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108TH CONGRESS
2^D SESSION

H. R. 4282

[Report No. 108-742]

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, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 5, 2004

Mr. ABERCROMBIE (for himself, Mr. CASE, Mr. RAHALL, Mr. YOUNG of Alaska, and Mr. FALEOMAVAEGA) introduced the following bill; which was referred to the Committee on Resources

OCTOBER 6, 2004

Additional sponsors: Ms. BORDALLO, Mr. GRIJALVA, Mr. MORAN of Virginia, and Mr. KILDEE

OCTOBER 6, 2004

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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, 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. SHORT TITLE.**

4 This Act may be cited as the “Native Hawaiian Gov-
5 ernment Reorganization Act of 2004”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

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

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

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

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

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

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

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

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

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

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

1 (8)(A) in 1959, as part of the compact with the
2 United States admitting Hawaii into the Union,
3 Congress established a public trust (commonly
4 known as the “ceded lands trust”), for 5 purposes,
5 1 of which is the betterment of the conditions of Na-
6 tive Hawaiians;

7 (B) the public trust consists of lands, including
8 submerged lands, natural resources, and the reve-
9 nues derived from the lands; and

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

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

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

22 (11) Native Hawaiians continue to maintain
23 other distinctly native areas in Hawaii;

24 (12) on November 23, 1993, Public Law 103–
25 150 (107 Stat. 1510) (commonly known as the

1 “Apology Resolution”) was enacted into law, extend-
2 ing an apology on behalf of the United States to the
3 native people of Hawaii for the United States’ role
4 in the overthrow of the Kingdom of Hawaii;

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

14 (14) the Apology Resolution expresses the com-
15 mitment of Congress and the President—

16 (A) to acknowledge the ramifications of the
17 overthrow of the Kingdom of Hawaii;

18 (B) to support reconciliation efforts be-
19 tween the United States and Native Hawaiians;
20 and

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

24 (15) despite the overthrow of the government of
25 the Kingdom of Hawaii, Native Hawaiians have con-

1 tinued to maintain their separate identity as a dis-
2 tinct native community through cultural, social, and
3 political institutions, and to give expression to their
4 rights as native people to self-determination, self-gov-
5 ernance, and economic self-sufficiency;

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

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

13 (i) health care services;

14 (ii) educational programs;

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

17 (iv) economic development assistance
18 programs;

19 (v) children's services;

20 (vi) conservation programs;

21 (vii) fish and wildlife protection;

22 (viii) agricultural programs;

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

1 (x) native language immersion schools
2 from kindergarten through high school;

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

6 (xii) traditional justice programs; and

7 (B) by continuing their efforts to enhance
8 Native Hawaiian self-determination and local
9 control;

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

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

1 (19) this Act provides a process within the
2 framework of Federal law for the Native Hawaiian
3 people to exercise their inherent rights as a distinct,
4 indigenous, native community to reorganize a Native
5 Hawaiian governing entity for the purpose of giving
6 expression to their rights as native people to self-de-
7 termination and self-governance;

8 (20) Congress—

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

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

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

22 (21) the United States has recognized and re-
23 affirmed the special political and legal relationship
24 with the Native Hawaiian people through the enact-
25 ment of the Act entitled, “An Act to provide for the

1 admission of the State of Hawaii into the Union”,
2 approved March 18, 1959 (Public Law 86–3; 73
3 Stat. 4), by—

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

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

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

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

1 digenous, native people who exercised sov-
2 ereignty over the Hawaiian Islands;

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

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

11 (D) the special trust relationship of Amer-
12 ican Indians, Alaska Natives, and Native Ha-
13 waiians to the United States arises out of their
14 status as aboriginal, indigenous, native people
15 of the United States; and

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

1 **SEC. 3. DEFINITIONS.**

2 In this Act:

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

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

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

21 (4) COMMISSION.—The term “commission”
22 means the Commission established under section
23 7(b) to provide for the certification that those adult
24 members of the Native Hawaiian community listed
25 on the roll meet the definition of Native Hawaiian
26 set forth in section 3(8).

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

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

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

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

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

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

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

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

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

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

18 (11) SECRETARY.—The term “Secretary”
 19 means the Secretary of the Department of the Inte-
 20 rior.

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

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

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

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

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

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

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

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

18 (4) Native Hawaiians have—

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

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

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

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

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

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

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

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

17 (b) DUTIES.—The Office shall—

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

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

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

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

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

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

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

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

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

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

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

20 (2) the Office.

21 (c) **LEAD AGENCY.**—

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

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

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

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

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

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

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

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

13 (b) COMMISSION.—

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

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

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

26 (2) MEMBERSHIP.—

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

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

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

20 (4) DUTIES.—The Commission shall—

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

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

5 (5) STAFF.—

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

12 (B) COMPENSATION.—

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

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

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

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

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

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

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

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

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

25 (1) ROLL.—

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

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

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

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

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

3 (iii) publish information related to
4 subclauses (i) and (ii) in the Federal Reg-
5 ister;

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

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

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

1 the Secretary within two years from the
2 date on which the Commission is fully
3 composed; and

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

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

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

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

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

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

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(8) 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).

(iii) ACTIVITIES.—

(I) IN GENERAL.—The Council may conduct a referendum among the adult members of the Native Hawaiian community listed on the roll published under this subsection for the purpose of determining the proposed elements of the organic governing documents of the Native Hawaiian governing entity, including but not limited to—

(aa) the proposed criteria for citizenship of the Native Hawaiian governing entity;

(bb) the proposed powers and authorities to be exercised by the Native Hawaiian governing entity, as well as the proposed privileges and immunities of the Native Hawaiian governing entity;

(cc) the proposed civil rights and protection of the rights of the citizens of the Native Hawaiian 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 three 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 three govern-
20 ments;

21 (v) prevent the sale, disposition, lease,
22 or encumbrance of lands, interests in
23 lands, or other assets of the Native Hawai-
24 ian governing entity without the consent of
25 the Native Hawaiian governing entity;

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

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

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

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

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

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

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

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

16 (C) CERTIFICATIONS DEEMED MADE.—

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

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

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

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

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

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

22 (b) NEGOTIATIONS.—

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

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

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

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

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

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

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

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

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

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

14 (c) CLAIMS.—

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

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

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

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

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

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

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

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

20 **SEC. 10. SEVERABILITY.**

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

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

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

Union Calendar No. 460

108TH CONGRESS
2D Session

H. R. 4282

[Report No. 108-742]

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, and for other purposes.

OCTOBER 6, 2004

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed