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HOUSE OF REPRESENTATIVES
REPORT
110–389

NATIVE HAWAIIAN GOVERNMENT REORGANIZATION ACT OF 2007

OCTOBER 18, 2007.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. RAHALL, from the Committee on Natural Resources, submitted the following

R E P O R T

[To accompany H.R. 505]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 505) 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, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 505 is 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 a Native Hawaiian governing entity.

BACKGROUND AND NEED FOR LEGISLATION

H.R. 505 was introduced on January 17, 2007 by Representatives Abercrombie (D–HI) and Hirono (D–HI). It would authorize a process leading to the reorganization and recognition of a Native Hawaiian governing entity. A Native Hawaiian government will not be recognized immediately upon enactment of this measure. Instead, a process is established that requires the Secretary of the Interior to certify that the organic governing documents of a Native Hawaiian government are consistent with Federal law and with the political and legal relationship between the United States and the indigenous people of the United States. Upon such certification,

H.R. 505 authorizes the Federal recognition of a Native Hawaiian government.

Historical Background

Native Hawaiians are the indigenous, native people of Hawai'i, with whom the United States has a trust relationship. Congress has repeatedly recognized the unique status of Native Hawaiians since 1921. The long-standing policy of the United States has been to protect and advance Native Hawaiian interests.

Beginning in the 106th Congress, the House Committee on Resources and the Senate Committee on Indian Affairs have held extensive hearings on the reorganization of a Native Hawaiian government. Both Committees have filed reports [1] setting forth a detailed cultural and political history of the aboriginal people living in what is now the State of Hawai'i. Rather than repeat this detailed history, those documents are hereby incorporated into this report. Reference should be made to those reports, in particular S. Rep. No. 108–85, for a detailed account of the history of the Native Hawaiian people and the islands, including their relations with the "outside" world: the pre-contact period and the initial encounter with Captain James Cook of the British Royal Navy in 1778; the consolidation of power under King Kamehameha in the early 19th Century, followed by several decades of increasing contact and influence of foreigners and foreign powers; relations with the United States, with which the Kingdom executed a series of treaties and conventions between 1826 and 1887; the overthrow of the Kingdom and Queen Lili'uokalani in 1893; the formation of the Republic of Hawai'i and its annexation by the United States five years later; the establishment of the Territory of Hawai'i in 1900; and, finally, the admission of the State of Hawai'i into the Union in 1959. A short summary of information will be provided to place the issue in context.

The Great Mahele

In the middle of the 19th century, influential non-Hawaiians sought to limit the absolute power of the Hawaiian king and to implement property law so that they could accumulate and control land. As a result of foreign pressure, in 1840, King Kamehameha III promulgated a new constitution. Soon thereafter, the King authorized the Great Mahele ("division"), in which the King conveyed about 1.5 million acres to the konohiki, or main chiefs; he reserved about 1 million acres for himself and his royal successors ("Crown Lands"), and allocated about 1.5 million acres to the government of Hawai'i ("Government Lands"). All lands remained subject to the rights of native tenants. In 1850, after the division was accomplished, an act was passed permitting non-natives to purchase land in fee simple. Upon annexation in 1898, the remaining Government Lands and Crown Lands were ceded by the Republic of Hawai'i to the United States. These lands came to be known as the "Ceded Lands."

[1] See "Legislative History" below.

Republic of Hawai'i

On January 17, 1893, a group of American citizens and others, who acted with the support of the United States Minister John Stephens and a contingent of United States Marines, overthrew the government of the Kingdom of Hawai'i. Supporters of this revolutionary movement organized the Republic of Hawai'i. Notwithstanding strong opposition from within the Native Hawaiian community, officials of the Republic of Hawai'i succeeded in having the Hawaiian Islands annexed by the United States. In 1898, Congress adopted the Joint Resolution for Annexing the Hawaiian Islands to the United States.[2] Soon thereafter, Congress passed the Hawai'i Organic Act[3] establishing a government for the newly created Territory of Hawai'i.

