



- 1           (1) Native Hawaiians, the native people of the Hawaiian  
2           archipelago that is now part of the United States and  
3           the State of Hawaii, are the indigenous, native  
4           peoples of the State of Hawaii, and the Native  
5           Hawaiian people are a distinctly native community;
- 6           (2) The State of Hawaii has a special political and legal  
7           relationship with, and has long enacted legislation to  
8           promote the welfare of, the Native Hawaiian people;
- 9           (3) The United States, through Congress, exercised its  
10          constitutional authority to confirm a treaty between  
11          the United States and the government that represented  
12          the Native Hawaiian people, and from 1826 until 1893,  
13          the United States recognized the independence of the  
14          Kingdom of Hawaii, extended full diplomatic  
15          recognition to the Hawaiian government, and entered  
16          into treaties and conventions with the Hawaiian  
17          monarchs to govern commerce and navigation in 1826,  
18          1842, 1849, 1875, and 1887.
- 19          (4) Pursuant to the Hawaiian Homes Commission Act, 1920  
20          (42 Stat. 108, chapter 42), the United States set  
21          aside approximately 203,500 acres of land in trust to  
22          better address the conditions of Native Hawaiians in



1 the federal territory that later became the State of  
2 Hawaii and in enacting the Hawaiian Homes Commission  
3 Act, 1920, Congress acknowledged the Native Hawaiian  
4 people as a native people of the United States, as  
5 evidenced by the committee report, which notes that  
6 Congress relied on the Indian affairs power and the  
7 War Powers, including the power to make peace;

8 (5) By setting aside 203,500 acres of land in trust for  
9 Native Hawaiian homesteads and farms, the Hawaiian  
10 Homes Commission Act, 1920, assists the members of the  
11 Native Hawaiian community in maintaining distinctly  
12 native communities throughout the State of Hawaii;

13 (6) Approximately 9,800 Native Hawaiian families reside on  
14 the Hawaiian home lands, and approximately 25,000  
15 Native Hawaiians who are eligible to reside on the  
16 Hawaiian home lands are on a waiting list to receive  
17 assignments of Hawaiian home lands;

18 (7) In 1959, as part of the compact with the United States  
19 admitting Hawaii into the Union, Congress delegated  
20 the authority and responsibility to administer the  
21 Hawaiian Homes Commission Act, 1920, lands in trust  
22 for Native Hawaiians and established a new public



1 trust, commonly known as the ceded lands trust, for  
2 five purposes, one of which is the betterment of the  
3 conditions of Native Hawaiians, and Congress thereby  
4 reaffirmed its recognition of the Native Hawaiians as  
5 a distinctly native community with a direct lineal and  
6 historical succession to the aboriginal, indigenous  
7 people of Hawaii. The public trust consists of lands,  
8 including submerged lands, natural resources, and the  
9 revenues derived from the lands; and the assets of  
10 this public trust have never been completely  
11 inventoried or segregated;

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

16 (9) The Hawaiian home lands and other ceded lands provide  
17 important native land reserves and resources for the  
18 Native Hawaiian community to maintain the practice of  
19 Native Hawaiian culture, language, and traditions, and  
20 for the continuity, survival, and economic self-  
21 sufficiency of the Native Hawaiian people as a  
22 distinctly native political community;



- 1           (10) Native Hawaiians continue to maintain other distinctly  
2           native areas in Hawaii, including native lands that  
3           date back to the ali'i and kuleana lands reserved under  
4           the Kingdom of Hawaii;
- 5           (11) Through the Sovereign Councils of Hawaiian Homelands  
6           Assembly and Native Hawaiian homestead associations,  
7           Native Hawaiian civic associations, charitable trusts  
8           established by the Native Hawaiian ali'i, nonprofit  
9           native service providers, and other community  
10          associations, the Native Hawaiian people have actively  
11          maintained native traditions and customary usages  
12          throughout the Native Hawaiian community, and the  
13          federal and state courts have continuously recognized  
14          the right of the Native Hawaiian people to engage in  
15          certain customary practices and usages on public  
16          lands;
- 17          (12) In 1978, the State of Hawaii held a constitutional  
18          convention at which the office of Hawaiian affairs was  
19          established, approved by the voters on November 7,  
20          1978, (article XII, sections 5 and 6, Hawaii State  
21          Constitution), and codified as chapter 10, Hawaii  
22          Revised Statutes;



