanism for an appeal for any person  
15 whose name is excluded from the roll who  
16 claims to meet the definition of Native Hawai-  
17 ian in section 3(8) and to be 18 years of age  
18 or older.

19 (H) PUBLICATION; UPDATE.—The Sec-  
20 retary shall—

21 (i) publish the roll regardless of  
22 whether appeals are pending;

23 (ii) update the roll and the publication  
24 of the roll on the final disposition of any  
25 appeal; and

1           (iii) update the roll to include any Na-  
2           tive Hawaiian who has attained the age of  
3           18 and who has been certified by the Com-  
4           mission as meeting the definition of Native  
5           Hawaiian in section 3(8) after the initial  
6           publication of the roll or after any subse-  
7           quent publications of the roll.

8           (I) FAILURE TO ACT.—If the Secretary  
9           fails to publish the roll, not later than 90 days  
10          after the date on which the roll is submitted to  
11          the Secretary, the Commission shall publish the  
12          roll notwithstanding any order or directive  
13          issued by the Secretary or any other official of  
14          the Department of the Interior to the contrary.

15          (J) EFFECT OF PUBLICATION.—The publi-  
16          cation of the initial and updated roll shall serve  
17          as the basis for the eligibility of adult members  
18          of the Native Hawaiian community whose  
19          names are listed on those rolls to participate in  
20          the reorganization of the Native Hawaiian gov-  
21          erning entity.

22          (2) ORGANIZATION OF THE NATIVE HAWAIIAN  
23          INTERIM GOVERNING COUNCIL.—

1           (A) ORGANIZATION.—The adult members  
2 of the Native Hawaiian community listed on the  
3 roll published under this section may—

4           (i) develop criteria for candidates to  
5 be elected to serve on the Native Hawaiian  
6 Interim Governing Council;

7           (ii) determine the structure of the  
8 Council; and

9           (iii) elect members from individuals  
10 listed on the roll published under this sub-  
11 section to the Council.

12       (B) POWERS.—

13           (i) IN GENERAL.—The Council—

14           (I) may represent those listed on  
15 the roll published under this section in  
16 the implementation of this Act; and

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

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

24           (iii) ACTIVITIES.—

1                   (H) IN GENERAL.—The Council  
2                   may conduct a referendum among the  
3                   adult members of the Native Hawai-  
4                   ian community listed on the roll pub-  
5                   lished under this subsection for the  
6                   purpose of determining the proposed  
7                   elements of the organic governing doc-  
8                   uments of the Native Hawaiian gov-  
9                   erning entity, including but not lim-  
10                  ited to—

11                   (aa) the proposed criteria  
12                   for citizenship of the Native Ha-  
13                   waiian governing entity;

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

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

1 governmental powers and au-  
2 thorities of the Native Hawaiian  
3 governing entity; and

4 (dd) other issues determined  
5 appropriate by the Council.

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

12 (III) DISTRIBUTION.—The Coun-  
13 cil may distribute to all adult mem-  
14 bers of the Native Hawaiian commu-  
15 nity listed on the roll published under  
16 this subsection—

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

20 (bb) a brief impartial de-  
21 scription of the proposed organic  
22 governing documents;

23 (IV) ELECTIONS.—The Council  
24 may hold elections for the purpose of  
25 ratifying the proposed organic gov-

1                   erning documents, and on certification  
 2                   of the organic governing documents  
 3                   by the Secretary in accordance with  
 4                   paragraph (4), hold elections of the  
 5                   officers of the Native Hawaiian gov-  
 6                   erning entity pursuant to paragraph  
 7                   (5).

8                   (3) SUBMITTAL OF ORGANIC GOVERNING DOCU-  
 9                   MENTS.—Following the reorganization of the Native  
 10                  Hawaiian governing entity and the adoption of or-  
 11                  ganic governing documents, the Council shall submit  
 12                  the organic governing documents of the Native Ha-  
 13                  waiian governing entity to the Secretary.

14                  (4) CERTIFICATIONS.—

15                  (A) IN GENERAL.—Within the context of  
 16                  the future negotiations to be conducted under  
 17                  the authority of section 8(b)(1), and the subse-  
 18                  quent actions by the Congress and the State of  
 19                  Hawaii to enact legislation to implement the  
 20                  agreements of the 3 governments, not later  
 21                  than 90 days after the date on which the Coun-  
 22                  cil submits the organic governing documents to  
 23                  the Secretary, the Secretary shall certify that  
 24                  the organic governing documents—

- 1 (i) establish the criteria for citizenship  
2 in the Native Hawaiian governing entity;
- 3 (ii) were adopted by a majority vote of  
4 the adult members of the Native Hawaiian  
5 community whose names are listed on the  
6 roll published by the Secretary;
- 7 (iii) provide authority for the Native  
8 Hawaiian governing entity to negotiate  
9 with Federal, State, and local govern-  
10 ments, and other entities;
- 11 (iv) provide for the exercise of govern-  
12 mental authorities by the Native Hawaiian  
13 governing entity, including any authorities  
14 that may be delegated to the Native Ha-  
15 waiian governing entity by the United  
16 States and the State of Hawaii following  
17 negotiations authorized in section 8(b)(1)  
18 and the enactment of legislation to imple-  
19 ment the agreements of the 3 governments;
- 20 (v) prevent the sale, disposition, lease,  
21 or encumbrance of lands, interests in  
22 lands, or other assets of the Native Hawai-  
23 ian governing entity without the consent of  
24 the Native Hawaiian governing entity;

1 (vi) provide for the protection of the  
2 civil rights of the citizens of the Native  
3 Hawaiian governing entity and all persons  
4 affected by the exercise of governmental  
5 powers and authorities by the Native Ha-  
6 waiian governing entity; and

7 (vii) are consistent with applicable  
8 Federal law and the special political and  
9 legal relationship between the United  
10 States and the indigenous, native people of  
11 the United States; provided that the provi-  
12 sions of Public Law 103-454, 25 U.S.C.  
13 479a, shall not apply.

