

S 381 IS

111th CONGRESS  
1st Session  
**S. 381**

To express the policy of the United States regarding the United States relationship with Native Hawaiians, to provide a process for the reorganization of a Native Hawaiian government and the recognition by the United States of the Native Hawaiian government, and for other purposes.

**IN THE SENATE OF THE UNITED STATES**

**February 4, 2009**

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

**A BILL**

To express the policy of the United States regarding the United States relationship with Native Hawaiians, to provide a process for the reorganization of a Native Hawaiian government and the recognition by the United States of the Native Hawaiian government, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. FINDINGS.**

Congress makes the following findings:

- (1) The Constitution vests Congress with the authority to address the conditions of the indigenous, native people of the United States.
- (2) Native Hawaiians, the native people of the Hawaiian archipelago which is now part of the United States, are indigenous, native people of the United States.

(3) The United States has a special trust relationship to promote the welfare of the native people of the United States, including Native Hawaiians.

(4) Under the treaty making power of the United States, Congress exercised its constitutional authority to confirm a treaty between the United States and the government that represented the Hawaiian people, and from 1826 until 1893, the United States recognized the independence of the Kingdom of Hawaii, extended full diplomatic recognition to the Hawaiian government, and entered into treaties and conventions with the Hawaiian monarchs to govern commerce and navigation in 1826, 1842, 1849, 1875, and 1887.

(5) Pursuant to the provisions of the Hawaiian Homes Commission Act, 1920 (42 Stat. 108, chapter 42), the United States set aside 203,500 acres of land in the Federal territory that later became the State of Hawaii to address the conditions of Native Hawaiians.

(6) By setting aside 203,500 acres of land for Native Hawaiian homesteads and farms, the Act assists the Native Hawaiian community in maintaining distinct native settlements throughout the State of Hawaii.

(7) Approximately 6,800 Native Hawaiian lessees and their family members reside on Hawaiian Home Lands and approximately 18,000 Native Hawaiians who are eligible to reside on the Home Lands are on a waiting list to receive assignments of land.

(8) In 1959, as part of the compact admitting Hawaii into the United States, Congress established the Ceded Lands Trust for 5 purposes, 1 of which is the betterment of the conditions of Native Hawaiians. Such trust consists of approximately 1,800,000 acres of land, submerged lands, and the revenues derived from such lands, the assets of which have never been completely inventoried or segregated.

(9) Throughout the years, Native Hawaiians have repeatedly sought access to the Ceded Lands Trust and its resources and revenues in order to establish and maintain native settlements and distinct native communities throughout the State.

(10) The Hawaiian Home Lands and the Ceded Lands provide an important foundation for the ability of the Native Hawaiian community to maintain the practice of Native Hawaiian culture, language, and traditions, and for the survival of the Native Hawaiian people.

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

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

(13) The Apology Resolution acknowledges that the overthrow of the Kingdom of Hawaii occurred with the active participation of agents and citizens of the United States and further acknowledges that the Native Hawaiian people never directly relinquished their claims to their inherent sovereignty as a people over their national lands to the United States, either through their monarchy or through a plebiscite or referendum.

(14) The Apology Resolution expresses the commitment of Congress and the President to acknowledge the ramifications of the overthrow of the Kingdom of Hawaii and to support reconciliation efforts between the United States and Native Hawaiians; and to have Congress and the President, through the President's designated officials, consult with Native Hawaiians on the reconciliation process as called for under the Apology Resolution.

(15) Despite the overthrow of the Hawaiian government, Native Hawaiians have continued to maintain their separate identity as a distinct native community through the formation of cultural, social, and political institutions, and to give expression to their rights as native people to self-determination and self-governance as evidenced through their participation in the Office of Hawaiian Affairs.

(16) Native Hawaiians also maintain a distinct Native Hawaiian community through the provision of governmental services to Native Hawaiians, including the provision of health care services, educational programs, employment and training programs, children's services, conservation programs, fish and wildlife protection, agricultural programs, native language immersion programs and native language immersion schools from kindergarten through high school, as well as college and master's degree programs in native language immersion instruction, and traditional justice programs, and by continuing their efforts to enhance Native Hawaiian self-determination and local control.

