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

IN THE SENATE OF THE UNITED STATES

DECEMBER 7, 2001

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

A BILL

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

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

3 **SECTION 1. FINDINGS.**

4 Congress makes the following findings:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(20) The United States has declared that—

(A) the United States has a special responsibility for the welfare of the native peoples of the United States, including Native Hawaiians;

(B) Congress has identified Native Hawaiians as a distinct indigenous group within the scope of its Indian affairs power, and has enacted dozens of statutes on their behalf pursuant to its recognized trust responsibility; and

(C) Congress has also delegated broad authority to administer a portion of the Federal trust responsibility to the State of Hawaii.

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

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

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

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

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

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

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

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

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

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

9 **SEC. 2. DEFINITIONS.**

10 In this Act:

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

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

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

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

15 (5) NATIVE HAWAIIAN.—

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

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

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

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

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

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

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

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

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

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

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

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

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

7 (4) Native Hawaiians have—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 **SEC. 5. PROCESS FOR THE RECOGNITION OF THE NATIVE**
 19 **HAWAIIAN GOVERNING ENTITY.**

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

25 (b) PROCESS.—

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

9 (A) to the Secretary; and

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

13 (2) CERTIFICATIONS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 the Native Hawaiian governing entity to the
2 Secretary.

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

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

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

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

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

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

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

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

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

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

20 **SEC. 9. ETHICS.**

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

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

7 **SEC. 10. SEVERABILITY.**

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