Hawaiian Homes Commission Act, 42 Stat. 108 (July 9, 1921)

By 1920, many were concluding that Native Hawaiians were a "dying race" and that if they were to be saved from extinction, they must have the means of regaining their connection to the land.[4] Then Secretary of the Interior Franklin Lane attributed the declining population to health problems like those faced by the "Indian in the United States" and concluded the Nation must provide similar remedies.[5] In an effort to "rehabilitate" Native Hawaiians by returning them to the land, the Congress enacted the Hawaiian Homes Commission Act.[6] The Act sets aside approximately 203,500 acres of the Ceded Lands for Native Hawaiian homesteading.[7] Congress compared the Act to "previous enactments granting Indians . . . special privileges in obtaining and using the public lands."[8]

In hearings on the matter, Secretary of the Interior Franklin Lane explained the trust relationship on which the statute was premised: "One thing that impressed me . . . was the fact that the natives of the islands who are our wards, I should say, and for whom in a sense we are trustees, are falling off rapidly in numbers and many of them are in poverty."[9]

Secretary Lane explicitly analogized the relationship between the United States and Native Hawaiians to the trust relationship between the United States and other Native Americans, explaining that programs for Native Hawaiians are fully supported by history and "an extension of the same idea" that supports such programs for other Indians.[10]

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[2] 30 Stat. 750 (August 12, 1898).
[3] 31 Stat. 141 (April 30, 1900).
[4] H. Rep. No. 66–839 (1920).
[5] Id., at 5.
[6] 42 Stat. 108 (July 9, 1921), as amended (Hawaiian Homes Commission Act).
[7] Id., § 203.
[8] H. Rep. No. 66–839, at 11 (1920).
[9] H.R. Rep. No. 66–839, at 4 (1920).
[10] Hearings before the Committee on the Territories, House of Representatives, 66th Cong., 2d Sess., on Proposed Amendments to the Organic Act of the Territory of Hawai'i, February 3, 4, 5, 7, and 10, 1920, at 129–30 (rejecting the argument that legislation aimed at "this distinct race" would be unconstitutional, Secretary Lane stated that "[w]e have got the right to set aside these lands for this particular body of people, because I think the history of the islands will justify that before any tribunal in the world," and citing a Solicitor's opinion that stated that the setting aside of public lands within the Territory of Hawai'i would not be unconstitutional, relying in part on the congressionally authorized allotment to Indians as precedent for such an action); see, also, id. at 127 (colloquy between Secretary Lane and Representative Monahan, analogizing status of Native Hawaiians to that of Indians) and at 167–70 (colloquy between Representative Curry, Chair of the Committee, and Representatives Dowell, and Humphreys, mak-

Continued

The 1921 Act authorizes a Native Hawaiian to lease Ceded Lands for a term of ninety-nine years, provided that the lessee occupy and use or cultivate the tract within one year after the lease is entered into. A restriction on alienation, like those imposed on Indian lands subject to allotment, was included in the lease. Also like the general allotment acts affecting Indians,[11] the leases were intended to encourage rural homesteading so that Native Hawaiians would return to rural subsistence or commercial farming and ranching. In 1923, the Congress amended the Act to permit one-half acre residence lots and to provide for home construction loans.[12] Thereafter, the demand for residential lots far exceeded the demand for agricultural or pastoral lots.[13]

Hawai'i Admission Act, Public Law 86–3, 73 Stat. 4 (March 18, 1959)

Congress again recognized the unique status of Native Hawaiians when Hawai'i gained Statehood in 1959. Upon its admission into the Union of States, the Ceded Lands were conveyed to the State of Hawai'i.[14] Section 5(f) of the Admission Act requires that the Ceded Lands and the revenues derived therefrom be held by the State of Hawai'i as a public trust for five purposes—one of which was for the betterment of Native Hawaiians.[15] Moreover, as a condition of admission into the Union, the Hawai'i Admission Act[16] also required the new State to assume management of the homesteading program established under the Hawaiian Homes Commission Act[17] and to adopt that Federal law, as amended, as a provision of its Constitution.

These explicit delegations of Federal authority to be assumed by the new State were not discretionary or permissive. Instead, the United States retained responsibility for the administration and amendment of the Hawaiian Homes Commission Act, and continues to oversee the use of Ceded Lands and the income or proceeds therefrom. Sections 4 and 5 of the Hawai'i Admission Act clearly contemplate a continuing Federal role.