(17) Native Hawaiians are actively engaged in Native Hawaiian cultural practices, traditional agricultural methods, fishing and subsistence practices, maintenance of cultural use areas and sacred sites, protection of burial sites, and the exercise of their

traditional rights to gather medicinal plants and herbs, and food sources.

(18) The Native Hawaiian people wish to preserve, develop, and transmit to future Native Hawaiian generations their ancestral lands and Native Hawaiian political and cultural identity in accordance with their traditions, beliefs, customs and practices, language, and social and political institutions, and to achieve greater self-determination over their own affairs.

(19) This Act provides for a process within the framework of Federal law for the Native Hawaiian people to exercise their inherent rights as a distinct aboriginal, indigenous, native community to reorganize a Native Hawaiian government for the purpose 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 trust relationship with the Native Hawaiian people through--

(A) 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--

(i) 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 for the betterment of the conditions of Native Hawaiians; and

(ii) transferring the United States responsibility for the administration of the Hawaiian Home Lands to the State of Hawaii, but retaining the authority to enforce the trust, including the exclusive right of the United States to consent to any actions affecting the lands which comprise the corpus of the trust and any amendments to the Hawaiian Homes Commission Act, 1920 (42 Stat. 108, chapter 42) that are

enacted by the legislature of the State of Hawaii affecting the beneficiaries under the Act.

(22) The United States continually has recognized and reaffirmed that--

- (A) Native Hawaiians have a cultural, historic, and land-based link to the aboriginal, native people who exercised sovereignty over the Hawaiian Islands;
- (B) Native Hawaiians have never relinquished their claims to sovereignty or their sovereign lands;
- (C) the United States extends services to Native Hawaiians because of their unique status as the aboriginal, native people of a once sovereign nation with whom the United States has a political and legal relationship; and
- (D) the special trust relationship of American Indians, Alaska Natives, and Native Hawaiians to the United States arises out of their status as aboriginal, indigenous, native people of the United States.

## **SEC. 2. DEFINITIONS.**

In this Act:

- (1) ABORIGINAL, INDIGENOUS, NATIVE PEOPLE- The term `aboriginal, indigenous, native people' means those people whom Congress has recognized as the original inhabitants of the lands and who exercised sovereignty prior to European contact in the areas that later became part of the United States.
- (2) ADULT MEMBERS- The term `adult members' means those Native Hawaiians who have attained the age of 18 at the time the Secretary publishes the final roll, as provided in section 7(a)(3) of this Act.
- (3) APOLOGY RESOLUTION- The term `Apology Resolution' means Public Law 103-150 (107 Stat. 1510), a joint resolution offering an apology to Native Hawaiians on behalf of the United States for the participation of agents of the United States in the January 17, 1893 overthrow of the Kingdom of Hawaii.
- (4) CEDED LANDS- The term `ceded lands' means those lands which were ceded to the United States by the Republic of Hawaii under the Joint Resolution to provide for annexing the Hawaiian Islands to the United States of July 7, 1898 (30 Stat. 750), and which were later transferred to the State of Hawaii in 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).

(5) COMMISSION- The term `Commission' means the commission established in section 7 of this Act to certify that the adult members of the Native Hawaiian community contained on the roll developed under that section meet the definition of Native Hawaiian, as defined in paragraph (7)(A).

(6) INDIGENOUS, NATIVE PEOPLE- The term `indigenous, native people' means the lineal descendants of the aboriginal, indigenous, native people of the United States.

