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[Report No. 111-162]

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

IN THE SENATE OF THE UNITED STATES

MAY 7, 2009

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

MARCH 11, 2010

Reported by Mr. DORGAN, with an amendment

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

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 2009”.

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 relationship 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
23 of the Kingdom of Hawaii, Native Hawaiians have
24 continued to maintain their separate identity as a
25 single distinct native community through cultural;

1 social, and political institutions, and to give expres-
2 sion to their rights as native people to self-deter-
3 mination, self-governance, and economic self-suffi-
4 ciency;

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

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

12 (i) health care services;

13 (ii) educational programs;

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

16 (iv) economic development assistance
17 programs;

18 (v) children's services;

19 (vi) conservation programs;

20 (vii) fish and wildlife protection;

21 (viii) agricultural programs;

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

24 (x) native language immersion schools
25 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 single
3 Native Hawaiian governing entity for the purpose of
4 giving expression to their rights as native people to
5 self-determination and self-governance;

6 (20) Congress—

7 (A) has declared that the United States
8 has a special political and legal relationship for
9 the welfare of the native peoples of the United
10 States, including 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 exclusive right of the United States to
13 consent to any actions affecting the lands in-
14 cluded in the trust and any amendments to the
15 Hawaiian Homes Commission Act, 1920 (42
16 Stat. 108, chapter 42) that are enacted by the
17 legislature of the State of Hawaii affecting the
18 beneficiaries under the Act;

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

21 (A) Native Hawaiians have a cultural, his-
22 toric, and land-based link to the aboriginal, in-
23 digenous, native people who exercised sov-
24 ereignty over the Hawaiian Islands;

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

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

10 (D) the special relationship of American
11 Indians, Alaska Natives, and Native Hawaiians
12 to the United States arises out of their status
13 as aboriginal, indigenous, native people of the
14 United States; and

15 ~~(23)~~ the State of Hawaii supports the reaffir-
16 mation of the special political and legal relationship
17 between the Native Hawaiian governing entity and
18 the United States as evidenced by 2 unanimous reso-
19 lutions enacted by the Hawaii State Legislature in
20 the 2000 and 2001 sessions of the Legislature and
21 by the testimony of the Governor of the State of Ha-
22 wahi before the Committee on Indian Affairs of the
23 Senate on February 25, 2003, and March 1, 2005.

24 **SEC. 3. DEFINITIONS.**

25 In this Act:

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

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

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

19 (4) COMMISSION.—The term “commission”
20 means the Commission established under section
21 7(b) to provide for the certification that those adult
22 members of the Native Hawaiian community listed
23 on the roll meet the definition of Native Hawaiian
24 set forth in paragraph (10).

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

4 (6) INDIAN PROGRAM OR SERVICE.—

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

11 (B) INCLUSIONS.—The term “Indian pro-
12 gram or service” includes a program or service
13 provided by the Bureau of Indian Affairs, the
14 Indian Health Service, or any other Federal
15 agency.

16 (7) INDIAN TRIBE.—The term “Indian tribe”
17 has the meaning given the term in section 4 of the
18 Indian Self-Determination and Education Assistance
19 Act (25 U.S.C. 450b).

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

24 (9) INTERAGENCY COORDINATING GROUP.—The
25 term “Interagency Coordinating Group” means the

1 Native Hawaiian Interagency Coordinating Group
2 established under section 6:

3 ~~(10) NATIVE HAWAIIAN.—~~

4 ~~(A) IN GENERAL.—~~Subject to subpara-
5 graph ~~(B)~~, for the purpose of establishing the
6 roll authorized under section 7(c)(1) and before
7 the reaffirmation of the special political and
8 legal relationship between the United States
9 and the Native Hawaiian governing entity, the
10 term “Native Hawaiian” means—

11 ~~(i) an individual who is 1 of the indig-~~
12 ~~enous, native people of Hawaii and who is~~
13 ~~a direct lineal descendant of the aboriginal,~~
14 ~~indigenous, native people who—~~

15 ~~(I) resided in the islands that~~
16 ~~now comprise the State of Hawaii on~~
17 ~~or before January 1, 1893; and~~

18 ~~(II) occupied and exercised sov-~~
19 ~~ereignty in the Hawaiian archipelago,~~
20 ~~including the area that now con-~~
21 ~~stitutes the State of Hawaii; or~~

22 ~~(ii) an individual who is 1 of the in-~~
23 ~~digenous, native people of Hawaii and who~~
24 ~~was eligible in 1921 for the programs au-~~
25 ~~thorized by the Hawaiian Homes Commis-~~

1 sion Act (42 Stat. 108, chapter 42) or a
2 direct lineal descendant of that individual.

3 (B) NO EFFECT ON OTHER DEFINI-
4 TIONS.—Nothing in this paragraph affects the
5 definition of the term “Native Hawaiian” under
6 any other Federal or State law (including a reg-
7 ulation).

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

12 (12) NATIVE HAWAIIAN PROGRAM OR SERV-
13 ICE.—The term “Native Hawaiian program or serv-
14 ice” means any program or service provided to Na-
15 tive Hawaiians because of their status as Native Ha-
16 waiians.

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

20 (14) SECRETARY.—The term “Secretary”
21 means the Secretary of the Interior.

22 (15) SPECIAL POLITICAL AND LEGAL RELA-
23 TIONSHIP.—The term “special political and legal re-
24 lationship” shall refer, except where differences are
25 specifically indicated elsewhere in the Act, to the

1 type of and nature of relationship the United States
2 has with the several federally recognized Indian
3 tribes.

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

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

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

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

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

18 (A) the Hawaiian Homes Commission Act,
19 1920 (42 Stat. 108, chapter 42);

20 (B) the Act entitled “An Act to provide for
21 the admission of the State of Hawaii into the
22 Union”, approved March 18, 1959 (Public Law
23 86–3, 73 Stat. 4); and

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

1 (4) Native Hawaiians have—

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

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

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

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

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

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

20 **SEC. 5. UNITED STATES OFFICE FOR NATIVE HAWAIIAN RE-**
21 **LATIONS.**

22 (a) ESTABLISHMENT.—There is established within
23 the Office of the Secretary, the United States Office for
24 Native Hawaiian Relations.

25 (b) DUTIES.—The Office shall—

1 (1) continue the process of reconciliation with
2 the Native Hawaiian people in furtherance of the
3 Apology Resolution;

4 (2) upon the reaffirmation of the special polit-
5 ical and legal relationship between the single Native
6 Hawaiian governing entity and the United States,
7 effectuate and coordinate the special political and
8 legal relationship between the Native Hawaiian gov-
9 erning entity and the United States through the
10 Secretary, and with all other Federal agencies;

11 (3) fully integrate the principle and practice of
12 meaningful, regular, and appropriate consultation
13 with the Native Hawaiian governing entity by pro-
14 viding timely notice to, and consulting with, the Na-
15 tive Hawaiian people and the Native Hawaiian gov-
16 erning entity before taking any actions that may
17 have the potential to significantly affect Native Ha-
18 waiian resources, rights, or lands;

19 (4) consult with the Interagency Coordinating
20 Group, other Federal agencies, and the State of Ha-
21 waii on policies, practices, and proposed actions af-
22 fecting Native Hawaiian resources, rights, or lands;
23 and

24 (5) prepare and submit to the Committee on
25 Indian Affairs and the Committee on Energy and

1 Natural Resources of the Senate and the Committee
2 on Resources of the House of Representatives an an-
3 nual report detailing the activities of the Interagency
4 Coordinating Group that are undertaken with re-
5 spect to the continuing process of reconciliation and
6 to effect meaningful consultation with the Native
7 Hawaiian governing entity and providing rec-
8 ommendations for any necessary changes to Federal
9 law or regulations promulgated under the authority
10 of Federal law.

11 (c) APPLICABILITY TO DEPARTMENT OF DE-
12 FENSE.—This section shall have no applicability to the
13 Department of Defense or to any agency or component
14 of the Department of Defense, but the Secretary of De-
15 fense may designate 1 or more officials as liaison to the
16 Office.

17 **SEC. 6. NATIVE HAWAIIAN INTERAGENCY COORDINATING**
18 **GROUP.**

19 (a) ESTABLISHMENT.—In recognition that Federal
20 programs authorized to address the conditions of Native
21 Hawaiians are largely administered by Federal agencies
22 other than the Department of the Interior, there is estab-
23 lished an interagency coordinating group to be known as
24 the “Native Hawaiian Interagency Coordinating Group”.