- 1 (13) At the 1978 constitutional convention, the State of  
2 Hawaii also found that many Native Hawaiian values and  
3 rights should be included in the Hawaii State  
4 Constitution, and the election of November 1978 also  
5 established state affirmation and protection of "all  
6 rights, customarily and traditionally exercised for  
7 subsistence, cultural and religious purposes and  
8 possessed by ahupua'a tenants who are descendants of  
9 native Hawaiians who inhabited the Hawaiian Islands  
10 prior to 1778, subject to the right of the State to  
11 regulate such rights." (Article XII, section 7,  
12 Hawaii State Constitution);
- 13 (14) The creation of the office of Hawaiian affairs and the  
14 expression of Native Hawaiian rights in the Hawaii  
15 State Constitution reflect the constitutional  
16 convention's acknowledgement that assets and rights  
17 for Native Hawaiians were long overdue;
- 18 (15) On November 23, 1993, Public Law 103-150 (107 Stat.  
19 1510), commonly known as the "Apology Resolution", was  
20 enacted into law, extending an apology to Native  
21 Hawaiians on behalf of the people of the United States



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

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

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

21       (18) Pursuant to the Apology Resolution, the United States  
22          Departments of Justice and the Interior conducted



1 reconciliation hearings with the Native Hawaiian  
2 people in 1999 and issued a joint report entitled,  
3 "From Mauka to Makai: The River of Justice Must Flow  
4 Freely", which identified promoting the reorganization  
5 of a Native Hawaiian government as a priority  
6 recommendation for continuing the process of  
7 reconciliation;

8 (19) Despite the overthrow of the government of the Kingdom  
9 of Hawaii, Native Hawaiians have continued to maintain  
10 their separate identity as a single distinctly native  
11 political community through cultural, social, and  
12 political institutions, and to give expression to  
13 their rights as native people to self-determination,  
14 self-governance, and economic self-sufficiency;

15 (20) There is clear continuity between the aboriginal,  
16 indigenous, native people of the Kingdom of Hawaii and  
17 their successors, the Native Hawaiian people today;

18 (21) Native Hawaiians have also given expression to their  
19 rights as native people to self-determination, self-  
20 governance, and economic self-sufficiency through the  
21 provision of governmental services to Native  
22 Hawaiians, including the provision of health care



1 services, educational programs, employment and  
2 training programs, economic development assistance  
3 programs, children's services, conservation programs,  
4 fish and wildlife protection, agricultural programs,  
5 native language immersion programs, native language  
6 immersion schools from kindergarten through high  
7 school, college and master's degree programs in native  
8 language immersion instruction, and traditional  
9 justice programs; and by continuing their efforts to  
10 enhance Native Hawaiian self-determination and local  
11 control;

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

19 (23) The Native Hawaiian people wish to preserve, develop,  
20 and transmit to future generations of Native Hawaiians  
21 their lands and Native Hawaiian political and cultural  
22 identity in accordance with their traditions, beliefs,



1 customs and practices, language, and social and  
2 political institutions; to control and manage their  
3 own lands, including ceded lands; and to achieve  
4 greater self-determination over their own affairs;

5 (24) This chapter provides a process for the Native  
6 Hawaiian people to exercise their inherent rights as a  
7 distinct, indigenous, native community to reorganize a  
8 first nation government for the purpose of giving  
9 expression to their rights as a native people to self-  
10 determination and self-governance;

11 (25) The United States has:

12 (A) Declared that the United States has a special  
13 political and legal relationship for the welfare  
14 of the native peoples of the United States,  
15 including Native Hawaiians;