14 (B) RESUBMISSION IN CASE OF NON-  
15 COMPLIANCE WITH THE REQUIREMENTS OF  
16 SUBPARAGRAPH (a).—

17 (i) RESUBMISSION BY THE SEC-  
18 RETARY.—If the Secretary determines that  
19 the organic governing documents, or any  
20 part of the documents, do not meet all of  
21 the requirements set forth in subparagraph  
22 (A), the Secretary shall resubmit the or-  
23 ganic governing documents to the Council,  
24 along with a justification for each of the



1 Secretary's findings as to why the provi-  
2 sions are not in full compliance.

3 (ii) ~~AMENDMENT AND RESUBMISSION~~  
4 ~~OF ORGANIC GOVERNING DOCUMENTS.~~—If  
5 the organic governing documents are re-  
6 submitted to the Council by the Secretary  
7 under clause (i), the Council shall—

8 (I) amend the organic governing  
9 documents to ensure that the docu-  
10 ments meet all the requirements set  
11 forth in subparagraph (A); and

12 (II) resubmit the amended or-  
13 ganic governing documents to the Sec-  
14 retary for certification in accordance  
15 with this paragraph.

16 (C) ~~CERTIFICATIONS DEEMED MADE.~~—

17 The certifications under paragraph (4) shall be  
18 deemed to have been made if the Secretary has  
19 not acted within 90 days after the date on  
20 which the Council has submitted the organic  
21 governing documents of the Native Hawaiian  
22 governing entity to the Secretary.

23 (5) ~~ELECTIONS.~~—On completion of the certifi-  
24 cations by the Secretary under paragraph (4), the

1 Council may hold elections of the officers of the Na-  
 2 tive Hawaiian governing entity.

3 (6) REAFFIRMATION.—Notwithstanding any  
 4 other provision of law, upon the certifications re-  
 5 quired under paragraph (4) and the election of the  
 6 officers of the Native Hawaiian governing entity, the  
 7 political and legal relationship between the United  
 8 States and the Native Hawaiian governing entity is  
 9 hereby reaffirmed and the United States extends  
 10 Federal recognition to the Native Hawaiian gov-  
 11 erning entity as the representative governing body of  
 12 the Native Hawaiian people.

13 **SEC. 8. REAFFIRMATION OF DELEGATION OF FEDERAL AU-**  
 14 **THORITY; NEGOTIATIONS; CLAIMS.**

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

22 (b) NEGOTIATIONS.—

23 (1) IN GENERAL.—Upon the reaffirmation of  
 24 the political and legal relationship between the  
 25 United States and the Native Hawaiian governing

1       entity, the United States and the State of Hawaii  
2       may enter into negotiations with the Native Hawai-  
3       ian governing entity designed to lead to an agree-  
4       ment addressing such matters as—

5               (A) the transfer of lands, natural re-  
6               sources, and other assets, and the protection of  
7               existing rights related to such lands or re-  
8               sources;

9               (B) the exercise of governmental authority  
10              over any transferred lands, natural resources,  
11              and other assets, including land use;

12              (C) the exercise of civil and criminal juris-  
13              diction;

14              (D) the delegation of governmental powers  
15              and authorities to the Native Hawaiian gov-  
16              erning entity by the United States and the  
17              State of Hawaii; and

18              (E) any residual responsibilities of the  
19              United States and the State of Hawaii.

20       (2) AMENDMENTS TO EXISTING LAWS.—Upon  
21       agreement on any matter or matters negotiated with  
22       the United States, the State of Hawaii, and the Na-  
23       tive Hawaiian governing entity, the parties are au-  
24       thorized to submit—

1           (A) to the Committee on Indian Affairs of  
 2           the Senate, the Committee on Energy and Nat-  
 3           ural Resources of the Senate, and the Com-  
 4           mittee on Resources of the House of Represent-  
 5           atives; recommendations for proposed amend-  
 6           ments to Federal law that will enable the imple-  
 7           mentation of agreements reached between the 3  
 8           governments; and

9           (B) to the Governor and the legislature of  
 10          the State of Hawaii; recommendations for pro-  
 11          posed amendments to State law that will enable  
 12          the implementation of agreements reached be-  
 13          tween the 3 governments.

14       (e) CLAIMS.—

15           (1) IN GENERAL.—Nothing in this Act serves  
 16          as a settlement of any claim against the United  
 17          States.

18           (2) STATUTE OF LIMITATIONS.—Any claim  
 19          against the United States arising under Federal law  
 20          that—

21           (A) is in existence on the date of enact-  
 22          ment of this Act;

23           (B) is asserted by the Native Hawaiian  
 24          governing entity on behalf of the Native Hawai-  
 25          ian people; and

1           (C) relates to the legal and political rela-  
2           tionship between the United States and the Na-  
3           tive Hawaiian people;  
4           shall be brought in the court of jurisdiction over  
5           such claims not later than 20 years after the date  
6           on which Federal recognition is extended to the Na-  
7           tive Hawaiian governing entity under section  
8           7(e)(6).

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

10       (a) INDIAN GAMING REGULATORY ACT.—Nothing in  
11 this Act shall be construed to authorize the Native Hawai-  
12 ian governing entity to conduct gaming activities under  
13 the authority of the Indian Gaming Regulatory Act (25  
14 U.S.C. 2701 et seq.).

15       (b) BUREAU OF INDIAN AFFAIRS.—Nothing con-  
16 tained in this Act provides an authorization for eligibility  
17 to participate in any programs and services provided by  
18 the Bureau of Indian Affairs for any persons not otherwise  
19 eligible for the programs or services.

20 **SEC. 10. SEVERABILITY.**

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

1 **SEC. 11. AUTHORIZATION OF APPROPRIATIONS.**

2 There are authorized to be appropriated such sums  
3 as are necessary to carry out this Act.

4 **SECTION 1. SHORT TITLE.**

5 *This Act may be cited as the “Native Hawaiian Gov-*  
6 *ernment Reorganization Act of 2005”.*

7 **SEC. 2. FINDINGS.**

8 *Congress finds that—*

9 *(1) the Constitution vests Congress with the au-*  
10 *thority to address the conditions of the indigenous,*  
11 *native people of the United States;*

12 *(2) Native Hawaiians, the native people of the*  
13 *Hawaiian archipelago that is now part of the United*  
14 *States, are indigenous, native people of the United*  
15 *States;*

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

20 *(4) under the treaty making power of the United*  
21 *States, Congress exercised its constitutional authority*  
22 *to confirm treaties between the United States and the*  
23 *Kingdom of Hawaii, and from 1826 until 1893, the*  
24 *United States—*