1 (b) COMPOSITION.—The Interagency Coordinating
2 Group shall be composed of officials, to be designated by
3 the President, from—

4 (1) each Federal agency that administers Na-
5 tive Hawaiian programs, establishes or implements
6 policies that affect Native Hawaiians, or whose ac-
7 tions may significantly or uniquely impact Native
8 Hawaiian resources, rights, or lands; and

9 (2) the Office.

10 (c) LEAD AGENCY.—

11 (1) IN GENERAL.—The Department of the Inte-
12 rior shall serve as the lead agency of the Interagency
13 Coordinating Group.

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

16 (d) DUTIES.—The Interagency Coordinating Group
17 shall—

18 (1) coordinate Federal programs and policies
19 that affect Native Hawaiians or actions by any agen-
20 cy or agencies of the Federal Government that may
21 significantly or uniquely affect Native Hawaiian re-
22 sources, rights, or lands;

23 (2) consult with the Native Hawaiian governing
24 entity, through the coordination referred to in sec-
25 tion 6(d)(1), but the consultation obligation estab-

1 lished in this provision shall apply only after the sat-
 2 isfaction of all of the conditions referred to in sec-
 3 tion 7(e)(6); and

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

7 (e) **APPLICABILITY TO DEPARTMENT OF DE-**
 8 **FENSE.**—This section shall have no applicability to the
 9 Department of Defense or to any agency or component
 10 of the Department of Defense, but the Secretary of De-
 11 fense may designate 1 or more officials as liaison to the
 12 Interagency Coordinating Group.

13 **SEC. 7. PROCESS FOR THE REORGANIZATION OF THE NA-**
 14 **TIVE HAWAIIAN GOVERNING ENTITY AND**
 15 **THE REAFFIRMATION OF THE SPECIAL PO-**
 16 **LITICAL AND LEGAL RELATIONSHIP BE-**
 17 **TWEEN THE UNITED STATES AND THE NA-**
 18 **TIVE HAWAIIAN GOVERNING ENTITY.**

19 (a) **RECOGNITION OF THE NATIVE HAWAIIAN GOV-**
 20 **ERNING ENTITY.**—The right of the Native Hawaiian peo-
 21 ple to reorganize the single Native Hawaiian governing en-
 22 tity to provide for their common welfare and to adopt ap-
 23 propriate organic governing documents is recognized by
 24 the United States.

25 (b) **COMMISSION.**—

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

4 (A) preparing and maintaining a roll of the
5 adult members of the Native Hawaiian commu-
6 nity who elect to participate in the reorganiza-
7 tion of the single Native Hawaiian governing
8 entity; and

9 (B) certifying that the adult members of
10 the Native Hawaiian community proposed for
11 inclusion on the roll meet the definition of Na-
12 tive Hawaiian in section 3(10).

13 (2) MEMBERSHIP.—

14 (A) APPOINTMENT.—

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

20 (ii) CONSIDERATION.—In making an
21 appointment under clause (i), the Sec-
22 retary may take into consideration a rec-
23 ommendation made by any Native Hawai-
24 ian organization.

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

4 (i) not less than 10 years of experi-
5 ence in the study and determination of Na-
6 tive Hawaiian genealogy; and

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

10 (C) VACANCIES.—A vacancy on the Com-
11 mission—

12 (i) shall not affect the powers of the
13 Commission; and

14 (ii) shall be filled in the same manner
15 as the original appointment.

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

23 (4) DUTIES.—The Commission shall—

24 (A) prepare and maintain a roll of the
25 adult members of the Native Hawaiian commu-

1 nity who elect to participate in the reorganiza-
 2 tion of the Native Hawaiian governing entity;
 3 and

4 (B) certify that each of the adult members
 5 of the Native Hawaiian community proposed for
 6 inclusion on the roll meets the definition of Na-
 7 tive Hawaiian in section 3(10).

8 (5) STAFF.—

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

15 (B) COMPENSATION.—

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

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

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

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

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

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

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

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

1 (c) PROCESS FOR THE REORGANIZATION OF THE NA-
2 TIVE HAWAIIAN GOVERNING ENTITY.—

3 (1) ROLL.—

4 (A) CONTENTS.—The roll shall include the
5 names of the adult members of the Native Ha-
6 waiian community who elect to participate in
7 the reorganization of the Native Hawaiian gov-
8 erning entity and are certified to be Native Ha-
9 waiian as defined in section 3(10) by the Com-
10 mission.

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

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

22 (i) identify the types of documentation
23 that may be submitted to the Commission
24 that would enable the Commission to de-
25 termine whether an individual meets the

1 definition of Native Hawaiian in section
2 3(10);

3 (ii) establish a standard format for
4 the submission of documentation; and

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

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

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

23 (i) submit the roll containing the
24 names of the adult members of the Native
25 Hawaiian community who meet the defini-

1 tion of Native Hawaiian in section 3(10) to
2 the Secretary within 2 years from the date
3 on which the Commission is fully com-
4 posed; and

5 (ii) certify to the Secretary that each
6 of the adult members of the Native Hawai-
7 ian community proposed for inclusion on
8 the roll meets the definition of Native Ha-
9 waiian in section 3(10).

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

15 (G) APPEAL.—The Secretary may estab-
16 lish a mechanism for an appeal for any person
17 whose name is excluded from the roll who
18 claims to meet the definition of Native Hawai-
19 ian in section 3(10) and to be 18 years of age
20 or older.

21 (H) PUBLICATION; UPDATE.—The Sec-
22 retary shall—

23 (i) publish the roll regardless of
24 whether appeals are pending;

1 (ii) update the roll and the publication
2 of the roll on the final disposition of any
3 appeal; and

4 (iii) update the roll to include any Na-
5 tive Hawaiian who has attained the age of
6 18 and who has been certified by the Com-
7 mission as meeting the definition of Native
8 Hawaiian in section 3(10) after the initial
9 publication of the roll or after any subse-
10 quent publications of the roll.

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

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

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

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

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

9 (ii) determine the structure of the
10 Council; and

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

14 (B) POWERS.—

15 (i) IN GENERAL.—The Council—

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

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

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

1 (iii) ACTIVITIES.—

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

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

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

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

1 sons affected by the exercise of
2 governmental powers and au-
3 thorities of the Native Hawaiian
4 governing entity; and

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

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

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

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

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

24 (IV) ELECTIONS.—The Council
25 may hold elections for the purpose of

1 ratifying the proposed organic gov-
2 erning documents, and on certification
3 of the organic governing documents
4 by the Secretary in accordance with
5 paragraph (4), hold elections of the
6 officers of the Native Hawaiian gov-
7 erning entity pursuant to paragraph
8 (5).

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

15 (4) CERTIFICATIONS.—

16 (A) IN GENERAL.—Within the context of
17 the future negotiations to be conducted under
18 the authority of section 8(b)(1), and the subse-
19 quent actions by the Congress and the State of
20 Hawaii to enact legislation to implement the
21 agreements of the 3 governments, not later
22 than 90 days after the date on which the Coun-
23 cil submits the organic governing documents to
24 the Secretary, the Secretary shall certify that
25 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 special political and legal relationship between the
 8 United States and the Native Hawaiian governing
 9 entity is hereby reaffirmed and the United States ex-
 10 tends Federal recognition to the Native Hawaiian
 11 governing entity as the representative governing
 12 body of 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 special political and legal relationship between
 25 the United States and the Native Hawaiian gov-

1 erning entity, the United States and the State of
2 Hawaii may enter into negotiations with the Native
3 Hawaiian governing entity designed to lead to an
4 agreement 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;

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

20 (F) grievances regarding assertions of his-
21 torical wrongs committed against Native Ha-
22 waiians by the United States or by the State of
23 Hawaii.

24 (2) AMENDMENTS TO EXISTING LAWS.—Upon
25 agreement on any matter or matters negotiated with

1 the United States, the State of Hawaii, and the Na-
2 tive Hawaiian governing entity, the parties are au-
3 thorized to submit—

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

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

17 (3) GOVERNMENTAL AUTHORITY AND
18 POWER.—Any governmental authority or power to
19 be exercised by the Native Hawaiian governing enti-
20 ty which is currently exercised by the State or Fed-
21 eral Governments shall be exercised by the Native
22 Hawaiian governing entity only as agreed to in nego-
23 tiations pursuant to section 8(b)(1) of this Act and
24 beginning on the date on which legislation to imple-
25 ment such agreement has been enacted by the

1 United States Congress, when applicable, and by the
2 State of Hawaii, when applicable. This includes any
3 required modifications to the Hawaii State Constitu-
4 tion in accordance with the Hawaii Revised Statutes.