(7) NATIVE HAWAIIAN-

(A) Prior to the recognition by the United States of a Native Hawaiian government under the authority of section 7(d)(2) of this Act, the term `Native Hawaiian' means the indigenous, native people of Hawaii who are the lineal descendants of the aboriginal, indigenous, native people who resided in the islands that now comprise the State of Hawaii on or before January 1, 1893, and who occupied and exercised sovereignty in the Hawaiian archipelago, including the area that now constitutes the State of Hawaii, and includes all Native Hawaiians who were eligible in 1921 for the programs authorized by the Hawaiian Homes Commission Act (42 Stat. 108, chapter 42) and their lineal descendants.

(B) Following the recognition by the United States of the Native Hawaiian government under section 7(d)(2) of this Act, the term `Native Hawaiian' shall have the meaning given to such term in the organic governing documents of the Native Hawaiian government.

(8) NATIVE HAWAIIAN GOVERNMENT- The term `Native Hawaiian government' means the citizens of the government of the Native Hawaiian people that is recognized by the United States under the authority of section 7(d)(2) of this Act.

(9) NATIVE HAWAIIAN INTERIM GOVERNING COUNCIL- The term `Native Hawaiian Interim Governing Council' means the interim governing council that is organized under section 7(c) of this Act.

(10) ROLL- The term `roll' means the roll that is developed under the authority of section 7(a) of this Act.

(11) SECRETARY- The term `Secretary' means the Secretary of the Interior.

(12) TASK FORCE- The term `Task Force' means the Native Hawaiian Interagency Task Force established under the authority of section 6 of this Act.

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

- (a) Policy- The United States reaffirms that--
- (1) Native Hawaiians are a unique and distinct aboriginal, indigenous, native people, with whom the United States has a political and legal relationship;
  - (2) the United States has a special trust relationship to promote the welfare of Native Hawaiians;
  - (3) Congress possesses the authority under the Constitution to enact legislation to address the conditions of Native Hawaiians and has exercised this authority through the enactment of--
    - (A) the Hawaiian Homes Commission Act, 1920 (42 Stat. 108, chapter 42);
    - (B) 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); and
    - (C) more than 150 other Federal laws addressing the conditions of Native Hawaiians;
  - (4) Native Hawaiians have--
    - (A) an inherent right to autonomy in their internal affairs;
    - (B) an inherent right of self-determination and self-governance;
    - (C) the right to reorganize a Native Hawaiian government; and
    - (D) the right to become economically self-sufficient; and
  - (5) the United States shall continue to engage in a process of reconciliation and political relations with the Native Hawaiian people.
- (b) Purpose- It is the intent of Congress that the purpose of this Act is to provide a process for the reorganization of a Native Hawaiian government and for the recognition by the United States of the Native Hawaiian government for purposes of continuing a government-to-government relationship.

#### **SEC. 4. ESTABLISHMENT OF THE UNITED STATES OFFICE FOR NATIVE HAWAIIAN AFFAIRS.**

- (a) In General- There is established within the Office of the Secretary the United States Office for Native Hawaiian Affairs.
- (b) Duties of the Office- The United States Office for Native Hawaiian Affairs shall--
- (1) effectuate and coordinate the special trust relationship between the Native Hawaiian people and the United States through the Secretary, and with all other Federal agencies;
  - (2) upon the recognition of the Native Hawaiian government by the United States as provided for in section 7(d)(2) of this Act,

effectuate and coordinate the special trust relationship between the Native Hawaiian government and the United States through the Secretary, and with all other Federal agencies;

(3) fully integrate the principle and practice of meaningful, regular, and appropriate consultation with the Native Hawaiian people by providing timely notice to, and consulting with the Native Hawaiian people prior to taking any actions that may affect traditional or current Native Hawaiian practices and matters that may have the potential to significantly or uniquely affect Native Hawaiian resources, rights, or lands, and upon the recognition of the Native Hawaiian government as provided for in section 7(d)(2) of this Act, fully integrate the principle and practice of meaningful, regular, and appropriate consultation with the Native Hawaiian government by providing timely notice to, and consulting with the Native Hawaiian people and the Native Hawaiian government prior to taking any actions that may have the potential to significantly affect Native Hawaiian resources, rights, or lands;