The Federal government retains the right to enforce the trust responsibility for Native Hawaiians.[18] In fact, the Admission Act provided that the use of the Ceded Lands and revenues for any use other than the five specified uses 'shall constitute breach of trust for which suit may be brought by the United States.'[19] Likewise, sections 204 and 223 of the Hawaiian Homes Commission Act require the Secretary of the Interior to consent to certain exchanges of trust land and reserve to Congress the right to amend that Act. Federal and State courts have repeatedly concluded that the United States retains the authority to bring an enforcement action against the State of Hawai'i for breach of the trust responsibilities

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ing the same analogy and rejecting the objection that "we have no government or tribe to deal with here").

[11] 25 U.S.C. §§ 331–334, 339, 342, 348, 349, 354, 381 (1998).

[12] 42 Stat. 1222, § 3 (Feb. 3, 1923).

[13] Office of State Planning, Office of the Governor, State of Hawai'i, Pt. 1, Report on Federal Breaches of the Hawaiian Home Lands Trust, 4–6 (1992).

[14] Pub. L. No. 86–3, 73 Stat. 4 (March 18, 1959), 5 (the "Admission Act").

[15] Id., § 5(f); Haw. Const. Art. XII, § 4.

[16] Id., § 4.

[17] 42 Stat. 108 (July 9, 1921), as amended.

[18] Id.

[19] Pub. L. No. 86–3, § 4.

set forth in section 5 of the Admission Act.[20] These responsibilities are also enforceable by the Native Hawaiian beneficiaries themselves.[21]

1978 Amendments to the Hawai'i Constitution

In 1978, the Hawai'i State constitution was amended to further the special relationship with Native Hawaiians and to protect Native Hawaiian subsistence rights, hunting and gathering rights, their right to self-determination and self-governance, and their attempts to preserve their culture and language. The 1978 amendments established a quasi-independent State agency, the Office of Hawaiian Affairs. Pursuant to the 1978 amendments, the Office was to be governed by nine trustees who are Native Hawaiian and who are to be elected by Native Hawaiians.

Hawai'i's adoption of amendments to the State constitution to fulfill the special relationship with Native Hawaiians is consistent with the practice of other states that have established special relationships with the native inhabitants of their areas. Fourteen states have extended recognition to Indian tribes that are not recognized by the Federal government, and thirty-two states have established commissions and offices to address matters of policy affecting their indigenous citizenry.

Apology Resolution, Public Law 103–150

One hundred years after the illegal overthrow of the Native Hawaiian government, a resolution extending an apology on behalf of the United States to Native Hawaiians for the illegal overthrow of the Native Hawaiian government and calling for a reconciliation of the relationship between the United States and Native Hawaiians was enacted into law (Apology Resolution).[22] The Apology Resolution acknowledges that the overthrow of the Kingdom of Hawai'i occurred with the active participation of agents and citizens of the United States and further acknowledges that the Native Hawaiian people never directly relinquished their claims to their inherent sovereignty as a people over their national lands to the United States, either through their government or through a plebiscite or referendum.

Reconciliation Report

In response to the Apology Resolution, the Departments of Interior and Justice initiated a process of reconciliation in 1999 by conducting meetings in Native Hawaiian communities on each of the principal islands in the State of Hawai'i. At each meeting, Native Hawaiians identified what they believe are the necessary elements of a process to reconcile the relationship between the United States and the Native Hawaiian people. Although the two departments made several recommendations, the principal recommendation was "that the Native Hawaiian people should have self-determination

[20] See e.g., Han v. United States, 45 F. 3d 333 (9th Cir. 1995).

[21] See, e.g., Keaukaha-Panaewa Community Ass'n v. Hawaiian Homes Comm'n, 739 F. 2d 1467 (9th Cir. 1984) (finding that Section 5(f) of the Hawai'i Admission Act, which set aside lands held in trust under the Hawaiian Homes Commission Act, creates a Federal right in the Native Hawaiian beneficiaries enforceable prospectively against the State of Hawai'i under 42 U.S.C. 1983); Napeahi v. Paty, 921 F.2d 897 (9th Cir. 1990), cert. denied, 502 U.S. 901 (1991) (same, concerning lands which were assets of the land trust created under Section5(f) of the Hawai'i Admission Act but which were not Hawaiian Home lands.).