5 (e) CLAIMS.—

6 (1) DISCLAIMERS.—Nothing in this Act—

7 (A) creates a cause of action against the
8 United States or any other entity or person;

9 (B) alters existing law, including existing
10 case law, regarding obligations on the part of
11 the United States or the State of Hawaii with
12 regard to Native Hawaiians or any Native Ha-
13 waiian entity;

14 (C) creates obligations that did not exist in
15 any source of Federal law prior to the date of
16 enactment of this Act; or

17 (D) establishes authority for the recogni-
18 tion of Native Hawaiian groups other than the
19 single Native Hawaiian Governing Entity.

20 (2) FEDERAL SOVEREIGN IMMUNITY.—

21 (A) SPECIFIC PURPOSE.—Nothing in this
22 Act is intended to create or allow to be main-
23 tained in any court any potential breach-of-
24 trust actions, land claims, resource-protection
25 or resource-management claims, or similar

1 types of claims brought by or on behalf of Na-
2 tive Hawaiians or the Native Hawaiian gov-
3 erning entity for equitable, monetary, or Ad-
4 ministrative Procedure Act-based relief against
5 the United States or the State of Hawaii,
6 whether or not such claims specifically assert
7 an alleged breach of trust, call for an account-
8 ing, seek declaratory relief, or seek the recovery
9 of or compensation for lands once held by Na-
10 tive Hawaiians.

11 (B) ESTABLISHMENT AND RETENTION OF
12 SOVEREIGN IMMUNITY.—To effectuate the ends
13 expressed in section 8(c)(1) and 8(c)(2)(A), and
14 notwithstanding any other provision of Federal
15 law, the United States retains its sovereign im-
16 munity to any claim that existed prior to the
17 enactment of this Act (including, but not lim-
18 ited to, any claim based in whole or in part on
19 past events), and which could be brought by
20 Native Hawaiians or any Native Hawaiian gov-
21 erning entity. Nor shall any preexisting waiver
22 of sovereign immunity (including, but not lim-
23 ited to, waivers set forth in chapter 7 of part
24 I of title 5, United States Code, and sections
25 1505 and 2409a of title 28, United States

1 Code) be applicable to any such claims. This
2 complete retention or reclaiming of sovereign
3 immunity also applies to every claim that might
4 attempt to rely on this Act for support, without
5 regard to the source of law under which any
6 such claim might be asserted.

7 (C) EFFECT.—It is the general effect of
8 section 8(c)(2)(B) that any claims that may al-
9 ready have accrued and might be brought
10 against the United States, including any claims
11 of the types specifically referred to in section
12 8(c)(2)(A), along with both claims of a similar
13 nature and claims arising out of the same nu-
14 cleus of operative facts as could give rise to
15 claims of the specific types referred to in sec-
16 tion 8(c)(2)(A), be rendered nonjusticiable in
17 suits brought by plaintiffs other than the Fed-
18 eral Government.

19 (3) STATE SOVEREIGNTY IMMUNITY.—

20 (A) Notwithstanding any other provision of
21 Federal law, the State retains its sovereign im-
22 munity, unless waived in accord with State law,
23 to any claim, established under any source of
24 law, regarding Native Hawaiians, that existed
25 prior to the enactment of this Act.

1 (B) Nothing in this Act shall be construed
2 to constitute an override pursuant to section 5
3 of the Fourteenth Amendment of State sov-
4 ereign immunity held under the Eleventh
5 Amendment.

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

7 (a) INDIAN GAMING REGULATORY ACT.—

8 (1) The Native Hawaiian governing entity and
9 Native Hawaiians may not conduct gaming activities
10 as a matter of claimed inherent authority or under
11 the authority of any Federal law, including the In-
12 dian Gaming Regulatory Act (25 U.S.C. 2701 et
13 seq.) or under any regulations thereunder promul-
14 gated by the Secretary or the National Indian Gam-
15 ing Commission.

16 (2) The foregoing prohibition in section 9(a)(1)
17 on the use of Indian Gaming Regulatory Act and in-
18 herent authority to game apply regardless of wheth-
19 er gaming by Native Hawaiians or the Native Ha-
20 waiian governing entity would be located on land
21 within the State of Hawaii or within any other State
22 or Territory of the United States.

23 (b) TAKING LAND INTO TRUST.—Notwithstanding
24 any other provision of law, including but not limited to
25 part 151 of title 25, Code of Federal Regulations, the Sec-

1 retary shall not take land into trust on behalf of individ-
2 uals or groups claiming to be Native Hawaiian or on be-
3 half of the native Hawaiian governing entity.

4 (c) REAL PROPERTY TRANSFERS.—The Indian
5 Trade and Intercourse Act (25 U.S.C. 177), does not, has
6 never, and will not apply after enactment to lands or lands
7 transfers present, past, or future, in the State of Hawaii.
8 If despite the expression of this intent herein, a court were
9 to construe the Trade and Intercourse Act to apply to
10 lands or land transfers in Hawaii before the date of enact-
11 ment of this Act, then any transfer of land or natural re-
12 sources located within the State of Hawaii prior to the
13 date of enactment of this Act, by or on behalf of the Na-
14 tive Hawaiian people, or individual Native Hawaiians,
15 shall be deemed to have been made in accordance with
16 the Indian Trade and Intercourse Act and any other provi-
17 sion of Federal law that specifically applies to transfers
18 of land or natural resources from, by, or on behalf of an
19 Indian tribe, Native Hawaiians, or Native Hawaiian enti-
20 ties.

21 (d) SINGLE GOVERNING ENTITY.—This Act will re-
22 sult in the recognition of the single Native Hawaiian gov-
23 erning entity. Additional Native Hawaiian groups shall not
24 be eligible for acknowledgment pursuant to the Federal
25 Acknowledgment Process set forth in part 83 of title 25

1 of the Code of Federal Regulations or any other adminis-
2 trative acknowledgment or recognition process.

3 (e) JURISDICTION.—Nothing in this Act alters the
4 civil or criminal jurisdiction of the United States or the
5 State of Hawaii over lands and persons within the State
6 of Hawaii. The status quo of Federal and State jurisdic-
7 tion can change only as a result of further legislation, if
8 any, enacted after the conclusion, in relevant part, of the
9 negotiation process established in section 8(b).

10 (f) INDIAN PROGRAMS AND SERVICES.—Notwith-
11 standing section 7(e)(6), because of the eligibility of the
12 Native Hawaiian governing entity and its citizens for Na-
13 tive Hawaiian programs and services in accordance with
14 subsection (g), nothing in this Act provides an authoriza-
15 tion for eligibility to participate in any Indian program
16 or service to any individual or entity not otherwise eligible
17 for the program or service under applicable Federal law.

18 (g) NATIVE HAWAIIAN PROGRAMS AND SERVICES.—
19 The Native Hawaiian governing entity and its citizens
20 shall be eligible for Native Hawaiian programs and serv-
21 ices to the extent and in the manner provided by other
22 applicable laws.

1 **SEC. 10. SEVERABILITY.**

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

5 **SEC. 11. AUTHORIZATION OF APPROPRIATIONS.**

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

8 **SECTION 1. SHORT TITLE.**

9 *This Act may be cited as the “Native Hawaiian Gov-*
10 *ernment Reorganization Act of 2009”.*

11 **SEC. 2. FINDINGS.**

12 *Congress finds that—*

13 *(1) the Constitution vests Congress with the au-*
14 *thority to address the conditions of the indigenous,*
15 *native people of the United States and the Supreme*
16 *Court has held that under the Indian Commerce,*
17 *Treaty, Supremacy, and Property Clauses, and the*
18 *War Powers, Congress may exercise that power to ra-*
19 *tionally promote the welfare of the native peoples of*
20 *the United States so long as the native people are a*
21 *“distinctly native community”;*

22 *(2) Native Hawaiians, the native people of the*
23 *Hawaiian archipelago that is now part of the United*
24 *States, are 1 of the indigenous, native peoples of the*
25 *United States, and the Native Hawaiian people are*
26 *a distinctly native community;*

1 (3) *the United States has a special political and*
2 *legal relationship with, and has long enacted legisla-*
3 *tion to promote the welfare of, the native peoples of*
4 *the United States, including the Native Hawaiian*
5 *people;*

6 (4) *under the authority of the Constitution, the*
7 *United States concluded a number of treaties with the*
8 *Kingdom of Hawaii, and from 1826 until 1893, the*
9 *United States—*

10 (A) *recognized the sovereignty of the King-*
11 *dom of Hawaii as a nation;*

12 (B) *accorded full diplomatic recognition to*
13 *the Kingdom of Hawaii; and*

14 (C) *entered into treaties and conventions of*
15 *peace, friendship and commerce with the King-*
16 *dom of Hawaii to govern trade, commerce, and*
17 *navigation in 1826, 1842, 1849, 1875, and 1887;*