25 *(A) recognized the sovereignty of the King-*  
26 *dom of Hawaii;*

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

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

7           (5) pursuant to the Hawaiian Homes Commis-  
8           sion Act, 1920 (42 Stat. 108, chapter 42), the United  
9           States set aside approximately 203,500 acres of land  
10          to address the conditions of Native Hawaiians in the  
11          Federal territory that later became the State of Ha-  
12          waii;

13          (6) by setting aside 203,500 acres of land for Na-  
14          tive Hawaiian homesteads and farms, the Hawaiian  
15          Homes Commission Act assists the members of the  
16          Native Hawaiian community in maintaining distinct  
17          native settlements throughout the State of Hawaii;

18          (7) approximately 6,800 Native Hawaiian fami-  
19          lies reside on the Hawaiian Home Lands and ap-  
20          proximately 18,000 Native Hawaiians who are eligi-  
21          ble to reside on the Hawaiian Home Lands are on a  
22          waiting list to receive assignments of Hawaiian  
23          Home Lands;

24          (8)(A) in 1959, as part of the compact with the  
25          United States admitting Hawaii into the Union,

1 Congress established a public trust (commonly known  
2 as the “ceded lands trust”), for 5 purposes, 1 of which  
3 is the betterment of the conditions of Native Hawai-  
4 ians;

5 (B) the public trust consists of lands, including  
6 submerged lands, natural resources, and the revenues  
7 derived from the lands; and

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

10 (9) Native Hawaiians have continuously sought  
11 access to the ceded lands in order to establish and  
12 maintain native settlements and distinct native com-  
13 munities throughout the State;

14 (10) the Hawaiian Home Lands and other ceded  
15 lands provide an important foundation for the ability  
16 of the Native Hawaiian community to maintain the  
17 practice of Native Hawaiian culture, language, and  
18 traditions, and for the survival and economic self-suf-  
19 ficiency of the Native Hawaiian people;

20 (11) Native Hawaiians continue to maintain  
21 other distinctly native areas in Hawaii;

22 (12) on November 23, 1993, Public Law 103–150  
23 (107 Stat. 1510) (commonly known as the “Apology  
24 Resolution”) was enacted into law, extending an  
25 apology on behalf of the United States to the native



1 *people of Hawaii for the United States' role in the*  
2 *overthrow of the Kingdom of Hawaii;*

3 *(13) the Apology Resolution acknowledges that*  
4 *the overthrow of the Kingdom of Hawaii occurred*  
5 *with the active participation of agents and citizens of*  
6 *the United States and further acknowledges that the*  
7 *Native Hawaiian people never directly relinquished*  
8 *to the United States their claims to their inherent*  
9 *sovereignty as a people over their national lands, ei-*  
10 *ther through the Kingdom of Hawaii or through a*  
11 *plebiscite or referendum;*

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

14 *(A) to acknowledge the ramifications of the*  
15 *overthrow of the Kingdom of Hawaii;*

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

18 *(C) to consult with Native Hawaiians on*  
19 *the reconciliation process as called for in the*  
20 *Apology Resolution;*

21 *(15) despite the overthrow of the government of*  
22 *the Kingdom of Hawaii, Native Hawaiians have con-*  
23 *tinued to maintain their separate identity as a dis-*  
24 *tinct native community through cultural, social, and*  
25 *political institutions, and to give expression to their*

1 *rights as native people to self-determination, self-gov-*  
2 *ernance, and economic self-sufficiency;*

3 *(16) Native Hawaiians have also given expres-*  
4 *sion to their rights as native people to self-determina-*  
5 *tion, self-governance, and economic self-sufficiency—*

6 *(A) through the provision of governmental*  
7 *services to Native Hawaiians, including the pro-*  
8 *vision of—*

9 *(i) health care services;*

10 *(ii) educational programs;*

11 *(iii) employment and training pro-*  
12 *grams;*

13 *(iv) economic development assistance*  
14 *programs;*

15 *(v) children's services;*

16 *(vi) conservation programs;*

17 *(vii) fish and wildlife protection;*

18 *(viii) agricultural programs;*

19 *(ix) native language immersion pro-*  
20 *grams;*

21 *(x) native language immersion schools*  
22 *from kindergarten through high school;*

23 *(xi) college and master's degree pro-*  
24 *grams in native language immersion in-*  
25 *struction; and*

1                    *(xii) traditional justice programs, and*  
2                    *(B) by continuing their efforts to enhance*  
3                    *Native Hawaiian self-determination and local*  
4                    *control;*

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

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

21                   *(19) this Act provides a process within the*  
22                   *framework of Federal law for the Native Hawaiian*  
23                   *people to exercise their inherent rights as a distinct,*  
24                   *indigenous, native community to reorganize a Native*  
25                   *Hawaiian governing entity for the purpose of giving*

1 *expression to their rights as native people to self-de-*  
2 *termination and self-governance;*

3 (20) Congress—

4 (A) *has declared that the United States has*  
5 *a special responsibility for the welfare of the na-*  
6 *tive peoples of the United States, including Na-*  
7 *tive Hawaiians;*

8 (B) *has identified Native Hawaiians as a*  
9 *distinct group of indigenous, native people of the*  
10 *United States within the scope of its authority*  
11 *under the Constitution, and has enacted scores of*  
12 *statutes on their behalf ; and*

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

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

24 (A) *ceding to the State of Hawaii title to*  
25 *the public lands formerly held by the United*

1           *States, and mandating that those lands be held*  
2           *as a public trust for 5 purposes, 1 of which is*  
3           *for the betterment of the conditions of Native*  
4           *Hawaiians; and*

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

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

18                   *(A) Native Hawaiians have a cultural, his-*  
19           *toric, and land-based link to the aboriginal, in-*  
20           *digenuous, native people who exercised sovereignty*  
21           *over the Hawaiian Islands;*

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

1           (C) *the United States extends services to*  
2           *Native Hawaiians because of their unique status*  
3           *as the indigenous, native people of a once-sov-*  
4           *ereign nation with whom the United States has*  
5           *a political and legal relationship; and*

6           (D) *the special trust relationship of Amer-*  
7           *ican Indians, Alaska Natives, and Native Ha-*  
8           *waiians to the United States arises out of their*  
9           *status as aboriginal, indigenous, native people of*  
10          *the United States; and*