[22] Public Law 103–150.

over their own affairs within the framework of Federal law, as do Native American tribes . . . [and] [t]o safeguard and enhance Native Hawaiian self-determination over their lands, cultural resources, and internal affairs, the Departments believe Congress should enact further legislation to clarify Native Hawaiians' political status and to create a framework for recognizing a government-to-government relationship with a representative Native Hawaiian governing body." [23]

Rice v. Cayetano, 528 U.S. 495 (2000)

On February 23, 2000, the United States Supreme Court issued a ruling in the case of Rice v. Cayetano.[24] The Supreme Court held that the provision of state law requiring those voting for the office of Trustee of the Office of Hawaiian Affairs to be Native Hawaiian violated the Fifteenth Amendment of the United States Constitution. The Court in Rice specifically stated that it need not decide whether Native Hawaiians have the same status as Indian tribes because of its finding that the provision violated the Fifteenth Amendment. The Court found that the Office of Hawaiian Affairs is an agency of the State of Hawai'i, funded in part by appropriations made by the State legislature. Therefore, the election for the trustees of the Office of Hawaiian Affairs must be open to all citizens of the State of Hawai'i who are otherwise eligible to vote in statewide elections. Accordingly, all Hawaiian citizens may vote for the candidates for the trustee positions and may themselves be candidates for these offices.[25] Consequently, Native Hawaiians have been divested of the mechanism that, since 1978, has enabled them to give expression to their rights as indigenous, native people of the United States to self-determination and self-governance. H.R. 505 would address these developments by extending the Federal policy of self-determination and self-governance to Native Hawaiians.

Congress' Plenary Authority

For the past 210 years, the United States Congress, the Executive Branch, and the United States Supreme Court have recognized certain legal rights and protections for America's indigenous peoples. Since the founding of the United States, Congress has exercised constitutional authority over indigenous affairs and has undertaken an enhanced duty of care for America's indigenous peoples. This has been done in recognition of the sovereignty possessed by the native people—a sovereignty which pre-existed the formation of the United States. Congress' constitutional authority is premised upon the status of the indigenous people as the original inhabitants of this nation who occupied and exercised dominion and control over the lands which eventually became the United States.

The United States has long recognized the existence of a political relationship with the indigenous people of the United States. The United States has recognized that Native Americans—American Indians, Alaska Natives, and Native Hawaiians—they are entitled

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[23] From Mauka to Makai: The River of Justice Must Flow Freely, Report on the Reconciliation Process between the Federal Government and Native Hawaiians Prepared by the Department of the Interior and the Department of Justice, p. 17, October 23, 2000.

[24] 528 U.S. 495 (2000).

[25] See, Arakaki v. State of Hawai'i, 314 F.3d 1091 (9th Cir. 2002) (invalidating on similar grounds the requirement that candidates for that office to be Native Hawaiian).

to different rights and considerations. Congress has enacted laws to give expression to the respective legal rights and responsibilities of the Federal government and the native people. As the United States Supreme Court stated in Morton v. Mancari,[26] the United States relationship with Native Americans is "political rather than racial in nature"[27] and legislation providing a preference for members of such groups does not violate the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution where "the special treatment can be tied rationally to the fulfillment of Congress" unique obligations toward the Indians[.]"[28]

The United States Supreme Court has so often addressed the scope of Congress' constitutional authority to address the conditions of native people that it is now well-established. The Court has characterized the authority of Congress as "plenary"[29] or as "plenary and exclusive."[30] In addition, the Court has frequently stated its views regarding the broad scope of Congressional authority with respect to native people[31] and other "dependent sovereign[s] that [are] not . . . state[s]."[32] The reports filed with H.R. 4282 and S. 344 during the 108th Congress set forth a more extensive discussion of the constitutional sources of Congressional authority to legislate on matters relating to Native Americans, including the reorganization of a Native Hawaiian governing entity.[33]

United States v. Lara, 541 U.S. 193 (2004)