18 (5) *pursuant to the Hawaiian Homes Commis-*
19 *sion Act, 1920 (42 Stat. 108, chapter 42), the United*
20 *States set aside approximately 203,500 acres of land*
21 *in trust to better address the conditions of Native Ha-*
22 *waiians in the Federal territory that later became the*
23 *State of Hawaii and in enacting the Hawaiian*
24 *Homes Commission Act, 1920, Congress acknowledged*
25 *the Native Hawaiian people as a native people of the*

1 *United States, as evidenced by the Committee Report,*
2 *which notes that Congress relied on the Indian affairs*
3 *power and the War Powers, including the power to*
4 *make peace;*

5 *(6) by setting aside 203,500 acres of land in*
6 *trust for Native Hawaiian homesteads and farms, the*
7 *Hawaiian Homes Commission Act, 1920, assists the*
8 *members of the Native Hawaiian community in*
9 *maintaining distinctly native communities through-*
10 *out the State of Hawaii;*

11 *(7) approximately 6,800 Native Hawaiian fami-*
12 *lies reside on the Hawaiian Home Lands, and ap-*
13 *proximately 18,000 Native Hawaiians who are eligi-*
14 *ble to reside on the Hawaiian Home Lands are on a*
15 *waiting list to receive assignments of Hawaiian*
16 *Home Lands;*

17 *(8)(A) in 1959, as part of the compact with the*
18 *United States admitting Hawaii into the Union,*
19 *Congress delegated the authority and responsibility to*
20 *administer the Hawaiian Homes Commission Act,*
21 *1920, lands in trust for Native Hawaiians and estab-*
22 *lished a new public trust (commonly known as the*
23 *“ceded lands trust”), for 5 purposes, 1 of which is the*
24 *betterment of the conditions of Native Hawaiians,*
25 *and Congress thereby reaffirmed its recognition of the*

1 *Native Hawaiians as a distinctly native community*
2 *with a direct lineal and historical succession to the*
3 *aboriginal, indigenous people of Hawaii;*

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

7 *(C) the assets of this public trust have never been*
8 *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 ceded*
14 *lands provide important native land reserves and re-*
15 *sources for the Native Hawaiian community to main-*
16 *tain the practice of Native Hawaiian culture, lan-*
17 *guage, and traditions, and for the continuity, sur-*
18 *vival, and economic self-sufficiency of the Native Ha-*
19 *waiian people as a distinctly native political commu-*
20 *nity;*

21 *(11) Native Hawaiians continue to maintain*
22 *other distinctly native areas in Hawaii, including*
23 *native lands that date back to the ali'i and kuleana*
24 *lands reserved under the Kingdom of Hawaii;*

1 (12) through the Sovereign Council of Hawaiian
2 Homelands Assembly, Native Hawaiian civic associa-
3 tions, charitable trusts established by the Native Ha-
4 waiian ali'i, nonprofit native service providers and
5 other community associations, the Native Hawaiian
6 people have actively maintained native traditions
7 and customary usages throughout the Native Hawai-
8 ian community and the Federal and State courts
9 have continuously recognized the right of the Native
10 Hawaiian people to engage in certain customary
11 practices and usages on public lands;

12 (13) on November 23, 1993, Public Law 103–150
13 (107 Stat. 1510) (commonly known as the “Apology
14 Resolution”) was enacted into law, extending an
15 apology on behalf of the United States to the native
16 people of Hawaii for the United States’ role in the
17 overthrow of the Kingdom of Hawaii;

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

1 *ther through the Kingdom of Hawaii or through a*
2 *plebiscite or referendum;*

3 *(15)(A) the Apology Resolution expresses the*
4 *commitment of Congress and the President—*

5 *(i) to acknowledge the ramifications of the*
6 *overthrow of the Kingdom of Hawaii; and*

7 *(ii) to support reconciliation efforts between*
8 *the United States and Native Hawaiians;*

9 *(B) Congress established the Office of Hawaiian*
10 *Relations within the Department of the Interior with*
11 *1 of its purposes being to consult with Native Hawai-*
12 *ians on the reconciliation process; and*

13 *(C) the United States has the duty to reconcile*
14 *and reaffirm its friendship with the Native Hawaiian*
15 *people because, among other things, the United States*
16 *Minister and United States naval forces participated*
17 *in the overthrow of the Kingdom of Hawaii;*

18 *(16)(A) despite the overthrow of the Government*
19 *of the Kingdom of Hawaii, Native Hawaiians have*
20 *continued to maintain their separate identity as a*
21 *single distinctly native political community through*
22 *cultural, social, and political institutions, and to give*
23 *expression to their rights as native people to self-de-*
24 *termination, self-governance, and economic self-suffi-*
25 *ciency; and*

1 (B) *there is clear continuity between the aborigi-*
2 *nal, native citizens of the Kingdom of Hawaii and*
3 *their successors, the Native Hawaiian people today;*

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

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

10 (i) *health care services;*

11 (ii) *educational programs;*

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

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

16 (v) *children's services;*

17 (vi) *conservation programs;*

18 (vii) *fish and wildlife protection;*

19 (viii) *agricultural programs;*

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

22 (x) *native language immersion schools*
23 *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 *(18) Native Hawaiian people are actively en-*
9 *gaged in Native Hawaiian cultural practices, tradi-*
10 *tional agricultural methods, fishing and subsistence*
11 *practices, maintenance of cultural use areas and sa-*
12 *cred sites, protection of burial sites, and the exercise*
13 *of their traditional rights to gather medicinal plants*
14 *and herbs, and food sources;*

15 *(19) 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 control*
21 *and manage their own lands, including ceded lands,*
22 *and to achieve greater self-determination over their*
23 *own affairs;*

24 *(20) 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 single*
3 *unified Native Hawaiian governing entity for the*
4 *purpose of giving expression to their rights as a na-*
5 *tive people to self-determination and self-governance;*

6 (21) Congress—

7 (A) *has declared that the United States has*
8 *a special political and legal relationship for the*
9 *welfare of the native peoples of the United States,*
10 *including Native Hawaiians;*

11 (B) *has identified Native Hawaiians as an*
12 *indigenous, distinctly native people of the United*
13 *States within the scope of its authority under the*
14 *Constitution, and has enacted scores of statutes*
15 *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 (22) *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 Stat.*
2 *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 responsi-*
10 *bility for the administration of the Hawaiian*
11 *Home Lands to the State of Hawaii, but retain-*
12 *ing the exclusive right of the United States to*
13 *consent to any actions affecting the lands in-*
14 *cluded in the trust and any amendments to the*
15 *Hawaiian Homes Commission Act, 1920 (42*
16 *Stat. 108, chapter 42), that are enacted by the*
17 *legislature of the State of Hawaii affecting the*
18 *beneficiaries under the Act;*

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

21 *(A) Native Hawaiians have a direct genea-*
22 *logical, cultural, historic, and land-based connec-*
23 *tion to their forebears, the aboriginal, indige-*
24 *nous, native people who exercised original sov-*
25 *ereignty over the Hawaiian Islands;*

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

4 (C) *the United States extends services to*
5 *Native Hawaiians because of their unique status*
6 *as the native people of a prior-sovereign nation*
7 *with whom the United States has a special polit-*
8 *ical and legal relationship; and*

9 (D) *the special relationship of American In-*
10 *dians, Alaska Natives, and Native Hawaiians to*
11 *the United States arises out of their status as ab-*
12 *original, indigenous, native people of the United*
13 *States; and*

14 (24) *the State of Hawaii supports the reaffirma-*
15 *tion of the special political and legal relationship be-*
16 *tween the Native Hawaiian governing entity and the*
17 *United States, as evidenced by 2 unanimous resolu-*
18 *tions enacted by the Hawaii State Legislature in the*
19 *2000 and 2001 sessions of the Legislature and by the*
20 *testimony of the Governor of the State of Hawaii be-*
21 *fore the Committee on Indian Affairs of the Senate on*
22 *February 25, 2003, and March 1, 2005.*

23 **SEC. 3. DEFINITIONS.**

24 *In this Act:*

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

8 (2) *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 (3) *COMMISSION.—The term “Commission”*
16 *means the Commission established under section 8(b).*

17 (4) *COUNCIL.—The term “Council” means the*
18 *Native Hawaiian Interim Governing Council estab-*
19 *lished under section 8(c)(2).*