16 (B) Identified Native Hawaiians as an indigenous,  
17 distinctly native people of the United States  
18 within the scope of its authority under the  
19 Constitution of the United States of America, and  
20 has enacted scores of statutes on their behalf;  
21 and



1 (C) Delegated broad authority to the State of Hawaii  
2 to administer some of the United States'  
3 responsibilities as they relate to the Native  
4 Hawaiian people and their lands;

5 (26) The United States has recognized and reaffirmed the  
6 special political and legal relationship with the  
7 Native Hawaiian people through the enactment of the  
8 Act entitled, "An Act to provide for the admission of  
9 the State of Hawaii into the Union", approved  
10 March 18, 1959 (Public Law 86-3; 73 Stat. 4), by:

11 (A) Ceding to the State of Hawaii title to the public  
12 lands formerly held by the United States, and  
13 mandating that those lands be held as a public  
14 trust for five purposes, one of which is for the  
15 betterment of the conditions of Native Hawaiians;  
16 and

17 (B) Transferring the United States' responsibility  
18 for the administration of the Hawaiian home lands  
19 to the State of Hawaii, but retaining the  
20 exclusive right of the United States to consent  
21 to any actions affecting the lands included in  
22 the trust and any amendments to the Hawaiian



1 Homes Commission Act, 1920 (42 Stat. 108, chapter  
2 42), that are enacted by the legislature of the  
3 State of Hawaii affecting the beneficiaries under  
4 the Act; and

5 (27) The United States has continually recognized and  
6 reaffirmed that:

7 (A) Native Hawaiians have a direct genealogical,  
8 cultural, historic, and land-based connection to  
9 their forebears, the aboriginal, indigenous,  
10 native people who exercised original sovereignty  
11 over the Hawaiian Islands;

12 (B) Native Hawaiians have never relinquished their  
13 claims to sovereignty or their sovereign lands;

14 (C) The United States extends services to Native  
15 Hawaiians because of their unique status as the  
16 native people of a prior-sovereign nation with  
17 whom the United States has a special political  
18 and legal relationship; and

19 (D) The special relationship of American Indians,  
20 Alaska Natives, and Native Hawaiians to the  
21 United States arises out of their status as



1                   aboriginal, indigenous, native people of the  
2                   United States.

3           §   -2   **Definitions.**   As used in this chapter:

4           "Aboriginal, indigenous, native people" means those people  
5 recognized as the original inhabitants of the lands that later  
6 became part of the United States and who exercised sovereignty  
7 in the areas that later became part of the United States.

8           "Apology Resolution" means Public Law 103-150 (107 Stat.  
9 1510), a Joint Resolution extending an apology to Native  
10 Hawaiians on behalf of the United States for the participation  
11 of agents of the United States in the January 17, 1893,  
12 overthrow of the Kingdom of Hawaii.

13           "Commission" means the commission established under  
14 section       -4.

15           "Council" means the interim first nation governing council  
16 established under section       -6.

17           "First nation government" means the governing entity  
18 organized pursuant to this chapter by the qualified Native  
19 Hawaiian constituents.

20           "Governor" means the governor of the State of Hawaii or the  
21 governor's designee.



1 "Indigenous, native people" means the lineal descendants of  
2 the aboriginal, indigenous, native people of the United States.

3 "Native Hawaiian membership organization" means an  
4 organization that:

- 5 (1) Serves and represents the interests of Native  
6 Hawaiians, has as a primary and stated purpose the  
7 provision of services to Native Hawaiians, and has  
8 expertise in Native Hawaiian affairs;
- 9 (2) Has leaders who are elected democratically, or  
10 selected through traditional Native Hawaiian  
11 leadership practices, by members of the Native  
12 Hawaiian community;
- 13 (3) Advances the cause of Native Hawaiians culturally,  
14 socially, economically, or politically;
- 15 (4) Is a membership organization or association; and
- 16 (5) Has an accurate and reliable list of Native Hawaiian  
17 members.