In April, 2004, the United States Supreme Court issued its decision in United States v. Lara.[34] The Lara Court expressed the view that Congress enjoys "'plenary' grants of power"[35] to legislate over matters relating to Indians and clarified its views of the sources of that power.[36]

The Lara decision is pertinent to H.R. 505 because in finding that Congress has the authority to modify the contours of inherent Indian tribal sovereignty, the Court compared, and justified, the particular modifications in sovereignty involved in that case with some examples of "adjustments to the autonomous status of *other such dependent entities*," including the Territory of Hawai'i, the Northern Mariana Islands, the Philippines and Puerto Rico.[37] The Lara Court acknowledged that Congress' plenary power over Indian affairs, which stems not only from the Indian Commerce Clause but also the Treaty Clause and the "necessary concomitants of nationality,"[38] includes the power to recognize, terminate and restore

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[26] 427 U.S. 535 (1974).
[27] Id. at 553, n. 24.
[28] Id. at 554.
[29] Id.
[30] United States v. Lara, 541 U.S. 193 (2004).
[31] Delaware Tribal Business Council v. Weeks, 430 U.S. 73 (1977); United States v. Sioux Nation, 448 U.S. 371 (1980).
[32] Lara, 541 U.S. at 203.
[33] See, S.Rep. No. 108–85, at 22–36.
[34] 541 U.S. 193 (2004).
[35] Id., at 202; emphasis added.
[36] The Court noted that the power of Congress in Indian affairs derives not only from the Indian Commerce Clause, U.S. Const., Art. I, § 8, cl. 3, and the Treaty Clause, Art. II, § 2, cl. 2, but rests also "upon the Constitution's adoption of preconstitutional powers necessarily inherent in any Federal Government, namely powers that [the U.S. Supreme] Court has described as 'necessary concomitants of nationality.'" Id. at 200–201.
[37] Id., at 203–4; emphasis added.
[38] Id., at 201–2.

the tribal status of Indian tribes.[39] In short, the plenary grants of power described by the Lara Court should be more than broad enough to encompass the provisions of H.R. 505.

Legislative History

In the 106th Congress, H.R. 4904 was introduced by Representative Abercrombie. A companion bill, S. 2899, was introduced in the Senate. Between August 28 and September 1, 2000, the Committee on Resources held a 5-day joint hearing with the Senate Committee on Indian Affairs on H.R. 4904 and S. 2899, in Honolulu, Hawai'i, and received extensive oral and written testimony from witnesses. See S. Hrg. 106–753 and the addendum printed in S. Hrg. 106–1105. A hearing on S. 2899 was held in Washington, D.C. on September 14, 2000. See S. Hrg. 106–795. H.R. 4904 was reported by the Committee on Resources with its accompanying report, H. Rep. No. 106–897, and passed the House of Representatives on suspension. S. 2899 was reported from the Committee on Indian Affairs with its accompanying report, S. Rep. No. 106–424.

In the 107th Congress, H.R. 617 was introduced by Representative Abercrombie. It was ordered reported by the Committee on Resources with its accompanying report, H. Rep. No. 107–140. A companion bill, S. 746 (with its accompanying report S. Rep. No. 107–66) and S. 1783, were introduced in the Senate. S. 746 was ordered reported by the Committee on Indian Affairs.

In the 108th Congress, H.R. 665 and H.R. 4282 were introduced by Representative Abercrombie. H.R. 4282 was introduced to reflect negotiations between the State of Hawai'i, the Hawai'i Congressional delegation and the Administration. It was ordered reported by the Committee on Resources with its accompanying report, H. Rep. No. 108–742. A companion bill, S. 344, was introduced in the Senate. A hearing was held by the Committee on Indian Affairs on February 25, 2003, and it was ordered reported with its accompanying report, S. Rep. No. 108–85.

In the 109th Congress, H.R. 309 was introduced by Representative Abercrombie and referred to the Committee on Resources. S. 147 was introduced in the Senate, and after a hearing held on March 1, 2005, the Committee on Indian Affairs ordered the bill reported from the Committee on Indian Affairs with its accompanying report, S. Rep. No. 109–68. After S. 147 was reported from the Committee, S. 3064 was introduced to address concerns raised by the Department of Justice. It was placed directly on the Senate Legislative Calendar. On June 8, 2006, S. 147 failed to garner the necessary vote to invoke cloture.