20 (5) *INDIAN PROGRAM OR SERVICE.—*

21 (A) *IN GENERAL.—The term “Indian pro-*
22 *gram or service” means any federally funded or*
23 *authorized program or service provided to an In-*
24 *Indian tribe (or member of an Indian tribe) be-*

1 *cause of the status of the members of the Indian*
2 *tribe as Indians.*

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

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

12 (7) *INDIGENOUS, NATIVE PEOPLE.*—*The term*
13 *“indigenous, native people” means the lineal descend-*
14 *ants of the aboriginal, indigenous, native people of the*
15 *United States.*

16 (8) *INTERAGENCY COORDINATING GROUP.*—*The*
17 *term “Interagency Coordinating Group” means the*
18 *Native Hawaiian Interagency Coordinating Group*
19 *established under section 6.*

20 (9) *NATIVE HAWAIIAN GOVERNING ENTITY.*—*The*
21 *term “Native Hawaiian governing entity” means the*
22 *governing entity organized pursuant to this Act by*
23 *the qualified Native Hawaiian constituents.*

1 (10) *NATIVE HAWAIIAN MEMBERSHIP ORGANIZA-*
2 *TION.*—*The term “Native Hawaiian Membership Or-*
3 *ganization” means an organization that—*

4 (A) *serves and represents the interests of*
5 *Native Hawaiians, has as a primary and stated*
6 *purpose the provision of services to Native Ha-*
7 *waiians, and has expertise in Native Hawaiian*
8 *affairs;*

9 (B) *has leaders who are elected democrat-*
10 *ically, or selected through traditional Native*
11 *leadership practices, by members of the Native*
12 *Hawaiian community;*

13 (C) *advances the cause of Native Hawaiians*
14 *culturally, socially, economically, or politically;*

15 (D) *is a membership organization or asso-*
16 *ciation; and*

17 (E) *has an accurate and reliable list of Na-*
18 *tive Hawaiian members.*

19 (11) *OFFICE.*—*The term “Office” means the*
20 *United States Office for Native Hawaiian Relations*
21 *established by section 5(a).*

22 (12) *QUALIFIED NATIVE HAWAIIAN CON-*
23 *STITUENT.*—*For the purposes of establishing the roll*
24 *authorized under section 8, and prior to the recogni-*
25 *tion by the United States of the Native Hawaiian*

1 governing entity, the term “qualified Native Hawai-
2 ian constituent” means an individual who the Com-
3 mission determines has satisfied the following criteria
4 and who makes a written statement certifying that he
5 or she—

6 (A) is—

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

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

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

18 (ii) an individual who is 1 of the in-
19 digenous, native people of Hawaii and who
20 was eligible in 1921 for the programs au-
21 thorized by the Hawaiian Homes Commis-
22 sion Act, 1920 (42 Stat. 108, chapter 42),
23 or a direct lineal descendant of that indi-
24 vidual;

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

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

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

5 (E) maintains a significant cultural, social,
6 or civic connection to the Native Hawaiian com-
7 munity, as evidenced by satisfying 2 or more of
8 the following 10 criteria:

9 (i) Resides in the State of Hawaii.

10 (ii) Resides outside the State of Ha-
11 wahi and—

12 (I)(aa) currently serves or served
13 as (or has a parent or spouse who cur-
14 rently serves or served as) a member of
15 the Armed Forces or as an employee of
16 the Federal Government; and

17 (bb) resided in the State of Ha-
18 wahi prior to the time he or she (or
19 such parent or spouse) left the State of
20 Hawaii to serve as a member of the
21 Armed Forces or as an employee of the
22 Federal Government; or

23 (II)(aa) currently is or was en-
24 rolled (or has a parent or spouse who
25 currently is or was enrolled) in an ac-

1 *credited institution of higher education*
2 *outside the State of Hawaii; and*

3 *(bb) resided in the State of Ha-*
4 *waii prior to the time he or she (or*
5 *such parent or spouse) left the State of*
6 *Hawaii to attend such institution.*

7 *(iii)(I) Is or was eligible to be a bene-*
8 *ficiary of the programs authorized by the*
9 *Hawaiian Homes Commission Act, 1920*
10 *(42 Stat. 108, chapter 42), and resides or*
11 *resided on land set aside as “Hawaiian*
12 *home lands”, as defined in such Act; or*

13 *(II) Is a child or grandchild of an in-*
14 *dividual who is or was eligible to be a bene-*
15 *ficiary of the programs authorized by such*
16 *Act and who resides or resided on land set*
17 *aside as “Hawaiian home lands”, as de-*
18 *finied in such Act.*

19 *(iv) Is or was eligible to be a bene-*
20 *ficiary of the programs authorized by the*
21 *Hawaiian Homes Commission Act, 1920*
22 *(42 Stat. 108, chapter 42).*

23 *(v) Is a child or grandchild of an indi-*
24 *vidual who is or was eligible to be a bene-*
25 *ficiary of the programs authorized by the*

1 *Hawaiian Homes Commission Act, 1920*
2 *(42 Stat. 108, chapter 42).*

3 *(vi) Resides on or has an ownership*
4 *interest in, or has a parent or grandparent*
5 *who resides on or has an ownership interest*
6 *in, “kuleana land” that is owned in whole*
7 *or in part by a person who, according to a*
8 *genealogy verification by the Office of Ha-*
9 *waiian Affairs or by court order, is a lineal*
10 *descendant of the person or persons who re-*
11 *ceived the original title to such “kuleana*
12 *land”, defined as lands granted to native*
13 *tenants pursuant to Haw. L. 1850, p. 202,*
14 *entitled “An Act Confirming Certain Reso-*
15 *lutions of the King and Privy Council*
16 *Passed on the 21st day of December, A.D.*
17 *1849, Granting to the Common People*
18 *Allodial Titles for Their Own Lands and*
19 *House Lots, and Certain Other Privileges”,*
20 *as amended by Haw. L. 1851, p. 98, enti-*
21 *tled “An Act to Amend An Act Granting to*
22 *the Common People Allodial Titles for Their*
23 *Own Lands and House Lots, and Certain*
24 *Other Privileges” and as further amended*
25 *by any subsequent legislation.*

1 (vii) *Is, or is the child or grandchild*
2 *of, an individual who has been or was a*
3 *student for at least 1 school year at a school*
4 *or program taught through the medium of*
5 *the Hawaiian language under section*
6 *302H-6, Hawaii Revised Statutes, or at a*
7 *school founded and operated primarily or*
8 *exclusively for the benefit of Native Hawai-*
9 *ians.*

10 (viii) *Has been a member since Sep-*
11 *tember 30, 2009, of at least 1 Native Ha-*
12 *waiian Membership Organization.*

13 (ix) *Has been a member since Sep-*
14 *tember 30, 2009, of at least 2 Native Ha-*
15 *waiian Membership Organizations.*

16 (x) *Is regarded as a Native Hawaiian*
17 *and whose mother or father is (or if de-*
18 *ceased, was) regarded as a Native Hawai-*
19 *ian by the Native Hawaiian community, as*
20 *evidenced by sworn affidavits from 2 or*
21 *more qualified Native Hawaiian constitu-*
22 *ents certified by the Commission as pos-*
23 *sessing expertise in the social, cultural, and*
24 *civic affairs of the Native Hawaiian com-*
25 *munity.*

1 (13) *SECRETARY*.—The term “Secretary” means
2 the Secretary of the Interior.