11          (23) *the State of Hawaii supports the reaffirma-*  
12          *tion of the political and legal relationship between the*  
13          *Native Hawaiian governing entity and the United*  
14          *States as evidenced by 2 unanimous resolutions en-*  
15          *acted by the Hawaii State Legislature in the 2000*  
16          *and 2001 sessions of the Legislature and by the testi-*  
17          *mony of the Governor of the State of Hawaii before*  
18          *the Committee on Indian Affairs of the Senate on*  
19          *February 25, 2003, and March 1, 2005.*

20 **SEC. 3. DEFINITIONS.**

21 *In this Act:*

22          (1) *ABORIGINAL, INDIGENOUS, NATIVE PEO-*  
23          *PLE.—The term “aboriginal, indigenous, native peo-*  
24          *ple” means people whom Congress has recognized as*  
25          *the original inhabitants of the lands that later became*

1 *part of the United States and who exercised sov-*  
2 *ereignty in the areas that later became part of the*  
3 *United States.*

4 (2) *ADULT MEMBER.*—*The term “adult member”*  
5 *means a Native Hawaiian who has attained the age*  
6 *of 18 and who elects to participate in the reorganiza-*  
7 *tion of the Native Hawaiian governing entity.*

8 (3) *APOLOGY RESOLUTION.*—*The term “Apology*  
9 *Resolution” means Public Law 103–150 (107 Stat.*  
10 *1510), a Joint Resolution extending an apology to*  
11 *Native Hawaiians on behalf of the United States for*  
12 *the participation of agents of the United States in the*  
13 *January 17, 1893, overthrow of the Kingdom of Ha-*  
14 *waii.*

15 (4) *COMMISSION.*—*The term “commission”*  
16 *means the Commission established under section 7(b)*  
17 *to provide for the certification that those adult mem-*  
18 *bers of the Native Hawaiian community listed on the*  
19 *roll meet the definition of Native Hawaiian set forth*  
20 *in paragraph (10).*

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

24 (6) *INDIAN PROGRAM OR SERVICE.*—

1           (A) *IN GENERAL.*—The term “Indian pro-  
2           gram or service” means any federally funded or  
3           authorized program or service provided to an In-  
4           dian tribe (or member of an Indian tribe) be-  
5           cause of the status of the members of the Indian  
6           tribe as Indians.

7           (B) *INCLUSIONS.*—The term “Indian pro-  
8           gram or service” includes a program or service  
9           provided by the Bureau of Indian Affairs, the  
10          Indian Health Service, or any other Federal  
11          agency.

12          (7) *INDIAN TRIBE.*—The term “Indian tribe” has  
13          the meaning given the term in section 4 of the Indian  
14          Self-Determination and Education Assistance Act (25  
15          U.S.C. 450b).

16          (8) *INDIGENOUS, NATIVE PEOPLE.*—The term  
17          “indigenous, native people” means the lineal descend-  
18          ants of the aboriginal, indigenous, native people of the  
19          United States.

20          (9) *INTERAGENCY COORDINATING GROUP.*—The  
21          term “Interagency Coordinating Group” means the  
22          Native Hawaiian Interagency Coordinating Group  
23          established under section 6.

24          (10) *NATIVE HAWAIIAN.*—



1           (A) *IN GENERAL.*—Subject to subparagraph  
2           (B), for the purpose of establishing the roll au-  
3           thorized under section 7(c)(1) and before the re-  
4           affirmation of the political and legal relationship  
5           between the United States and the Native Ha-  
6           waiian governing entity, the term “Native Ha-  
7           waiian” means—

8                   (i) an individual who is 1 of the indig-  
9                   enous, native people of Hawaii and who is  
10                  a direct lineal descendant of the aboriginal,  
11                  indigenous, native people who—

12                           (I) resided in the islands that now  
13                           comprise the State of Hawaii on or be-  
14                           fore January 1, 1893; and

15                           (II) occupied and exercised sov-  
16                           ereignty in the Hawaiian archipelago,  
17                           including the area that now constitutes  
18                           the State of Hawaii; or

19                   (ii) an individual who is 1 of the in-  
20                   digenous, native people of Hawaii and who  
21                   was eligible in 1921 for the programs au-  
22                   thorized by the Hawaiian Homes Commis-  
23                   sion Act (42 Stat. 108, chapter 42) or a di-  
24                   rect lineal descendant of that individual.

1                   (B) *NO EFFECT ON OTHER DEFINITIONS.*—  
2                   Nothing in this paragraph affects the definition  
3                   of the term “Native Hawaiian” under any other  
4                   Federal or State law (including a regulation).

5                   (11) *NATIVE HAWAIIAN GOVERNING ENTITY.*—  
6                   The term “Native Hawaiian Governing Entity”  
7                   means the governing entity organized by the Native  
8                   Hawaiian people pursuant to this Act.

9                   (12) *NATIVE HAWAIIAN PROGRAM OR SERVICE.*—  
10                  The term “Native Hawaiian program or service”  
11                  means any program or service provided to Native  
12                  Hawaiians because of their status as Native Hawai-  
13                  ians.

14                  (13) *OFFICE.*—The term “Office” means the  
15                  United States Office for Native Hawaiian Relations  
16                  established by section 5(a).

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

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

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

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

24                         (2) *the United States has a special political and*  
25                         *legal relationship with the Native Hawaiian people*

1       *which includes promoting the welfare of Native Ha-*  
2       *waiians;*

3           (3) *Congress possesses the authority under the*  
4       *Constitution, including but not limited to Article I,*  
5       *section 8, clause 3, to enact legislation to address the*  
6       *conditions of Native Hawaiians and has exercised*  
7       *this authority through the enactment of—*

8           (A) *the Hawaiian Homes Commission Act,*  
9       *1920 (42 Stat. 108, chapter 42);*

10          (B) *the Act entitled “An Act to provide for*  
11       *the admission of the State of Hawaii into the*  
12       *Union”, approved March 18, 1959 (Public Law*  
13       *86–3, 73 Stat. 4); and*

14          (C) *more than 150 other Federal laws ad-*  
15       *ressing the conditions of Native Hawaiians;*

16       (4) *Native Hawaiians have—*

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

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

21          (C) *the right to reorganize a Native Hawai-*  
22       *ian governing entity; and*

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

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

4           (b) *PURPOSE.*—*The purpose of this Act is to provide*  
5           *a process for the reorganization of the Native Hawaiian*  
6           *governing entity and the reaffirmation of the political and*  
7           *legal relationship between the United States and the Native*  
8           *Hawaiian governing entity for purposes of continuing a*  
9           *government-to-government relationship.*