COMMITTEE ACTION

H.R. 505 was introduced on January 17, 2007 by Representative Abercrombie (D–HI). The bill was referred to the Committee on Natural Resources on January 17, 2007. On May 2, 2007, the Natural Resources Committee met to consider the bill. No amendments

[39] Id. See, also, the Court's observations in U.S. v. John, 437 U.S. 634 (1978): "[I]n view of the elaborate history, recounted above, of relations between the Mississippi Choctaws and the United States, we do not agree that Congress and the Executive Branch have less power to deal with the affairs of the Mississippi Choctaws than with the affairs of other Indian groups. Neither the fact that the Choctaws in Mississippi are merely a remnant of a larger group of Indians, long ago removed from Mississippi, nor the fact that federal supervision over them has not been continuous, destroys the federal power to deal with them." Id., at 652–3.

were offered. The bill was then ordered favorably reported to the House of Representatives by voice vote. A companion bill, S. 310, has been introduced in the Senate. The Committee on Indian Affairs held a hearing on May 3, 2007. It was reported without amendment to the Senate on May 10, 2007.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 sets forth the short title of the bill as the "Native Hawaiian Government Reorganization Act of 2007."

Section 2. Findings

Section 2 sets forth findings, including findings regarding the history of Native Hawaiians; their interactions with the United States; Congress' authority over Native Hawaiians; Congress' past declaration of the political and legal relationship with Native Hawaiians; and Native Hawaiians expression of their rights to self-determination, self-governance, and economic self-sufficiency.

Section 3. Definitions

Section 3 sets forth definitions of terms used in this Act, including definitions for the term "Native Hawaiian," which is defined as an individual who is one of the indigenous, native people of Hawai'i and who is a direct lineal descendant of the aboriginal, indigenous, native people who resided in the islands that now comprise the State of Hawai'i on or before January 1, 1893 and who occupied and exercised sovereignty in the Hawaiian archipelago, including the area that now constitutes the State of Hawai'i, or an individual who is one of the indigenous, native people of Hawai'i and who was eligible in 1921 for the programs authorized by the Hawaiian Homes Commission Act or a direct lineal descendant of that individual.

Section 4. United States policy and purpose

Section 4 reaffirms policies of the United States, including that Native Hawaiians are indigenous, native people; the United States has a political and legal relationship with Native Hawaiians; that Congress has the authority under Article I, section 8, clause 3 of the United States Constitution to enact legislation to address the conditions of Native Hawaiians and has done so in more than 150 Federal laws; that Native Hawaiians have an inherent right to autonomy in their internal affairs, an inherent right of self-determination and self-governance, the right to reorganize a Native Hawaiian governing entity, and the right to become economically self-sufficient; and that the United States shall continue to engage in the process of reconciliation and political relations with Native Hawaiians.

This section also sets forth the purpose of this Act, which is to provide a process for the reorganization of a Native Hawaiian governing entity and the reaffirmation of the political and legal relationship between the United States and the Native Hawaiian governing entity.

Section 5. United States Office for Native Hawaiian Relations

Section 5 establishes the United States Office for Native Hawaiian Relations (Office) in the Office of the Secretary of the Department of Interior and sets forth the duties of the Office. The duties include continuing the process of reconciliation with Native Hawaiians; effectuating and coordinating the political and legal relationship between the Native Hawaiian governing entity and the United States; consulting with the Native Hawaiian governing entity before taking any actions that may have the potential to significantly affect Native Hawaiian resources, rights, or lands; consulting with the Interagency Coordinating Group, other Federal agencies, and the State of Hawai'i on policies, practices, and proposed actions affecting Native Hawaiian resources, rights, or lands; and preparing and submitting an annual report containing certain information to specified Committees of Congress and providing recommendations for any necessary changes to Federal law or regulations. This section does not apply to the Department of Defense but the Secretary of Defense may designate one or more officials as liaison to the Office.