3 (14) *SPECIAL POLITICAL AND LEGAL RELATION-*
4 *SHIP*.—The term “special political and legal relation-
5 *ship” shall refer, except where differences are specifi-*
6 *cally indicated elsewhere in the Act, to the type of*
7 *and nature of relationship the United States has with*
8 *the several federally recognized Indian tribes.*

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

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

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

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

18 (3)(A) *Congress possesses and hereby exercises the*
19 *authority under the Constitution, including but not*
20 *limited to Article I, Section 8, Clause 3, to enact leg-*
21 *islation to better the conditions of Native Hawaiians*
22 *and has exercised this authority through the enact-*
23 *ment of—*

24 (i) *the Hawaiian Homes Commission Act,*
25 *1920 (42 Stat. 108, chapter 42);*

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

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

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

14 (C) the Constitution’s original Apportionment
15 Clause and the 14th Amendment Citizenship and
16 amended Apportionment Clauses also acknowledge the
17 propriety of legislation on behalf of the native peoples
18 of the United States, including Native Hawaiians;

19 (4) Native Hawaiians have—

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

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

24 (C) the right to reorganize a Native Hawai-
25 ian governing entity; and

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

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

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

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

14 (a) *ESTABLISHMENT.*—There is established within the
15 Office of the Secretary the United States Office for Native
16 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 government-to-
22 government relationship between the single Native
23 Hawaiian governing entity and the United States, ef-
24 fectuate and coordinate the special political and legal
25 relationship between the Native Hawaiian governing

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

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

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

13 *(5) prepare and submit to the Committee on In-*
14 *dian Affairs and the Committee on Energy and Nat-*
15 *ural Resources of the Senate and the Committee on*
16 *Natural Resources of the House of Representatives an*
17 *annual report detailing the activities of the Inter-*
18 *agency Coordinating Group that are undertaken with*
19 *respect to the continuing process of reconciliation and*
20 *to effect meaningful consultation with the Native Ha-*
21 *waiian governing entity and may provide rec-*
22 *ommendations for any necessary changes to Federal*
23 *law or regulations promulgated under the authority*
24 *of Federal law.*

1 (c) *APPLICABILITY TO DEPARTMENT OF DEFENSE.*—
 2 *This section shall have no applicability to the Department*
 3 *of Defense or to any agency or component of the Depart-*
 4 *ment of Defense, but the Secretary of Defense may designate*
 5 *1 or more officials as liaison to the Office.*

6 **SEC. 6. NATIVE HAWAIIAN INTERAGENCY COORDINATING**
 7 **GROUP.**

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

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

17 (1) *each Federal agency whose actions may sig-*
 18 *nificantly or uniquely impact Native Hawaiian pro-*
 19 *grams, resources, rights, or lands; and*

20 (2) *the Office.*

21 (c) *LEAD AGENCY.*—

22 (1) *IN GENERAL.*—*The Department of the Inte-*
 23 *rior and the White House Office of Intergovernmental*
 24 *Affairs shall serve as the leaders of the Interagency*
 25 *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) *consult with the Native Hawaiian governing*
11 *entity, through the coordination referred to in para-*
12 *graph (1), but the consultation obligation established*
13 *in this provision shall apply only after the satisfac-*
14 *tion of all of the conditions referred to in section*
15 *8(c)(8); 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).*

19 (e) *APPLICABILITY TO DEPARTMENT OF DEFENSE.*—
20 *This section shall have no applicability to the Department*
21 *of Defense or to any agency or component of the Depart-*
22 *ment of Defense, but the Secretary of Defense may designate*
23 *1 or more officials as liaison to the Interagency Coordi-*
24 *nating Group.*

1 **SEC. 7. DESIGNATION OF DEPARTMENT OF JUSTICE REP-**
 2 **RESENTATIVE.**

3 *The Attorney General shall designate an appropriate*
 4 *official within the Department of Justice to assist the Office*
 5 *in the implementation and protection of the rights of Native*
 6 *Hawaiians and their political and legal relationship with*
 7 *the United States, and upon the recognition of the Native*
 8 *Hawaiian governing entity as provided for in section 8,*
 9 *in the implementation and protection of the rights of the*
 10 *Native Hawaiian governing entity and its political and*
 11 *legal relationship with the United States.*

12 **SEC. 8. PROCESS FOR REORGANIZATION OF NATIVE HAWAI-**
 13 **IAN GOVERNING ENTITY AND REAFFIRMA-**
 14 **TION OF SPECIAL POLITICAL AND LEGAL RE-**
 15 **LATIONSHIP BETWEEN UNITED STATES AND**
 16 **NATIVE HAWAIIAN GOVERNING ENTITY.**

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

23 (b) *COMMISSION.—*

24 (1) *IN GENERAL.—There is authorized to be es-*
 25 *tablished a Commission to be composed of 9 members*
 26 *for the purposes of—*

1 (A) *preparing and maintaining a roll of*
2 *qualified Native Hawaiian constituents; and*

3 (B) *certifying that the individuals on the*
4 *roll of qualified Native Hawaiian constituents*
5 *meet the definition of qualified Native Hawaiian*
6 *constituent set forth in section 3.*

7 (2) *MEMBERSHIP.—*

8 (A) *APPOINTMENT.—*

9 (i) *IN GENERAL.—Not later than 180*
10 *days after the date of enactment of this Act,*
11 *the Secretary shall appoint the members of*
12 *the Commission in accordance with sub-*
13 *paragraph (B).*

14 (ii) *CONSIDERATION.—In making an*
15 *appointment under clause (i), the Secretary*
16 *may take into consideration a recommenda-*
17 *tion made by any Native Hawaiian Mem-*
18 *bership Organization.*

19 (B) *REQUIREMENTS.—Each member of the*
20 *Commission shall demonstrate, as determined by*
21 *the Secretary—*

22 (i) *not less than 10 years of experience*
23 *in the study and determination of Native*
24 *Hawaiian genealogy (traditional cultural*

1 *experience shall be given due consideration);*

2 *and*

3 *(ii) an ability to read and translate*
4 *into English documents written in the Ha-*
5 *waiian language.*

6 *(C) VACANCIES.—A vacancy on the Com-*
7 *mission—*

8 *(i) shall not affect the powers of the*
9 *Commission; and*

10 *(ii) shall be filled in the same manner*
11 *as the original appointment.*

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

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

20 *(A) prepare and maintain a roll of quali-*
21 *fied Native Hawaiian constituents as set forth in*
22 *subsection (c); and*

23 *(B) certify that the individuals on the roll*
24 *of qualified Native Hawaiian constituents meet*

1 *the definition of that term as set forth in section*
2 3.

3 (5) *STAFF.*—

4 (A) *IN GENERAL.*—*The Commission may,*
5 *without regard to the civil service laws (includ-*
6 *ing regulations), appoint and terminate an exec-*
7 *utive director and such other additional per-*
8 *sonnel as are necessary to enable the Commission*
9 *to perform the duties of the Commission.*

10 (B) *COMPENSATION.*—

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

19 (ii) *MAXIMUM RATE OF PAY.*—*The rate*
20 *of pay for the executive director and other*
21 *personnel shall not exceed the rate payable*
22 *for level V of the Executive Schedule under*
23 *section 5316 of title 5, United States Code.*

24 (6) *DETAIL OF FEDERAL GOVERNMENT EMPLOY-*
25 *EES.*—

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

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

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

15 (8) *EXPIRATION.*—*The Secretary shall dissolve*
16 *the Commission upon the reaffirmation of the special*
17 *political and legal relationship between the Native*
18 *Hawaiian governing entity and the United States.*

19 (c) *PROCESS FOR REORGANIZATION OF NATIVE HA-*
20 *WAIAN GOVERNING ENTITY.*—

21 (1) *ROLL.*—

22 (A) *CONTENTS.*—*The roll shall include the*
23 *names of the qualified Native Hawaiian con-*
24 *stituents who are certified by the Commission to*

1 *be qualified Native Hawaiian constituents, as*
2 *defined in section 3.*

3 *(B) FORMATION OF ROLL.—Each indi-*
4 *vidual claiming to be a qualified Native Hawai-*
5 *ian constituent shall submit to the Commission*
6 *documentation in the form established by the*
7 *Commission that is sufficient to enable the Com-*
8 *mission to determine whether the individual*
9 *meets the definition set forth in section 3; Pro-*
10 *vided, That an individual presenting evidence*
11 *that he or she satisfies the definition in section*
12 *2 of Public Law 103–150 shall be presumed to*
13 *meet the requirement of section 3(12)(A)(i).*

14 *(C) DOCUMENTATION.—The Commission*
15 *shall—*

16 *(i)(I) identify the types of documenta-*
17 *tion that may be submitted to the Commis-*
18 *sion that would enable the Commission to*
19 *determine whether an individual meets the*
20 *definition of qualified Native Hawaiian*
21 *constituent set forth in section 3;*

22 *(II) recognize an individual’s identi-*
23 *fication of lineal ancestors on the 1890 Cen-*
24 *sus by the Kingdom of Hawaii as a reliable*
25 *indicia of lineal descent from the aborigi-*

1 *nal, indigenous, native people who resided*
2 *in the islands that now comprise the State*
3 *of Hawaii on or before January 1, 1893;*
4 *and*

5 *(III) permit elderly Native Hawaiians*
6 *and other Native Hawaiians lacking birth*
7 *certificates or other documentation due to*
8 *birth on Hawaiian Home Lands or other*
9 *similar circumstances to establish lineal de-*
10 *scend by sworn affidavits from 2 or more*
11 *qualified Native Hawaiian constituents;*

12 *(ii) establish a standard format for the*
13 *submission of documentation and a process*
14 *to ensure veracity; and*