10 **SEC. 5. UNITED STATES OFFICE FOR NATIVE HAWAIIAN RE-**  
11 **LATIONS.**

12           (a) *ESTABLISHMENT.*—*There is established within the*  
13 *Office of the Secretary, the United States Office for Native*  
14 *Hawaiian Relations.*

15           (b) *DUTIES.*—*The Office shall—*

16                 (1) *continue the process of reconciliation with*  
17                 *the Native Hawaiian people in furtherance of the*  
18                 *Apology Resolution;*

19                 (2) *upon the reaffirmation of the political and*  
20                 *legal relationship between the Native Hawaiian gov-*  
21                 *erning entity and the United States, effectuate and*  
22                 *coordinate the special political and legal relationship*  
23                 *between the Native Hawaiian governing entity and*  
24                 *the United States through the Secretary, and with all*  
25                 *other Federal agencies;*

1           (3) *fully integrate the principle and practice of*  
2           *meaningful, regular, and appropriate consultation*  
3           *with the Native Hawaiian governing entity by pro-*  
4           *viding timely notice to, and consulting with, the Na-*  
5           *tive Hawaiian people and the Native Hawaiian gov-*  
6           *erning entity before taking any actions that may have*  
7           *the potential to significantly affect Native Hawaiian*  
8           *resources, rights, or lands;*

9           (4) *consult with the Interagency Coordinating*  
10          *Group, other Federal agencies, the Governor of the*  
11          *State of Hawaii and relevant agencies of the State of*  
12          *Hawaii on policies, practices, and proposed actions*  
13          *affecting Native Hawaiian resources, rights, or lands;*  
14          *and*

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

1 **SEC. 6. NATIVE HAWAIIAN INTERAGENCY COORDINATING**  
2 **GROUP.**

3 (a) *ESTABLISHMENT.*—*In recognition that Federal*  
4 *programs authorized to address the conditions of Native*  
5 *Hawaiians are largely administered by Federal agencies*  
6 *other than the Department of the Interior, there is estab-*  
7 *lished an interagency coordinating group to be known as*  
8 *the “Native Hawaiian Interagency Coordinating Group”.*

9 (b) *COMPOSITION.*—*The Interagency Coordinating*  
10 *Group shall be composed of officials, to be designated by*  
11 *the President, from—*

12 (1) *each Federal agency that administers Native*  
13 *Hawaiian programs, establishes or implements poli-*  
14 *cies that affect Native Hawaiians, or whose actions*  
15 *may significantly or uniquely impact Native Hawai-*  
16 *ian resources, rights, or lands; and*

17 (2) *the Office.*

18 (c) *LEAD AGENCY.*—

19 (1) *IN GENERAL.*—*The Department of the Inte-*  
20 *rior shall serve as the lead agency of the Interagency*  
21 *Coordinating Group.*

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

24 (d) *DUTIES.*—*The Interagency Coordinating Group*  
25 *shall—*

1           (1) *coordinate Federal programs and policies*  
 2 *that affect Native Hawaiians or actions by any agen-*  
 3 *cy or agencies of the Federal Government that may*  
 4 *significantly or uniquely affect Native Hawaiian re-*  
 5 *sources, rights, or lands;*

6           (2) *ensure that each Federal agency develops a*  
 7 *policy on consultation with the Native Hawaiian peo-*  
 8 *ple, and upon the reaffirmation of the political and*  
 9 *legal relationship between the Native Hawaiian gov-*  
 10 *erning entity and the United States, consultation*  
 11 *with the Native Hawaiian governing entity; and*

12           (3) *ensure the participation of each Federal*  
 13 *agency in the development of the report to Congress*  
 14 *authorized in section 5(b)(5).*

15 **SEC. 7. PROCESS FOR THE REORGANIZATION OF THE NA-**  
 16 **TIVE HAWAIIAN GOVERNING ENTITY AND THE**  
 17 **REAFFIRMATION OF THE POLITICAL AND**  
 18 **LEGAL RELATIONSHIP BETWEEN THE UNITED**  
 19 **STATES AND THE NATIVE HAWAIIAN GOV-**  
 20 **ERNING ENTITY.**

21           (a) *RECOGNITION OF THE NATIVE HAWAIIAN GOV-*  
 22 *ERNING ENTITY.*—*The right of the Native Hawaiian people*  
 23 *to reorganize the Native Hawaiian governing entity to pro-*  
 24 *vide for their common welfare and to adopt appropriate*

1 *organic governing documents is recognized by the United*  
2 *States.*

3 (b) *COMMISSION.—*

4 (1) *IN GENERAL.—There is authorized to be es-*  
5 *tablished a Commission to be composed of nine mem-*  
6 *bers for the purposes of—*

7 (A) *preparing and maintaining a roll of the*  
8 *adult members of the Native Hawaiian commu-*  
9 *nity who elect to participate in the reorganiza-*  
10 *tion of the Native Hawaiian governing entity;*  
11 *and*

12 (B) *certifying that the adult members of the*  
13 *Native Hawaiian community proposed for inclu-*  
14 *sion on the roll meet the definition of Native Ha-*  
15 *waiian in section 3(10).*

16 (2) *MEMBERSHIP.—*

17 (A) *APPOINTMENT.—Within 180 days of the*  
18 *date of enactment of this Act, the Secretary shall*  
19 *appoint the members of the Commission in ac-*  
20 *cordance with subclause (B). Any vacancy on the*  
21 *Commission shall not affect its powers and shall*  
22 *be filled in the same manner as the original ap-*  
23 *pointment.*

24 (B) *REQUIREMENTS.—The members of the*  
25 *Commission shall be Native Hawaiian, as de-*



1           *fined in section 3(10), and shall have expertise*  
2           *in the determination of Native Hawaiian ances-*  
3           *try and lineal descendancy.*

4           (3) *EXPENSES.—Each member of the Commis-*  
5           *sion shall be allowed travel expenses, including per*  
6           *diem in lieu of subsistence, at rates authorized for*  
7           *employees of agencies under subchapter I of chapter*  
8           *57 of title 5, United States Code, while away from*  
9           *their homes or regular places of business in the per-*  
10          *formance of services for the Commission.*

11          (4) *DUTIES.—The Commission shall—*

12                 (A) *prepare and maintain a roll of the*  
13                 *adult members of the Native Hawaiian commu-*  
14                 *nity who elect to participate in the reorganiza-*  
15                 *tion of the Native Hawaiian governing entity;*  
16                 *and*