18 "Qualified Native Hawaiian constituent" means, for the  
19 purposes of establishing the roll authorized under section  
20 -5, and prior to the recognition by the United States of the  
21 Native Hawaiian governing entity, an individual who the



1 commission determines has satisfied the following criteria and  
2 who makes a written statement certifying that the individual:

3 (1) Is:

4 (A) An individual who is one of the indigenous,  
5 native people of Hawaii and who is a direct  
6 lineal descendant of the aboriginal, indigenous,  
7 native people who:

8 (i) Resided in the islands that now comprise the  
9 State of Hawaii on or before January 1,  
10 1893; and

11 (ii) Occupied and exercised sovereignty in the  
12 Hawaiian archipelago, including the area  
13 that now constitutes the State of Hawaii; or

14 (B) An individual who is one of the indigenous,  
15 native people of Hawaii and who was eligible in  
16 1921 for the programs authorized by the Hawaiian  
17 Homes Commission Act, 1920 (42 Stat. 108, chapter  
18 42), or a direct lineal descendant of that  
19 individual;

20 (2) Wishes to participate in the reorganization of the  
21 Native Hawaiian governing entity;

22 (3) Is eighteen years of age or older;



1           (4) Is a citizen of the United States; and  
2           (5) Maintains a significant cultural, social, or civic  
3           connection to the Native Hawaiian community, as  
4           evidenced by satisfying two or more of the following  
5           ten criteria:

6           (A) Resides in the State of Hawaii;

7           (B) Resides outside the State of Hawaii and:

8                   (i) Currently serves or has served, or has a  
9                   parent or spouse who currently serves or has  
10                   served, as a member of the armed forces or  
11                   as an employee of the federal government;  
12                   and resided in the State of Hawaii prior to  
13                   the time the individual or the individual's  
14                   parent or spouse left the State of Hawaii to  
15                   serve as a member of the armed forces or as  
16                   an employee of the federal government; or

17                   (ii) Currently is or was enrolled, or has a  
18                   parent or spouse who currently is or was  
19                   enrolled, in an accredited institution of  
20                   higher education outside the State of  
21                   Hawaii; and resided in the State of Hawaii  
22                   prior to the time the individual or the



1 individual's parent or spouse left the State  
2 of Hawaii to attend the institution;

3 (C) (i) Is or was eligible to be a beneficiary of  
4 the programs authorized by the Hawaiian  
5 Homes Commission Act, 1920 (42 Stat. 108,  
6 chapter 42), and resides or resided on land  
7 set aside as Hawaiian home lands, as defined  
8 in the Hawaiian Homes Commission Act; or

9 (ii) Is a child or grandchild of an individual  
10 who is or was eligible to be a beneficiary  
11 of the programs authorized by the Act and  
12 who resides or resided on land set aside as  
13 Hawaiian home lands, as defined in the  
14 Hawaiian Homes Commission Act;

15 (D) Is or was eligible to be a beneficiary of the  
16 programs authorized by the Hawaiian Homes  
17 Commission Act, 1920 (42 Stat. 108, chapter 42);

18 (E) Is a child or grandchild of an individual who is  
19 or was eligible to be a beneficiary of the  
20 programs authorized by the Hawaiian Homes  
21 Commission Act, 1920 (42 Stat. 108, chapter 42);



1 (F) Resides on or has an ownership interest in, or  
2 has a parent or grandparent who resides on or has  
3 an ownership interest in, kuleana land that is  
4 owned in whole or in part by a person who,  
5 pursuant to a genealogy verification by the  
6 office of Hawaiian affairs or by court order, is  
7 a lineal descendant of the person or persons who  
8 received the original title to the kuleana land,  
9 defined as lands granted to native tenants  
10 pursuant to Haw. L. 1850, p. 202, entitled "An  
11 Act Confirming Certain Resolutions of the King  
12 and Privy Council Passed on the 21st day of  
13 December, A.D. 1849, Granting to the Common  
14 People Allodial Titles for Their Own Lands and  
15 House Lots, and Certain Other Privileges", as  
16 amended by Haw. L. 1851, p. 98, entitled "An Act  
17 to Amend An Act Granting to the Common People  
18 Allodial Titles for Their Own Lands and House  
19 Lots, and Certain Other Privileges" and as  
20 further amended by any subsequent legislation;