Section 6. Native Hawaiian Interagency Coordinating Group

Section 6 establishes the Native Hawaiian Interagency Coordinating Group, which is to be composed of officials from each Federal agency that administers Native Hawaiian programs, establishes or implements policies that affect Native Hawaiians, or whose actions may significantly or uniquely impact Native Hawaiian resources, rights, or lands, and the Office for Native Hawaiian Relations. The specific duties of the Interagency Coordinating Group are set forth but, generally, the Group will coordinate Federal programs and policies affecting Native Hawaiians. This section does not apply to the Department of Defense but the Secretary of Defense may designate one or more officials as liaison to the Interagency Coordinating Group.

Section 7. Process for the reorganization of the Native Hawaiian Governing Entity and the reaffirmation of the special political and legal relationship between the United States and the Native Hawaiian Governing Entity

Section 7 addresses the process for the reorganization of the Native Hawaiian governing entity and provides for the reaffirmation of the political and legal relationship between the United States and the Native Hawaiian governing entity.

This section recognizes the right of Native Hawaiians to reorganize a single Native Hawaiian governing entity to provide for their common welfare and to adopt appropriate organic governing documents. A Commission is established to prepare and maintain a roll of the adult members of the Native Hawaiian community who elect to participate in the reorganization of the Native Hawaiian governing entity and to certify that the adult members of the Native Hawaiian community, who have submitted sufficient documentation and proposed for inclusion on the roll, meet the definition of "Native Hawaiian."

Commission members will be appointed by the Secretary of the Interior and must have not less than 10 years of experience in the study and determination of Native Hawaiian genealogy and an

ability to read and translate into English documents written in the Hawaiian language. Duties of the Commission include preparing and maintaining a roll of the adult members of the Native Hawaiian community and certifying to the Secretary that each of the adult members proposed for inclusion on the roll meet the definition of "Native Hawaiian" set forth in this Act. The certified roll shall be published in the Federal Register. An appeal mechanism may be established by the Secretary for any person whose name is excluded from the roll but who claims to meet the "Native Hawaiian" definition.

The adult members listed on the certified roll may develop criteria for candidates to serve on the Native Hawaiian Interim Governing Council, determine the structure of the Council, and elect members to service on the Council. This section sets forth the powers and activities of the Council, which include developing organic governing documents for the Native Hawaiian governing entity and holding elections to ratify such organic documents.

Following ratification, the organic governing documents shall be submitted to the Secretary. The Secretary must certify that the organic documents contain certain information, including civil rights protection for citizens of the Native Hawaiian governing entity and all persons affected by the exercise of governmental powers and authorities by the Native Hawaiian governing entity.

Upon certification of the organic governing documents and the election of officers of the Native Hawaiian governing entity, the political and legal relationship between the United States and the Native Hawaiian governing entity will automatically be reaffirmed and Federal recognition shall be extended to the Native Hawaiian governing entity.

Section 8. Reaffirmation of delegation of Federal authority; Negotiations; Claims

Section 8 reaffirms the delegation of authority to the State of Hawai'i to address the conditions of Native Hawaiians. It provides that upon reaffirmation of the political and legal relationship between the United States and the Native Hawaiian governing entity, the United States and the State of Hawai'i may negotiate with the Native Hawaiian governing entity on certain issues. Negotiation topics include the transfer of lands, natural resources, and other assets, and the protection of existing rights related to such lands or resources; the exercise of governmental authority over any transferred lands, natural resources, and other assets, including land use; the exercise of civil and criminal jurisdiction; the delegation of governmental powers and authorities to the Native Hawaiian governing entity by the United States and the State of Hawai'i; any residual responsibilities of the United States and the State of Hawai'i; and grievances regarding assertions of historical wrongs committed against Native Hawaiians by the United States or by the State of Hawai'i. Upon agreement of any matters, the parties may submit proposed amendments to Federal or State law to the Congress or the State of Hawai'i, respectively. Any governmental power or authority of the Native Hawaiian governing entity which is currently exercised by the State or Federal Governments shall only be exercised by the Native Hawaiian governing entity as agreed to in negotiations under this section.