17                 (B) *certify that each of the adult members*  
18                 *of the Native Hawaiian community proposed for*  
19                 *inclusion on the roll meets the definition of Na-*  
20                 *tive Hawaiian in section 3(10).*

21          (5) *STAFF.—*

22                 (A) *IN GENERAL.—The Commission may,*  
23                 *without regard to the civil service laws (includ-*  
24                 *ing regulations), appoint and terminate an exec-*  
25                 *utive director and such other additional per-*

1           *sonnel as are necessary to enable the Commission*  
2           *to perform the duties of the Commission.*

3           *(B) COMPENSATION.—*

4                   *(i) IN GENERAL.—Except as provided*  
5                   *in clause (ii), the Commission may fix the*  
6                   *compensation of the executive director and*  
7                   *other personnel without regard to the provi-*  
8                   *sions of chapter 51 and subchapter III of*  
9                   *chapter 53 of title 5, United States Code,*  
10                  *relating to classification of positions and*  
11                  *General Schedule pay rates.*

12                   *(ii) MAXIMUM RATE OF PAY.—The rate*  
13                   *of pay for the executive director and other*  
14                   *personnel shall not exceed the rate payable*  
15                   *for level V of the Executive Schedule under*  
16                   *section 5316 of title 5, United States Code.*

17           *(6) DETAIL OF FEDERAL GOVERNMENT EMPLOY-*  
18           *EES.—*

19                   *(A) IN GENERAL.—An employee of the Fed-*  
20                   *eral Government may be detailed to the Commis-*  
21                   *sion without reimbursement.*

22                   *(B) CIVIL SERVICE STATUS.—The detail of*  
23                   *the employee shall be without interruption or*  
24                   *loss of civil service status or privilege.*

1           (7) *PROCUREMENT OF TEMPORARY AND INTER-*  
2           *MITTENT SERVICES.*—*The Commission may procure*  
3           *temporary and intermittent services in accordance*  
4           *with section 3109(b) of title 5, United States Code, at*  
5           *rates for individuals that do not exceed the daily*  
6           *equivalent of the annual rate of basic pay prescribed*  
7           *for level V of the Executive Schedule under section*  
8           *5316 of that title.*

9           (8) *EXPIRATION.*—*The Secretary shall dissolve*  
10          *the Commission upon the reaffirmation of the polit-*  
11          *ical and legal relationship between the Native Hawai-*  
12          *ian governing entity and the United States.*

13          (c) *PROCESS FOR THE REORGANIZATION OF THE NA-*  
14          *TIVE HAWAIIAN GOVERNING ENTITY.*—

15               (1) *ROLL.*—

16                   (A) *CONTENTS.*—*The roll shall include the*  
17                   *names of the adult members of the Native Ha-*  
18                   *waiian community who elect to participate in*  
19                   *the reorganization of the Native Hawaiian gov-*  
20                   *erning entity and are certified to be Native Ha-*  
21                   *waiian as defined in section 3(10) by the Com-*  
22                   *mission.*

23                   (B) *FORMATION OF ROLL.*—*Each adult*  
24                   *member of the Native Hawaiian community who*  
25                   *elects to participate in the reorganization of the*

1           *Native Hawaiian governing entity shall submit*  
2           *to the Commission documentation in the form es-*  
3           *tablished by the Commission that is sufficient to*  
4           *enable the Commission to determine whether the*  
5           *individual meets the definition of Native Hawai-*  
6           *ian in section 3(10).*

7           (C) *DOCUMENTATION.—The Commission*  
8           *shall—*

9                   (i) *identify the types of documentation*  
10                   *that may be submitted to the Commission*  
11                   *that would enable the Commission to deter-*  
12                   *mine whether an individual meets the defi-*  
13                   *inition of Native Hawaiian in section 3(10);*

14                   (ii) *establish a standard format for the*  
15                   *submission of documentation; and*

16                   (iii) *publish information related to*  
17                   *clauses (i) and (ii) in the Federal Register.*

18           (D) *CONSULTATION.—In making deter-*  
19           *minations that each of the adult members of the*  
20           *Native Hawaiian community proposed for inclu-*  
21           *sion on the roll meets the definition of Native*  
22           *Hawaiian in section 3(10), the Commission may*  
23           *consult with Native Hawaiian organizations,*  
24           *agencies of the State of Hawaii including but*  
25           *not limited to the Department of Hawaiian*

1           *Home Lands, the Office of Hawaiian Affairs,*  
2           *and the State Department of Health, and other*  
3           *entities with expertise and experience in the de-*  
4           *termination of Native Hawaiian ancestry and*  
5           *lineal descendancy.*

6           (E) *CERTIFICATION AND SUBMITTAL OF*  
7           *ROLL TO SECRETARY.—The Commission shall—*

8                   (i) *submit the roll containing the*  
9                   *names of the adult members of the Native*  
10                  *Hawaiian community who meet the defini-*  
11                  *tion of Native Hawaiian in section 3(10) to*  
12                  *the Secretary within two years from the*  
13                  *date on which the Commission is fully com-*  
14                  *posed; and*

15                  (ii) *certify to the Secretary that each of*  
16                  *the adult members of the Native Hawaiian*  
17                  *community proposed for inclusion on the*  
18                  *roll meets the definition of Native Hawai-*  
19                  *ian in section 3(10).*

20           (F) *PUBLICATION.—Upon certification by*  
21           *the Commission to the Secretary that those listed*  
22           *on the roll meet the definition of Native Hawai-*  
23           *ian in section 3(10), the Secretary shall publish*  
24           *the roll in the Federal Register.*

1           (G) *APPEAL*.—*The Secretary may establish*  
2 *a mechanism for an appeal for any person whose*  
3 *name is excluded from the roll who claims to*  
4 *meet the definition of Native Hawaiian in sec-*  
5 *tion 3(10) and to be 18 years of age or older.*

6           (H) *PUBLICATION; UPDATE*.—*The Secretary*  
7 *shall—*

8                   (i) *publish the roll regardless of wheth-*  
9 *er appeals are pending;*

10                   (ii) *update the roll and the publication*  
11 *of the roll on the final disposition of any*  
12 *appeal; and*