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

(5) be responsible for the preparation and submittal to the Committee on Indian Affairs of the Senate, the Committee on Energy and Natural Resources of the Senate, and the Committee on Resources of the House of Representatives of an annual report detailing the activities of the Interagency Task Force established under section 6 of this Act that are undertaken with respect to the continuing process of reconciliation and to effect meaningful consultation with the Native Hawaiian people and the Native Hawaiian government and providing recommendations for any necessary changes to existing Federal statutes or regulations promulgated under the authority of Federal law;

(6) be responsible for continuing the process of reconciliation with the Native Hawaiian people, and upon the recognition of the Native Hawaiian government by the United States as provided for in section 7(d)(2) of this Act, be responsible for continuing the process of reconciliation with the Native Hawaiian government; and

(7) assist the Native Hawaiian people in facilitating a process for self-determination, including but not limited to the provision of technical assistance in the development of the roll under section 7(a) of this Act, the organization of the Native Hawaiian Interim Governing Council as provided for in section 7(c) of this Act, and



the recognition of the Native Hawaiian government as provided for in section 7(d) of this Act.

(c) Authority- The United States Office for Native Hawaiian Affairs is authorized to enter into a contract with or make grants for the purposes of the activities authorized or addressed in section 7 of this Act for a period of 3 years from the date of enactment of this Act.

## **SEC. 5. DESIGNATION OF DEPARTMENT OF JUSTICE REPRESENTATIVE.**

The Attorney General shall designate an appropriate official within the Department of Justice to assist the United States Office for Native Hawaiian Affairs in the implementation and protection of the rights of Native Hawaiians and their political, legal, and trust relationship with the United States, and upon the recognition of the Native Hawaiian government as provided for in section 7(d)(2) of this Act, in the implementation and protection of the rights of the Native Hawaiian government and its political, legal, and trust relationship with the United States.

## **SEC. 6. NATIVE HAWAIIAN INTERAGENCY TASK FORCE.**

(a) Establishment- There is established an interagency task force to be known as the 'Native Hawaiian Interagency Task Force'.

(b) Composition- The Task Force shall be composed of officials, to be designated by the President, from--

(1) each Federal agency that establishes or implements policies that affect Native Hawaiians or whose actions may significantly or uniquely impact on Native Hawaiian resources, rights, or lands;

(2) the United States Office for Native Hawaiian Affairs established under section 4 of this Act; and

(3) the Executive Office of the President.

(c) Lead Agencies- The Department of the Interior and the Department of Justice shall serve as the lead agencies of the Task Force, and meetings of the Task Force shall be convened at the request of either of the lead agencies.

(d) Co-Chairs- The Task Force representative of the United States Office for Native Hawaiian Affairs established under the authority of section 4 of this Act and the Attorney General's designee under the authority of section 5 of this Act shall serve as co-chairs of the Task Force.

(e) Duties- The responsibilities of the Task Force shall be--

- (1) the coordination of Federal policies that affect Native Hawaiians or actions by any agency or agencies of the Federal Government which may significantly or uniquely impact on Native Hawaiian resources, rights, or lands;
- (2) to assure that each Federal agency develops a policy on consultation with the Native Hawaiian people, and upon recognition of the Native Hawaiian government by the United States as provided in section 7(d)(2) of this Act, consultation with the Native Hawaiian government; and
- (3) to assure the participation of each Federal agency in the development of the report to Congress authorized in section 4(b)(5) of this Act.