21 (G) Is, or is the child or grandchild of, an  
22 individual who has been or was a student for at



1 least one school year at a school or program  
2 taught through the medium of the Hawaiian  
3 language under section 302H-6, or at a school  
4 founded and operated primarily or exclusively for  
5 the benefit of Native Hawaiians;

6 (H) Has been a member since September 30, 2009, of at  
7 least one Native Hawaiian membership  
8 organization;

9 (I) Has been a member since September 30, 2009, of at  
10 least two Native Hawaiian membership  
11 organizations;

12 (J) Is regarded as Native Hawaiian and whose mother  
13 or father is or, if deceased, was regarded as  
14 Native Hawaiian by the Native Hawaiian community,  
15 as evidenced by sworn affidavits from two or more  
16 citizens certified by the commission as  
17 possessing expertise in the social, cultural, and  
18 civic affairs of the Native Hawaiian community.

19 § -3 State of Hawaii policy. The State of Hawaii  
20 reaffirms that:

21 (1) Native Hawaiians are a unique and distinct,  
22 indigenous, native people with whom the State of



1 Hawaii has a special political and legal relationship,  
2 which includes promoting the welfare of Native  
3 Hawaiians;

4 (2) The legislature possesses and hereby exercises the  
5 authority under the Hawaii State Constitution to enact  
6 legislation to address the conditions of Native  
7 Hawaiians and has exercised this authority through:

8 (A) Article XII, sections 5 and 6, of the Hawaii  
9 State Constitution, and chapter 10, which  
10 established the office of Hawaiian affairs;

11 (B) Article XII, section 7, of the Hawaii State  
12 Constitution, which affirmed the State's  
13 protection of traditional and customary rights;  
14 and

15 (C) Numerous other state laws addressing the  
16 conditions of Native Hawaiians;

17 (3) Native Hawaiians have:

18 (A) An inherent right to autonomy in their internal  
19 affairs;

20 (B) An inherent right of self-determination and self-  
21 governance;



- 1 (C) The right to reorganize a first nation
- 2 government; and
- 3 (D) The right to become economically self-sufficient;
- 4 (4) The State of Hawaii shall continue to engage in a
- 5 process of reconciliation and political relations with
- 6 the Native Hawaiian people and their first nation
- 7 government, once reorganized; and
- 8 (5) The right of qualified Native Hawaiian constituents to
- 9 reorganize a first nation government to provide for
- 10 their common welfare and to adopt appropriate organic
- 11 governing documents is recognized by the State of
- 12 Hawaii.

13 § -4 **Commission.** (a) The governor shall establish and  
14 appoint a nine-member commission for the purposes of:

- 15 (1) Preparing and maintaining a roll of qualified Native
- 16 Hawaiian constituents; and
- 17 (2) Certifying that the individuals on the roll of
- 18 qualified Native Hawaiian constituents meet the
- 19 definition of qualified Native Hawaiian constituent
- 20 set forth in section -2.

21 (b) Not later than one hundred eighty days after the  
22 effective date of this Act, the governor shall appoint the



1 members of the commission to develop the roll of qualified  
2 Native Hawaiian constituents for the purposes of reorganizing a  
3 first nation government.

4 In making an appointment under this subsection, the  
5 governor may take into consideration a recommendation made by  
6 any Native Hawaiian membership organization.

7 The governor may not appoint any official of the State of  
8 Hawaii to the commission.

9 A vacancy on the commission shall:

10 (1) Not affect the powers of the commission; and

11 (2) Be filled in the same manner as the original  
12 appointment.

13 (c) Members of the commission shall serve without  
14 compensation but shall be allowed travel expenses, including per  
15 diem in lieu of subsistence while away from their homes or  
16 regular places of business in the performance of services for  
17 the commission.