13                   (iii) *update the roll to include any Na-*  
14 *tive Hawaiian who has attained the age of*  
15 *18 and who has been certified by the Com-*  
16 *mission as meeting the definition of Native*  
17 *Hawaiian in section 3(10) after the initial*  
18 *publication of the roll or after any subse-*  
19 *quent publications of the roll.*

20           (I) *FAILURE TO ACT*.—*If the Secretary fails*  
21 *to publish the roll, not later than 90 days after*  
22 *the date on which the roll is submitted to the*  
23 *Secretary, the Commission shall publish the roll*  
24 *notwithstanding any order or directive issued by*

1           *the Secretary or any other official of the Depart-*  
 2           *ment of the Interior to the contrary.*

3           *(J) EFFECT OF PUBLICATION.—The publi-*  
 4           *cation of the initial and updated roll shall serve*  
 5           *as the basis for the eligibility of adult members*  
 6           *of the Native Hawaiian community whose names*  
 7           *are listed on those rolls to participate in the re-*  
 8           *organization of the Native Hawaiian governing*  
 9           *entity.*

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

12           *(A) ORGANIZATION.—The adult members of*  
 13           *the Native Hawaiian community listed on the*  
 14           *roll published under this section may—*

15                   *(i) develop criteria for candidates to be*  
 16                   *elected to serve on the Native Hawaiian In-*  
 17                   *terim Governing Council;*

18                   *(ii) determine the structure of the*  
 19                   *Council; and*

20                   *(iii) elect members from individuals*  
 21                   *listed on the roll published under this sub-*  
 22                   *section to the Council.*

23           *(B) POWERS.—*

24                   *(i) IN GENERAL.—The Council—*

1           (I) may represent those listed on  
2           the roll published under this section in  
3           the implementation of this Act; and

4           (II) shall have no powers other  
5           than powers given to the Council under  
6           this Act.

7           (ii) *FUNDING.*—The Council may enter  
8           into a contract with, or obtain a grant  
9           from, any Federal or State agency to carry  
10          out clause (iii).

11          (iii) *ACTIVITIES.*—

12           (I) *IN GENERAL.*—The Council  
13           may conduct a referendum among the  
14           adult members of the Native Hawaiian  
15           community listed on the roll published  
16           under this subsection for the purpose of  
17           determining the proposed elements of  
18           the organic governing documents of the  
19           Native Hawaiian governing entity, in-  
20          cluding but not limited to—

21           (aa) the proposed criteria for  
22           citizenship of the Native Hawai-  
23           ian governing entity;

24           (bb) the proposed powers and  
25           authorities to be exercised by the



1 *Native Hawaiian governing enti-*  
2 *ty, as well as the proposed privi-*  
3 *leges and immunities of the Na-*  
4 *tive Hawaiian governing entity;*

5 *(cc) the proposed civil rights*  
6 *and protection of the rights of the*  
7 *citizens of the Native Hawaiian*  
8 *governing entity and all persons*  
9 *affected by the exercise of govern-*  
10 *mental powers and authorities of*  
11 *the Native Hawaiian governing*  
12 *entity; and*

13 *(dd) other issues determined*  
14 *appropriate by the Council.*

15 *(II) DEVELOPMENT OF ORGANIC*  
16 *GOVERNING DOCUMENTS.—Based on*  
17 *the referendum, the Council may de-*  
18 *velop proposed organic governing docu-*  
19 *ments for the Native Hawaiian gov-*  
20 *erning entity.*

21 *(III) DISTRIBUTION.—The Coun-*  
22 *cil may distribute to all adult members*  
23 *of the Native Hawaiian community*  
24 *listed on the roll published under this*  
25 *subsection—*

1                   (aa) a copy of the proposed  
2                   organic governing documents, as  
3                   drafted by the Council; and

4                   (bb) a brief impartial de-  
5                   scription of the proposed organic  
6                   governing documents;

7                   (IV) *ELECTIONS.*—The Council  
8                   may hold elections for the purpose of  
9                   ratifying the proposed organic gov-  
10                  erning documents, and on certification  
11                  of the organic governing documents by  
12                  the Secretary in accordance with para-  
13                  graph (4), hold elections of the officers  
14                  of the Native Hawaiian governing en-  
15                  tity pursuant to paragraph (5).

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

22                  (4) *CERTIFICATIONS.*—

23                         (A) *IN GENERAL.*—Within the context of the  
24                         future negotiations to be conducted under the au-  
25                         thority of section 8(b)(1), and the subsequent ac-

1            *tions by the Congress and the State of Hawaii*  
2            *to enact legislation to implement the agreements*  
3            *of the 3 governments, not later than 90 days*  
4            *after the date on which the Council submits the*  
5            *organic governing documents to the Secretary,*  
6            *the Secretary shall certify that the organic gov-*  
7            *erning documents—*

8                    *(i) establish the criteria for citizenship*  
9                    *in the Native Hawaiian governing entity;*

10                   *(ii) were adopted by a majority vote of*  
11                   *the adult members of the Native Hawaiian*  
12                   *community whose names are listed on the*  
13                   *roll published by the Secretary;*

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

18                   *(iv) provide for the exercise of govern-*  
19                   *mental authorities by the Native Hawaiian*  
20                   *governing entity, including any authorities*  
21                   *that may be delegated to the Native Hawai-*  
22                   *ian governing entity by the United States*  
23                   *and the State of Hawaii following negotia-*  
24                   *tions authorized in section 8(b)(1) and the*

1           enactment of legislation to implement the  
2           agreements of the 3 governments;

3           (v) prevent the sale, disposition, lease,  
4           or encumbrance of lands, interests in lands,  
5           or other assets of the Native Hawaiian gov-  
6           erning entity without the consent of the Na-  
7           tive Hawaiian governing entity;

8           (vi) provide for the protection of the  
9           civil rights of the citizens of the Native Ha-  
10          waiian governing entity and all persons af-  
11          fected by the exercise of governmental pow-  
12          ers and authorities by the Native Hawaiian  
13          governing entity; and

14          (vii) are consistent with applicable  
15          Federal law and the special political and  
16          legal relationship between the United States  
17          and the indigenous, native people of the  
18          United States; provided that the provisions  
19          of Public Law 103-454, 25 U.S.C. 479a,  
20          shall not apply.