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

17 *(D) CONSULTATION.—In making deter-*
18 *minations that each individual proposed for in-*
19 *clusion on the roll of qualified Native Hawaiian*
20 *constituents meets the definition of qualified Na-*
21 *tive Hawaiian constituent in section 3, the Com-*
22 *mission may consult with Native Hawaiian*
23 *Membership Organizations, agencies of the State*
24 *of Hawaii including but not limited to the De-*
25 *partment of Hawaiian Home Lands, the Office*

1 *of Hawaiian Affairs, and the State Department*
2 *of Health, and other entities with expertise and*
3 *experience in the determination of Native Ha-*
4 *waiian ancestry and lineal descendancy.*

5 (E) NOTIFICATION.—*The Commission*
6 *shall—*

7 (i) *inform an individual whether they*
8 *have been deemed by the Commission a*
9 *qualified Native Hawaiian constituent; and*

10 (ii) *inform an individual of a right to*
11 *appeal the decision if deemed not to be a*
12 *qualified Native Hawaiian constituent.*

13 (F) CERTIFICATION AND SUBMITTAL OF
14 ROLL TO SECRETARY.—*The Commission shall—*

15 (i) *submit the roll containing the*
16 *names of those individuals who meet the*
17 *definition of qualified Native Hawaiian*
18 *constituent in section 3 to the Secretary*
19 *within 2 years from the date on which the*
20 *Commission is fully composed; and*

21 (ii) *certify to the Secretary that each of*
22 *the qualified Native Hawaiian constituents*
23 *proposed for inclusion on the roll meets the*
24 *definition set forth in section 3.*

1 (G) *PUBLICATION.*—Upon certification by
2 the Commission to the Secretary that those listed
3 on the roll meet the definition of qualified Native
4 Hawaiian constituent set forth in section 3, the
5 Commission shall publish the notice of the cer-
6 tification of the roll in the Federal Register, not-
7 withstanding pending appeals pursuant to sub-
8 paragraph (H).

9 (H) *APPEAL.*—The Secretary, in consulta-
10 tion with the Commission, shall establish a
11 mechanism for an administrative appeal for any
12 person whose name is excluded from the roll who
13 claims to meet the definition of qualified Native
14 Hawaiian constituent in section 3.

15 (I) *PUBLICATION; UPDATE.*—The Commis-
16 sion shall—

17 (i) publish the notice of the certifi-
18 cation of the roll regardless of whether ap-
19 peals are pending;

20 (ii) update the roll and provide notice
21 of the updated roll on the final disposition
22 of any appeal;

23 (iii) update the roll to include any
24 person who has been certified by the Com-
25 mission as meeting the definition of quali-

1 *fied Native Hawaiian constituent in section*
 2 *3 after the initial publication of the roll or*
 3 *after any subsequent publications of the roll;*
 4 *and*

5 *(iv) provide a copy of the roll and any*
 6 *updated rolls to the Council.*

7 *(J) EFFECT OF PUBLICATION.—The publi-*
 8 *cation of the initial and updated roll shall serve*
 9 *as the basis for the eligibility of qualified Native*
 10 *Hawaiian constituents whose names are listed*
 11 *on those rolls to participate in the reorganiza-*
 12 *tion of the Native Hawaiian governing entity.*

13 *(2) ORGANIZATION OF COUNCIL.—*

14 *(A) ORGANIZATION.—The Commission, in*
 15 *consultation with the Secretary, shall hold a*
 16 *minimum of 3 meetings and each meeting shall*
 17 *be at least 2 working days of the qualified Native*
 18 *Hawaiian constituents listed on the roll estab-*
 19 *lished under this section—*

20 *(i) to develop criteria for candidates to*
 21 *be elected to serve on the Council;*

22 *(ii) to determine the structure of the*
 23 *Council, including the number of Council*
 24 *members; and*

1 *(iii) to elect members from individuals*
2 *listed on the roll established under this sub-*
3 *section to the Council.*

4 *(B) POWERS.—*

5 *(i) IN GENERAL.—The Council—*

6 *(I) shall represent those listed on*
7 *the roll established under this section*
8 *in the implementation of this Act; and*

9 *(II) shall have no powers other*
10 *than powers given to the Council under*
11 *this Act.*

12 *(ii) FUNDING.—The Council may enter*
13 *into a contract with, or obtain a grant*
14 *from, any Federal or State agency to carry*
15 *out clause (iii).*

16 *(iii) ACTIVITIES.—*

17 *(I) IN GENERAL.—The Council*
18 *shall conduct, among the qualified Na-*
19 *tive Hawaiian constituents listed on*
20 *the roll established under this sub-*
21 *section, a referendum for the purpose of*
22 *determining the proposed elements of*
23 *the organic governing documents of the*
24 *Native Hawaiian governing entity, in-*
25 *cluding but not limited to—*

1 (aa) *the proposed criteria for*
2 *future membership in the Native*
3 *Hawaiian governing entity;*

4 (bb) *the proposed powers and*
5 *authorities to be exercised by the*
6 *Native Hawaiian governing enti-*
7 *ty, as well as the proposed privi-*
8 *leges and immunities of the Na-*
9 *tive Hawaiian governing entity;*

10 (cc) *the proposed civil rights*
11 *and protection of the rights of the*
12 *citizens of the Native Hawaiian*
13 *governing entity and all persons*
14 *affected by the exercise of govern-*
15 *mental powers and authorities of*
16 *the Native Hawaiian governing*
17 *entity; and*

18 (dd) *other issues determined*
19 *appropriate by the Council.*

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

1 *assistance from the Secretary on the*
2 *draft organic governing documents to*
3 *ensure that the draft organic governing*
4 *documents comply with this Act and*
5 *other Federal law.*

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

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

15 (bb) *a brief impartial de-*
16 *scription of the proposed organic*
17 *governing documents;*

18 (IV) *ELECTIONS.*—

19 (aa) *IN GENERAL.*—*Not*
20 *sooner than 180 days after the*
21 *proposed organic governing docu-*
22 *ments are drafted and distributed,*
23 *the Council, with the assistance of*
24 *the Secretary, shall hold elections*
25 *for the purpose of ratifying the*

1 *proposed organic governing docu-*
2 *ments.*

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

10 *(cc) OFFICERS.—On certifi-*
11 *cation of the organic governing*
12 *documents by the Secretary in ac-*
13 *cordance with paragraph (4), the*
14 *Council, with the assistance of the*
15 *Secretary, shall hold elections of*
16 *the officers of the Native Hawai-*
17 *ian governing entity pursuant to*
18 *paragraph (5).*

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

25 *(4) CERTIFICATIONS.—*

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

13 (i) *establish the criteria for member-*
14 *ship in the Native Hawaiian governing en-*
15 *tity;*

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

21 (iii) *provide authority for the Native*
22 *Hawaiian governing entity to negotiate*
23 *with Federal, State, and local governments,*
24 *and other entities;*

1 (iv) provide for the exercise of inherent
2 and other appropriate governmental au-
3 thorities by the Native Hawaiian governing
4 entity;

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

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

16 (vii) are consistent with applicable
17 Federal law.

18 (B) *RESUBMISSION IN CASE OF NONCOMPLI-*
19 *ANCE.—*

20 (i) *RESUBMISSION BY THE SEC-*
21 *RETARY.—If the Secretary determines that*
22 *the organic governing documents, or any*
23 *part of the documents, do not meet all of the*
24 *requirements set forth in subparagraph (A),*
25 *the Secretary shall resubmit the organic*

1 *governing documents to the Council, along*
2 *with a justification for each of the Sec-*
3 *retary's findings as to why the provisions*
4 *are not in full compliance.*

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

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

14 *(II) resubmit the amended organic*
15 *governing documents to the Secretary*
16 *for certification in accordance with*
17 *this paragraph.*

18 *(C) CERTIFICATIONS DEEMED MADE.—The*
19 *certifications under this paragraph shall be*
20 *deemed to have been made if the Secretary has*
21 *not acted within 180 days after the date on*
22 *which the Council has submitted the organic gov-*
23 *erning documents of the Native Hawaiian gov-*
24 *erning entity to the Secretary.*

1 (5) *ELECTIONS.*—*On completion of the certifi-*
2 *cations by the Secretary under paragraph (4), the*
3 *Council, with the assistance of the Secretary, shall*
4 *hold elections of the officers of the Native Hawaiian*
5 *governing entity.*

6 (6) *PROVISION OF ROLL.*—*The Council shall pro-*
7 *vide a copy of the roll of qualified Native Hawaiian*
8 *constituents to the governing body of the Native Ha-*
9 *waiian governing entity.*

10 (7) *TERMINATION.*—*The Council shall cease to*
11 *exist and shall have no power or authority under this*
12 *Act after the officers of the governing body who are*
13 *elected as provided in paragraph (5) are installed.*

14 (8) *REAFFIRMATION.*—*Notwithstanding any*
15 *other provision of law, the special political and legal*
16 *relationship between the United States and the Native*
17 *Hawaiian people is hereby reaffirmed and the United*
18 *States extends Federal recognition to the Native Ha-*
19 *waiian governing entity as the representative sov-*
20 *ereign governing body of the Native Hawaiian people*
21 *after—*

22 (A) *the approval of the organic governing*
23 *documents by the Secretary under subparagraph*
24 (A) *or (C) of paragraph (4); and*

1 (B) the officers of the Native Hawaiian gov-
 2 erning entity elected under paragraph (5) have
 3 been installed.