**SEC. 7. PROCESS FOR THE DEVELOPMENT OF A ROLL FOR THE ORGANIZATION OF A NATIVE HAWAIIAN INTERIM GOVERNING COUNCIL, FOR THE ORGANIZATION OF A NATIVE HAWAIIAN INTERIM GOVERNING COUNCIL AND A NATIVE HAWAIIAN GOVERNMENT, AND FOR THE RECOGNITION OF THE NATIVE HAWAIIAN GOVERNMENT.**

(a) Roll-

(1) PREPARATION OF ROLL- The United States Office for Native Hawaiian Affairs shall assist the adult members of the Native Hawaiian community who wish to participate in the reorganization of a Native Hawaiian government in preparing a roll for the purpose of the organization of a Native Hawaiian Interim Governing Council. The roll shall include the names of the--

(A) adult members of the Native Hawaiian community who wish to become citizens of a Native Hawaiian government and who are--

(i) the lineal descendants of the aboriginal, indigenous, native people who resided in the islands that now comprise the State of Hawaii on or before January 1, 1893, and who occupied and exercised sovereignty in the Hawaiian archipelago; or

(ii) Native Hawaiians who were eligible in 1921 for the programs authorized by the Hawaiian Homes Commission Act (42 Stat. 108, chapter 42) or their lineal descendants; and

(B) the children of the adult members listed on the roll prepared under this subsection.

(2) CERTIFICATION AND SUBMISSION-

(A) COMMISSION-

(i) IN GENERAL- There is authorized to be established a Commission to be composed of 9 members for the purpose of certifying that the adult members of the Native Hawaiian community on the roll meet the definition of Native Hawaiian, as defined in section 2(7)(A) of this Act.

(ii) MEMBERSHIP-

(I) APPOINTMENT- The Secretary shall appoint the members of the Commission in accordance with subclause (II). Any vacancy on the Commission shall not affect its powers and shall be filled in the same manner as the original appointment.

(II) REQUIREMENTS- The members of the Commission shall be Native Hawaiian, as defined in section 2(7)(A) of this Act, and shall have expertise in the certification of Native Hawaiian ancestry.

(III) CONGRESSIONAL SUBMISSION OF SUGGESTED CANDIDATES- In appointing members of the Commission, the Secretary may choose such members from among--

(aa) five suggested candidates submitted by the majority leader of the Senate and the minority leader of the Senate from a list of candidates provided to such leaders by the Chairman and Vice Chairman of the Committee on Indian Affairs of the Senate; and

(bb) four suggested candidates submitted by the Speaker of the House of Representatives and the minority leader of the House of Representatives from a list provided to the Speaker and the minority leader by the Chairman and Ranking member of the Committee on Resources of the House of Representatives.

(iii) EXPENSES- Each member of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(B) CERTIFICATION- The Commission shall certify that the individuals listed on the roll developed under the authority

of this subsection are Native Hawaiians, as defined in section 2(7)(A) of this Act.

(3) SECRETARY-

(A) CERTIFICATION- The Secretary shall review the Commission's certification of the membership roll and determine whether it is consistent with applicable Federal law, including the special trust relationship between the United States and the indigenous, native people of the United States.

(B) PUBLICATION- Upon making the determination authorized in subparagraph (A), the Secretary shall publish a final roll.

(C) APPEAL-

(i) ESTABLISHMENT OF MECHANISM- The Secretary is authorized to establish a mechanism for an appeal of the Commission's determination as it concerns--

(I) the exclusion of the name of a person who meets the definition of Native Hawaiian, as defined in section 2(7)(A) of this Act, from the roll; or

(II) a challenge to the inclusion of the name of a person on the roll on the grounds that the person does not meet the definition of Native Hawaiian, as so defined.

(ii) PUBLICATION; UPDATE- The Secretary shall publish the final roll while appeals are pending, and shall update the final roll and the publication of the final roll upon the final disposition of any appeal.

(D) FAILURE TO ACT- If the Secretary fails to make the certification authorized in subparagraph (A) within 90 days of the date that the Commission submits the membership roll to the Secretary, the certification shall be deemed to have been made, and the Commission shall publish the final roll.

(4) EFFECT OF PUBLICATION- The publication of the final roll shall serve as the basis for the eligibility of adult members listed on the roll to participate in all referenda and elections associated with the organization of a Native Hawaiian Interim Governing Council and the Native Hawaiian government.