21           (B) *RESUBMISSION IN CASE OF NONCOMPLI-*  
22           *ANCE WITH THE REQUIREMENTS OF SUBPARA-*  
23           *GRAPH (a).—*

24           (i) *RESUBMISSION BY THE SEC-*  
25           *RETARY.—If the Secretary determines that*

1           *the organic governing documents, or any*  
2           *part of the documents, do not meet all of the*  
3           *requirements set forth in subparagraph (A),*  
4           *the Secretary shall resubmit the organic*  
5           *governing documents to the Council, along*  
6           *with a justification for each of the Sec-*  
7           *retary's findings as to why the provisions*  
8           *are not in full compliance.*

9           *(ii) AMENDMENT AND RESUBMISSION*  
10          *OF ORGANIC GOVERNING DOCUMENTS.—If*  
11          *the organic governing documents are resub-*  
12          *mitted to the Council by the Secretary*  
13          *under clause (i), the Council shall—*

14                 *(I) amend the organic governing*  
15                 *documents to ensure that the docu-*  
16                 *ments meet all the requirements set*  
17                 *forth in subparagraph (A); and*

18                 *(II) resubmit the amended organic*  
19                 *governing documents to the Secretary*  
20                 *for certification in accordance with*  
21                 *this paragraph.*

22          *(C) CERTIFICATIONS DEEMED MADE.—The*  
23          *certifications under paragraph (4) shall be*  
24          *deemed to have been made if the Secretary has*  
25          *not acted within 90 days after the date on which*

1           *the Council has submitted the organic governing*  
 2           *documents of the Native Hawaiian governing en-*  
 3           *tity to the Secretary.*

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

8           (6) *REAFFIRMATION.*—*Notwithstanding any*  
 9           *other provision of law, upon the certifications re-*  
 10          *quired under paragraph (4) and the election of the of-*  
 11          *ficers of the Native Hawaiian governing entity, the*  
 12          *political and legal relationship between the United*  
 13          *States and the Native Hawaiian governing entity is*  
 14          *hereby reaffirmed and the United States extends Fed-*  
 15          *eral recognition to the Native Hawaiian governing*  
 16          *entity as the representative governing body of the Na-*  
 17          *tive Hawaiian people.*

18 **SEC. 8. REAFFIRMATION OF DELEGATION OF FEDERAL AU-**  
 19                                   **THORITY; NEGOTIATIONS; CLAIMS.**

20          (a) *REAFFIRMATION.*—*The delegation by the United*  
 21          *States of authority to the State of Hawaii to address the*  
 22          *conditions of the indigenous, native people of Hawaii con-*  
 23          *tained in the Act entitled “An Act to provide for the admis-*  
 24          *sion of the State of Hawaii into the Union” approved*

1 *March 18, 1959 (Public Law 86-3, 73 Stat. 4), is re-*  
2 *affirmed.*

3 *(b) NEGOTIATIONS.—*

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

11 *(A) the transfer of lands, natural resources,*  
12 *and other assets, and the protection of existing*  
13 *rights related to such lands or resources;*

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

17 *(C) the exercise of civil and criminal juris-*  
18 *diction;*

19 *(D) the delegation of governmental powers*  
20 *and authorities to the Native Hawaiian gov-*  
21 *erning entity by the United States and the State*  
22 *of Hawaii; and*

23 *(E) any residual responsibilities of the*  
24 *United States and the State of Hawaii.*

1           (2) *AMENDMENTS TO EXISTING LAWS.*—Upon  
2           *agreement on any matter or matters negotiated with*  
3           *the United States, the State of Hawaii, and the Na-*  
4           *tive Hawaiian governing entity, the parties are au-*  
5           *thorized to submit—*

6                     *(A) to the Committee on Indian Affairs of*  
7                     *the Senate, the Committee on Energy and Nat-*  
8                     *ural Resources of the Senate, and the Committee*  
9                     *on Resources of the House of Representatives,*  
10                    *recommendations for proposed amendments to*  
11                    *Federal law that will enable the implementation*  
12                    *of agreements reached between the 3 governments;*  
13                    *and*

14                    *(B) to the Governor and the legislature of*  
15                    *the State of Hawaii, recommendations for pro-*  
16                    *posed amendments to State law that will enable*  
17                    *the implementation of agreements reached be-*  
18                    *tween the 3 governments.*

19           *(c) CLAIMS.*—

20                    *(1) IN GENERAL.*—*Nothing in this Act serves as*  
21                    *a settlement of any claim against the United States.*

22                    *(2) STATUTE OF LIMITATIONS.*—*Any claim*  
23                    *against the United States arising under Federal law*  
24                    *that—*



1           (A) is in existence on the date of enactment  
2           of this Act;

3           (B) is asserted by the Native Hawaiian gov-  
4           erning entity on behalf of the Native Hawaiian  
5           people; and

6           (C) relates to the legal and political rela-  
7           tionship between the United States and the Na-  
8           tive Hawaiian people;

9           shall be brought in the court of jurisdiction over such  
10          claims not later than 20 years after the date on which  
11          Federal recognition is extended to the Native Hawai-  
12          ian governing entity under section 7(c)(6).

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

14          (a) *INDIAN GAMING REGULATORY ACT.*—Nothing in  
15          this Act shall be construed to authorize the Native Hawai-  
16          ian governing entity to conduct gaming activities under the  
17          authority of the Indian Gaming Regulatory Act (25 U.S.C.  
18          2701 *et seq.*).

19          (b) *INDIAN PROGRAMS AND SERVICES.*—Notwith-  
20          standing section 7(c)(6), because of the eligibility of the Na-  
21          tive Hawaiian governing entity and its citizens for Native  
22          Hawaiian programs and services in accordance with sub-  
23          section (c), nothing in this Act provides an authorization  
24          for eligibility to participate in any Indian program or serv-

1 *ice to any individual or entity not otherwise eligible for*  
2 *the program or service under applicable Federal law.*

3 *(c) NATIVE HAWAIIAN PROGRAMS AND SERVICES.—*

4 *The Native Hawaiian governing entity and its citizens*  
5 *shall be eligible for Native Hawaiian programs and services*  
6 *to the extent and in the manner provided by other applica-*  
7 *ble laws.*

8 **SEC. 10. SEVERABILITY.**

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

12 **SEC. 11. AUTHORIZATION OF APPROPRIATIONS.**

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



**Calendar No. 101**

109<sup>TH</sup> CONGRESS  
1<sup>ST</sup> Session

**S. 147**

[Report No. 109-68]

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**A BILL**

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

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MAY 16, 2005

Reported with an amendment