4 **SEC. 9. REAFFIRMATION OF DELEGATION OF FEDERAL AU-**
 5 **THORITY TO STATE OF HAWAII; NEGOTIA-**
 6 **TIONS; CLAIMS.**

7 (a) *REAFFIRMATION.*—The delegation by the United
 8 States of authority to the State of Hawaii to address the
 9 conditions of the indigenous, native people of Hawaii con-
 10 tained in the Act entitled “An Act to provide for the admis-
 11 sion of the State of Hawaii into the Union”, approved
 12 March 18, 1959 (Public Law 86–3; 73 Stat. 4), is re-
 13 affirmed.

14 (b) *NEGOTIATIONS.*—

15 (1) *IN GENERAL.*—Upon the reaffirmation of the
 16 special political and legal relationship between the
 17 United States and the Native Hawaiian governing
 18 entity, the United States and the State of Hawaii
 19 may enter into negotiations with the Native Hawai-
 20 ian governing entity designed to lead to an agreement
 21 addressing such matters as—

22 (A) the transfer of State of Hawaii lands
 23 and surplus Federal lands, natural resources,
 24 and other assets, and the protection of existing
 25 rights related to such lands or resources;

1 (B) *the exercise of governmental authority*
2 *over any transferred lands, natural resources,*
3 *and other assets, including land use;*

4 (C) *the exercise of civil and criminal juris-*
5 *isdiction;*

6 (D) *the exercise of other powers and au-*
7 *thorities that are recognized by the United States*
8 *as powers and authorities typically exercised by*
9 *governments representing indigenous, native peo-*
10 *ple of the United States;*

11 (E) *any residual responsibilities of the*
12 *United States and the State of Hawaii; and*

13 (F) *grievances regarding assertions of his-*
14 *torical wrongs committed against Native Hawai-*
15 *ians by the United States or by the State of Ha-*
16 *waii.*

17 (2) *AMENDMENTS TO EXISTING LAWS.—Upon*
18 *agreement on any matter or matters negotiated with*
19 *the United States or the State of Hawaii, and the Na-*
20 *tive Hawaiian governing entity, the parties may sub-*
21 *mit—*

22 (A) *to the Committee on Indian Affairs of*
23 *the Senate, the Committee on Energy and Nat-*
24 *ural Resources of the Senate, and the Committee*
25 *on Natural Resources of the House of Represent-*

1 *atives recommendations for proposed amend-*
2 *ments to Federal law that will enable the imple-*
3 *mentation of agreements reached between the*
4 *governments; and*

5 *(B) to the Governor and the legislature of*
6 *the State of Hawaii, recommendations for pro-*
7 *posed amendments to State law that will enable*
8 *the implementation of agreements reached be-*
9 *tween the governments.*

10 (3) *GOVERNMENTAL AUTHORITY AND POWER.—*

11 *The Native Hawaiian governing entity shall be vested*
12 *with the inherent powers and privileges of self-govern-*
13 *ment of a native government under existing law, ex-*
14 *cept as set forth in section 10(a). Said powers and*
15 *privileges may be modified by agreement between the*
16 *Native Hawaiian governing entity, the United States,*
17 *and the State pursuant to paragraph (1), subject to*
18 *the limit described by section 10(a). Unless so agreed,*
19 *nothing in this Act shall preempt Federal or State*
20 *authority over Native Hawaiians or their property*
21 *under existing law or authorize the State to tax or*
22 *regulate the Native Hawaiian governing entity.*

23 (4) *MEMBERSHIP.—Once the United States ex-*
24 *tends Federal recognition to the Native Hawaiian*
25 *governing entity, the United States will recognize and*

1 *affirm the Native Hawaiian governing entity’s inher-*
2 *ent power and authority to determine its own mem-*
3 *bership criteria, to determine its own membership,*
4 *and to grant, deny, revoke, or qualify membership*
5 *without regard to whether any person was or was not*
6 *deemed to be a qualified Native Hawaiian constituent*
7 *under this Act.*

8 *(c) CLAIMS.—Nothing in this Act—*

9 *(1) alters existing law, including case law, re-*
10 *garding obligations of the United States or the State*
11 *of Hawaii relating to events or actions that occurred*
12 *prior to recognition of the Native Hawaiian gov-*
13 *erning entity;*

14 *(2) creates, enlarges, revives, modifies, dimin-*
15 *ishes, extinguishes, waives, or otherwise alters any*
16 *claim or cause of action against the United States or*
17 *its officers or the State of Hawaii or its officers, or*
18 *any defense (including the defense of statute of limita-*
19 *tions) to any such claim or cause of action; or*

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

1 *title 28, United States Code (commonly known as the*
2 *“Indian Tucker Act”), the Hawaii Organic Act (31*
3 *Stat. 141), or any other Federal statute, except as ex-*
4 *pressly amended by this Act.*

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

6 *(a) INDIAN GAMING REGULATORY ACT.—*

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

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

23 *(b) SINGLE GOVERNING ENTITY.—This Act will result*
24 *in the recognition of the single Native Hawaiian governing*
25 *entity. Additional Native Hawaiian groups shall not be eli-*

1 *gible for acknowledgment pursuant to the Federal Acknowl-*
 2 *edgment Process set forth in part 83 of title 25, Code of*
 3 *Federal Regulations, or any other administrative acknowl-*
 4 *edgment or recognition process.*

5 (c) *INDIAN CIVIL RIGHTS ACT OF 1968.—The Council*
 6 *and the subsequent governing entity recognized under this*
 7 *Act shall be an Indian tribe, as defined in section 201 of*
 8 *the Indian Civil Rights Act of 1968 (25 U.S.C. 1301) for*
 9 *purposes of sections 201 through 203 of that Act (25 U.S.C.*
 10 *1301–1303).*

11 (d) *INDIAN PROGRAMS, SERVICES, AND LAWS.—*

12 (1) *IN GENERAL.—Notwithstanding any other*
 13 *provision of this Act, nothing in this Act extends eli-*
 14 *gibility for any Indian program or service to the Na-*
 15 *tive Hawaiian governing entity or its members unless*
 16 *a statute governing such a program or service ex-*
 17 *pressly provides that Native Hawaiians or the Native*
 18 *Hawaiian governing entity is eligible for such pro-*
 19 *gram or service. Nothing in this Act affects the eligi-*
 20 *bility of any person for any program or service under*
 21 *any statute or law in effect before the date of enact-*
 22 *ment of this Act.*

23 (2) *APPLICABILITY OF OTHER TERMS.—In Fed-*
 24 *eral statutes or regulations in force prior to the*
 25 *United States’ recognition of the Native Hawaiian*

1 *governing entity, the terms “Indian” and “Native*
2 *American”, and references to Indian tribes, bands,*
3 *nations, pueblos, villages, or other organized groups*
4 *or communities, shall not apply to the Native Hawai-*
5 *ian governing entity or its members, unless the Fed-*
6 *eral statute or regulation expressly applies to Native*
7 *Hawaiians or the Native Hawaiian governing entity.*

8 *(e) REAL PROPERTY TRANSFERS.—Section 2116 of the*
9 *Revised Statutes (commonly known as the “Indian Trade*
10 *and Intercourse Act”) (25 U.S.C. 177) does not apply to*
11 *any purchase, grant, lease, or other conveyance of lands,*
12 *or of any title or claim thereto, from Native Hawaiians,*
13 *Native Hawaiian entities, or the Kingdom of Hawaii that*
14 *occurred prior to the date of the United States’ recognition*
15 *of the Native Hawaiian governing entity.*

16 **SEC. 11. SEVERABILITY.**

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

20 **SEC. 12. AUTHORIZATION OF APPROPRIATIONS.**

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

Calendar No. 314

11TH CONGRESS
2^D SESSION

S. 1011

[Report No. 111-162]

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.

MARCH 11, 2010

Reported with an amendment