Additionally, this section provides that this Act does not create a cause of action against the United States or any other entity or person; alter existing law regarding obligations on the part of the United States or the State of Hawai'i with regard to Native Hawaiians or any Native Hawaiian entity; create obligations that did not exist in any source of Federal law prior to the date of enactment of this Act; or establish authority for the recognition of more than one Native Hawaiian governing entity. In addition, nothing in this Act creates any breach-of-trust actions, land claims, resource-protection or resource-management claims by or on behalf of Native Hawaiians or the Native Hawaiian governing entity and the United States retains its sovereign immunity from suit to any claim that exists prior to enactment of this Act which could be brought by Native Hawaiians or a Native Hawaiian governing entity. Any claims that may have already accrued and may be brought against the United States shall be rendered nonjusticiable.

The State of Hawai'i also retains its sovereign immunity unless waived in accordance with State law. Finally, nothing in this Act may be construed as overriding section 5 of the Fourteenth Amendment or State sovereign immunity held under the Eleventh Amendment.

Section 9. Applicability of certain Federal laws

This section prohibits the Native Hawaiian governing entity and Native Hawaiians from conducting gaming as a matter of claimed inherent authority or under any Federal law, including the Indian Gaming Regulatory Act in the State of Hawai'i or within any other State or Territory of the United States.

The Secretary may not take land into trust for Native Hawaiians or on behalf of the Native Hawaiian governing entity. It makes clear that the Indian Trade and Intercourse Act does not, has never, and will not apply after enactment to lands or land transfers present, past, or future, in the State of Hawai'i. If a Court construes otherwise, any land transfers before the date of enactment of this Act shall be deemed to have been made in accordance with the Indian Trade and Intercourse Act.

Only one Native Hawaiian governing entity may be recognized pursuant to this Act. Any other groups shall not be eligible for the Federal Acknowledgment Process.

Nothing in this Act alters the civil or criminal jurisdiction of the United States or the State of Hawai'i over lands and persons within the State of Hawai'i, unless otherwise negotiated pursuant to section 8.

Native Hawaiians shall not be eligible for programs and services available to Indians unless otherwise provided under applicable Federal law. The Native Hawaiian governing entity and its citizens shall be eligible for Native Hawaiian programs and services to the extent and in the manner provided by other applicable laws.

Section 10. Severability

The section provides that if any section or provision of this Act is found to be invalid, the remaining sections or provisions shall continue in full force and effect.

Section 11. Authorization of appropriations

This section authorizes such sums as necessary to carry out this Act.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

FEDERAL ADVISORY COMMITTEE STATEMENT

The functions of the proposed advisory committee authorized in the bill are not currently being nor could they be performed by one or more agencies, an advisory committee already in existence or by enlarging the mandate of an existing advisory committee.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 of the Constitution of the United States grants Congress the authority to enact this bill.

COMPLIANCE WITH HOUSE RULE XIII

1. **Cost of Legislation.** Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

2. **Congressional Budget Act.** As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

3. **General Performance Goals and Objectives.** As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is 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.

4. **Congressional Budget Office Cost Estimate.** Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

H.R. 505—Native Hawaiian Government Reorganization Act of 2007

H.R. 505 would set forth a process for establishing and recognizing a Native Hawaiian governing entity that would act on behalf of its members with the state and the federal government. CBO estimates that implementing H.R. 505 would cost about $1 million per year over the 2008–2010 period and less than $500,000 in each subsequent year, assuming the appropriation of the necessary

funds. Enacting the bill would not affect direct spending or revenues.

The bill would establish the United States Office for Native Hawaiian Relations within the Department of the Interior (DOI). This office would be responsible for developing and overseeing the federal relationship with the Native Hawaiian governing entity. Based on information from DOI, CBO expects that this office would require up to three full-time personnel. H.R. 505 would also create a nine-member commission responsible for collecting and certifying a membership roll of adult Native Hawaiians. Based on the deadlines specified in the bill as well as information from DOI, CBO expects that this commission would need three years and three full-time staff to complete its work.

H.R. 505 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments. Enacting this legislation could lead to the creation of a new government to represent Native Hawaiians. Any transfer of land now controlled by the state of Hawaii, would be the subject of future negotiations.

The CBO staff contacts for this estimate are Daniel Hoople (for federal costs), and Marjorie Miller (for the impact on state, local, and tribal governments). This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates.

EARMARK STATEMENT

H.R. 505 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e) or 9(f) of rule XXI.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes in existing law.

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