(b) Recognition of Rights- The right of the Native Hawaiian people to organize for their common welfare and to adopt appropriate organic governing documents is hereby recognized by the United States.

(c) Organization of the Native Hawaiian Interim Governing Council-

(1) ORGANIZATION- The adult members listed on the roll developed under the authority of subsection (a) are authorized to--

- (A) develop criteria for candidates to be elected to serve on the Native Hawaiian Interim Governing Council;
- (B) determine the structure of the Native Hawaiian Interim Governing Council; and
- (C) elect members to the Native Hawaiian Interim Governing Council.

(2) ELECTION- Upon the request of the adult members listed on the roll developed under the authority of subsection (a), the United States Office for Native Hawaiian Affairs may assist the Native Hawaiian community in holding an election by secret ballot (absentee and mail balloting permitted), to elect the membership of the Native Hawaiian Interim Governing Council.

(3) POWERS-

(A) IN GENERAL- The Native Hawaiian Interim Governing Council is authorized to represent those on the roll in the implementation of this Act and shall have no powers other than those given to it in accordance with this Act.

(B) FUNDING- The Native Hawaiian Interim Governing Council is authorized to enter into a contract or grant with any Federal agency, including but not limited to, the United States Office for Native Hawaiian Affairs within the Department of the Interior and the Administration for Native Americans within the Department of Health and Human Services, to carry out the activities set forth in subparagraph (C).

(C) ACTIVITIES-

(i) IN GENERAL- The Native Hawaiian Interim Governing Council is authorized to conduct a referendum of the adult members listed on the roll developed under the authority of subsection (a) for the purpose of determining (but not limited to) the following:

(I) The proposed elements of the organic governing documents of a Native Hawaiian government.

(II) The proposed powers and authorities to be exercised by a Native Hawaiian government, as well as the proposed privileges and immunities of a Native Hawaiian government.

(III) The proposed civil rights and protection of such rights of the citizens of a Native Hawaiian

government and all persons subject to the authority of a Native Hawaiian government.

(ii) DEVELOPMENT OF ORGANIC GOVERNING DOCUMENTS- Based upon the referendum, the Native Hawaiian Interim Governing Council is authorized to develop proposed organic governing documents for a Native Hawaiian government.

(iii) DISTRIBUTION- The Native Hawaiian Interim Governing Council is authorized to distribute to all adult members of those listed on the roll, a copy of the proposed organic governing documents, as drafted by the Native Hawaiian Interim Governing Council, along with a brief impartial description of the proposed organic governing documents.

(iv) CONSULTATION- The Native Hawaiian Interim Governing Council is authorized to freely consult with those members listed on the roll concerning the text and description of the proposed organic governing documents.

(D) ELECTIONS-

(i) IN GENERAL- The Native Hawaiian Interim Governing Council is authorized to hold elections for the purpose of ratifying the proposed organic governing documents, and upon ratification of the organic governing documents, to hold elections for the officers of the Native Hawaiian government.

(ii) ASSISTANCE- Upon the request of the Native Hawaiian Interim Governing Council, the United States Office of Native Hawaiian Affairs may assist the Council in conducting such elections.

(4) TERMINATION- The Native Hawaiian Interim Governing Council shall have no power or authority under this Act after the time at which the duly elected officers of the Native Hawaiian government take office.

(d) Recognition of the Native Hawaiian Government-

(1) PROCESS FOR RECOGNITION-

(A) SUBMITTAL OF ORGANIC GOVERNING DOCUMENTS- The duly elected officers of the Native Hawaiian government shall submit the organic governing documents of the Native Hawaiian government to the Secretary.

