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[Report No. 110–260]

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

IN THE SENATE OF THE UNITED STATES

JANUARY 17, 2007

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

FEBRUARY 5, 2008

Reported by Mr. DORGAN, without amendment

A BILL

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

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Native Hawaiian Gov-
3 ernment Reorganization Act of 2007”.

4 **SEC. 2. FINDINGS.**

5 Congress finds that—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 (i) health care services;

12 (ii) educational programs;

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

15 (iv) economic development assistance
 16 programs;

17 (v) children's services;

18 (vi) conservation programs;

19 (vii) fish and wildlife protection;

20 (viii) agricultural programs;

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

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

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

4 (xii) traditional justice programs, and

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

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

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

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

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

6 (20) Congress—

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

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

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

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

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

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

9 (B) transferring the United States’ respon-
10 sibility for the administration of the Hawaiian
11 Home Lands to the State of Hawaii, but retain-
12 ing the exclusive right of the United States to
13 consent to any actions affecting the lands in-
14 cluded in the trust and any amendments to the
15 Hawaiian Homes Commission Act, 1920 (42
16 Stat. 108, chapter 42) that are enacted by the
17 legislature of the State of Hawaii affecting the
18 beneficiaries under the Act;

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

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

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

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

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

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

24 **SEC. 3. DEFINITIONS.**

25 In this Act:

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

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

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

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

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

4 (6) INDIAN PROGRAM OR SERVICE.—

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

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

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

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

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

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

3 (10) NATIVE HAWAIIAN.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (4) Native Hawaiians have—

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

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

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

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

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

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

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

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

25 (b) DUTIES.—The Office shall—

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

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

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

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

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

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

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

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

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

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

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

9 (2) the Office.

10 (c) LEAD AGENCY.—

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

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

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

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

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

lished in this provision shall apply only after the satisfaction of all of the conditions referred to in section 7(c)(6); and

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

(e) APPLICABILITY TO DEPARTMENT OF DEFENSE.—This section shall have no applicability to the Department of Defense or to any agency or component of the Department of Defense, but the Secretary of Defense may designate 1 or more officials as liaison to the Interagency Coordinating Group.

SEC. 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.

(a) RECOGNITION OF THE NATIVE HAWAIIAN GOVERNING ENTITY.—The right of the Native Hawaiian people to reorganize the single Native Hawaiian governing entity to provide for their common welfare and to adopt appropriate organic governing documents is recognized by the United States.

(b) COMMISSION.—

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

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

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

13 (2) MEMBERSHIP.—

14 (A) APPOINTMENT.—

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

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

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

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

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

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

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

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

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

23 (4) DUTIES.—The Commission shall—

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

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

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

8 (5) STAFF.—

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

15 (B) COMPENSATION.—

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

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

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

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

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

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

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

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

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

3 (1) ROLL.—

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

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

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

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

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

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

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

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

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

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

tion of Native Hawaiian in section 3(10) to the Secretary within two years from the date on which the Commission is fully composed; and

(ii) certify to the Secretary that each of the adult members of the Native Hawaiian community proposed for inclusion on the roll meets the definition of Native Hawaiian in section 3(10).

(F) PUBLICATION.—Upon certification by the Commission to the Secretary that those listed on the roll meet the definition of Native Hawaiian in section 3(10), the Secretary shall publish the roll in the Federal Register.

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

(H) PUBLICATION; UPDATE.—The Secretary shall—

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

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

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

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

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

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

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

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

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

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

14 (B) POWERS.—

15 (i) IN GENERAL.—The Council—

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

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

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

(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-

sons affected by the exercise of governmental powers and authorities of the Native Hawaiian governing entity; and

(dd) other issues determined appropriate by the Council.

(II) DEVELOPMENT OF ORGANIC GOVERNING DOCUMENTS.—Based on the referendum, the Council may develop proposed organic governing documents for the Native Hawaiian governing entity.

(III) DISTRIBUTION.—The Council may distribute to all adult members of the Native Hawaiian community listed on the roll published under this subsection—

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

(bb) a brief impartial description of the proposed organic governing documents;

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

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

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

15 (4) CERTIFICATIONS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (b) NEGOTIATIONS.—

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

erning entity, the United States and the State of Hawaii may enter into negotiations with the Native Hawaiian governing entity designed to lead to an agreement addressing such matters as—

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

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

(C) the exercise of civil and criminal jurisdiction;

(D) the delegation of governmental powers and authorities to the Native Hawaiian governing entity by the United States and the State of Hawaii;

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

(F) grievances regarding assertions of historical wrongs committed against Native Hawaiians by the United States or by the State of Hawaii.

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

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

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

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

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

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

5 (c) CLAIMS.—

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

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

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

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

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

20 (2) FEDERAL SOVEREIGN IMMUNITY.—

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

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

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

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

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

19 (3) STATE SOVEREIGNTY IMMUNITY.—

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

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

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

7 (a) INDIAN GAMING REGULATORY ACT.—

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

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

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

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

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

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

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

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

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

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

1 **SEC. 10. SEVERABILITY.**

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

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

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

Calendar No. 567

110TH CONGRESS
2ND Session

S. 310

[Report No. 110-260]

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.

FEBRUARY 5, 2008

Reported by Mr. Dorgan, without amendment