18 (d) The commission may, without regard to the civil  
19 service laws under chapter 76 and rules adopted pursuant to  
20 chapter 76, appoint and terminate an executive director and  
21 other additional personnel as are necessary to enable the  
22 commission to perform the duties of the commission.



1           The commission may fix the compensation of the executive  
2 director and other personnel.

3           (e) The commission may procure temporary and intermittent  
4 services.

5           (f) The governor shall dissolve the commission upon  
6 election of the interim first nation governing council.

7           § -5 Roll. (a) The roll shall include the names of the  
8 qualified Native Hawaiian constituents who are certified by the  
9 commission to be qualified Native Hawaiian constituents, as  
10 defined in section -2.

11           (b) Each individual claiming to be a qualified Native  
12 Hawaiian constituent shall submit to the commission  
13 documentation in the form established by the commission that is  
14 sufficient to enable the commission to determine whether the  
15 individual meets the definition in section -2.

16           (c) The commission shall establish a standard format for  
17 the submission of documentation and a process to ensure veracity  
18 of the information in accordance with subsection (d).

19           (d) The commission shall:

20           (1) Identify the types of documentation that may be  
21 submitted to the commission that would enable the  
22 commission to determine whether an individual meets



1 the definition of qualified Native Hawaiian  
2 constituent set forth in section -2;  
3 (2) Recognize an individual's identification of lineal  
4 ancestors on the 1890 Census by the Kingdom of Hawaii  
5 as a reliable indicia of lineal descent from the  
6 aboriginal, indigenous, native people who resided in  
7 the islands that now comprise the State of Hawaii on  
8 or before January 1, 1893; and

9 (3) Permit elderly Native Hawaiians and other qualified  
10 Native Hawaiian constituents lacking birth  
11 certificates or other documentation due to birth on  
12 Hawaiian home lands or other similar circumstances to  
13 establish lineal descent by sworn affidavits from two  
14 or more qualified Native Hawaiian constituents.

15 (e) The commission shall publish notices of the  
16 information described in subsections (c) and (d) that  
17 individuals claiming to be qualified Native Hawaiian  
18 constituents shall submit to the commission.

19 (f) In making determinations that each individual proposed  
20 for inclusion on the roll of qualified Native Hawaiian  
21 constituents meets the definition of qualified Native Hawaiian  
22 constituent in section -2, the commission may consult with



1 bona fide Native Hawaiian membership organizations, agencies of  
2 the State of Hawaii, including the department of Hawaiian home  
3 lands, the office of Hawaiian affairs, and the department of  
4 health, and other entities with expertise and experience in the  
5 determination of Native Hawaiian ancestry and lineal  
6 descendency.

7 (g) The commission shall inform an individual:

8 (1) Whether the individual has been deemed by the  
9 commission as a qualified Native Hawaiian constituent;  
10 and

11 (2) Of a right to appeal the decision if deemed not to be  
12 a qualified Native Hawaiian constituent.

13 (h) The commission shall:

14 (1) Submit the roll containing the names of those  
15 individuals who meet the definition of qualified  
16 Native Hawaiian constituent in section -2 to the  
17 governor within two years from the date on which the  
18 commission is fully composed; and

19 (2) Certify to the governor that each of the qualified  
20 Native Hawaiian constituents proposed for inclusion on  
21 the roll meets the definition set forth in section

22 -2.



1 (i) Upon certification by the commission to the governor  
2 that those listed on the roll meet the definition of qualified  
3 Native Hawaiian constituent in section -2, the commission  
4 shall publish the notice of the certification of the roll,  
5 notwithstanding pending appeals pursuant to subsection (j).

6 (j) The governor, in consultation with the commission,  
7 shall establish a mechanism for an administrative appeal for any  
8 person whose name is excluded from the roll who claims to meet  
9 the definition of qualified Native Hawaiian constituent in  
10 section -2.

11 (k) The commission shall:

12 (1) Publish the notice of the certification of the roll  
13 regardless of whether appeals are pending;

14 (2) Update the roll and provide notice of the updated roll  
15 on the final disposition of any appeal;

16 (3) Update the roll to include any person who has been  
17 certified by the commission as meeting the definition  
18 of qualified Native Hawaiian constituent in section  
19 -2 after the initial publication of the roll or  
20 after any subsequent publications of the roll; and

21 (4) Provide a copy of the roll and any updated rolls to  
22 the council.