(B) CERTIFICATIONS- Within 90 days of the date that the duly elected officers of the Native Hawaiian government submit the organic governing documents to the Secretary,

the Secretary shall certify that the organic governing documents--

- (i) were adopted by a majority vote of the adult members listed on the roll prepared under the authority of subsection (a);
- (ii) are consistent with applicable Federal law and the special trust relationship between the United States and the indigenous native people of the United States;
- (iii) provide for the exercise of those governmental authorities that are recognized by the United States as the powers and authorities that are exercised by other governments representing the indigenous, native people of the United States;
- (iv) provide for the protection of the civil rights of the citizens of the Native Hawaiian government and all persons subject to the authority of the Native Hawaiian government, and to assure that the Native Hawaiian government exercises its authority consistent with the requirements of section 202 of the Act of April 11, 1968 (25 U.S.C. 1302);
- (v) prevent the sale, disposition, lease, or encumbrance of lands, interests in lands, or other assets of the Native Hawaiian government without the consent of the Native Hawaiian government;
- (vi) establish the criteria for citizenship in the Native Hawaiian government; and
- (vii) provide authority for the Native Hawaiian government to negotiate with Federal, State, and local governments, and other entities.

(C) FAILURE TO ACT- If the Secretary fails to act within 90 days of the date that the duly elected officers of the Native Hawaiian government submitted the organic governing documents of the Native Hawaiian government to the Secretary, the certifications authorized in subparagraph (B) shall be deemed to have been made.

(D) RESUBMISSION IN CASE OF NONCOMPLIANCE WITH FEDERAL LAW-

- (i) RESUBMISSION BY THE SECRETARY- If the Secretary determines that the organic governing documents, or any part thereof, are not consistent with applicable Federal law, the Secretary shall resubmit the organic governing documents to the duly elected officers of the Native Hawaiian

government along with a justification for each of the Secretary's findings as to why the provisions are not consistent with such law.

(ii) AMENDMENT AND RESUBMISSION BY THE NATIVE HAWAIIAN GOVERNMENT- If the organic governing documents are resubmitted to the duly elected officers of the Native Hawaiian government by the Secretary under clause (i), the duly elected officers of the Native Hawaiian government shall--

(I) amend the organic governing documents to ensure that the documents comply with applicable Federal law; and

(II) resubmit the amended organic governing documents to the Secretary for certification in accordance with subparagraphs (B) and (C).

(2) FEDERAL RECOGNITION-

(A) RECOGNITION- Notwithstanding any other provision of law, upon the election of the officers of the Native Hawaiian government and the certifications (or deemed certifications) by the Secretary authorized in paragraph (1), Federal recognition is hereby extended to the Native Hawaiian government as the representative governing body of the Native Hawaiian people.

(B) NO DIMINISHMENT OF RIGHTS OR PRIVILEGES- Nothing contained in this Act shall diminish, alter, or amend any existing rights or privileges enjoyed by the Native Hawaiian people which are not inconsistent with the provisions of this Act.

## **SEC. 8. AUTHORIZATION OF APPROPRIATIONS.**

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

## **SEC. 9. REAFFIRMATION OF DELEGATION OF FEDERAL AUTHORITY; NEGOTIATIONS.**

(a) Reaffirmation- The delegation by the United States of authority to the State of Hawaii to address the conditions of Native Hawaiians contained in 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. 5) is hereby reaffirmed.

(b) Negotiations- Upon the Federal recognition of the Native Hawaiian government pursuant to section 7(d)(2) of this Act, the United States



is authorized to negotiate and enter into an agreement with the State of Hawaii and the Native Hawaiian government regarding the transfer of lands, resources, and assets dedicated to Native Hawaiian use under existing law as in effect on the date of enactment of this Act to the Native Hawaiian government.

#### **SEC. 10. DISCLAIMER.**

Nothing in this Act is intended to serve as a settlement of any claims against the United States, or to affect the rights of the Native Hawaiian people under international law.

#### **SEC. 11. REGULATIONS.**

The Secretary is authorized to make such rules and regulations and such delegations of authority as the Secretary deems necessary to carry out the provisions of this Act.

#### **SEC. 12. SEVERABILITY.**

In the event that any section or provision of this Act, or any amendment made by this Act is held invalid, it is the intent of Congress that the remaining sections or provisions of this Act, and the amendments made by this Act, shall continue in full force and effect.

*END*