1           (1) The publication of the initial and updated roll shall  
2 serve as the basis for the eligibility of qualified Native  
3 Hawaiian constituents whose names are listed on those rolls to  
4 participate in the reorganization of the Native Hawaiian  
5 governing entity.

6           §   -6 Process of reorganization and ratification of  
7 governing documents and elections. (a) The commission shall  
8 hold a minimum of three meetings, and each meeting shall be at  
9 least two working days, of the qualified Native Hawaiian  
10 constituents listed on the roll established under this section,  
11 to:

12           (1) Develop criteria for candidates to be elected to serve  
13 on the interim first nation governing council;

14           (2) Determine the structure of the council, including the  
15 number of council members; and

16           (3) Elect members from individuals listed on the roll  
17 established under section -5 to the council.

18           (b) The interim first nation governing council shall  
19 represent those listed on the roll established under section

20 -5 in the implementation of this Act; provided that the  
21 council shall have no powers other than powers given to the  
22 council under this Act.



1 (c) The council may enter into a contract with, or obtain  
2 a grant from, any federal or state agency to carry out the  
3 purposes of this section.

4 (d) The council shall conduct, among the qualified Native  
5 Hawaiian constituents listed on the roll established under  
6 section -5, a referendum for the purpose of determining the  
7 proposed elements of the organic governing documents of the  
8 first nation government, including:

9 (1) The proposed criteria for future membership in the  
10 first nation governing entity, provided that  
11 membership is voluntary and can be relinquished;

12 (2) The proposed powers and authorities to be exercised by  
13 the first nation government, as well as the proposed  
14 privileges and immunities of the first nation  
15 government;

16 (3) The proposed civil rights and protection of the rights  
17 of the citizens of the first nation government and all  
18 persons affected by the exercise of governmental  
19 powers and authorities of the first nation government;

20 (4) The protection and preservation of the rights vested  
21 on the effective date of this Act of those Native  
22 Hawaiians who are eligible to reside on the Hawaiian



1 home lands under the authority of the Hawaiian Homes  
2 Commission Act, 1920 (42 Stat. 108, chapter 42); and

3 (5) Other issues determined appropriate by the council.

4 (e) Based on the referendum, the council shall develop  
5 proposed organic governing documents for the first nation  
6 government and may seek technical assistance from the governor  
7 on the draft organic governing documents to ensure that the  
8 draft organic governing documents comply with this Act.

9 (f) The council shall publish to all qualified Native  
10 Hawaiian constituents listed on the roll published under section  
11 -5 notice of the availability of a:

12 (1) Copy of the proposed organic governing documents, as  
13 drafted by the council; and

14 (2) Brief impartial description of the proposed organic  
15 governing documents.

16 (g) No sooner than one hundred eighty days after the  
17 proposed organic governing documents are drafted and  
18 distributed, the council, with the assistance of the governor,  
19 shall hold elections for the purpose of ratifying the proposed  
20 organic governing documents; provided that the election shall be  
21 held no less than sixty days after the published notice of an  
22 election.



1           (h) Upon certification of the organic governing documents  
2 by the governor in accordance with subsection (j), the council,  
3 with the assistance of the governor, shall hold elections of the  
4 officers of the first nation government pursuant to subsection  
5 (n).

6           (i) Following the reorganization of the first nation  
7 government and the adoption of organic governing documents, the  
8 council shall submit the organic governing documents of the  
9 first nation government to the governor.

10          (j) The governor shall certify or decline to certify that  
11 the organic governing documents:

12           (1) Establish the criteria for membership in the first  
13 nation government and provide that membership is  
14 voluntary and can be relinquished;

15           (2) Were adopted by a majority vote of those qualified  
16 Native Hawaiian constituents whose names are listed on  
17 the roll published by the commission and who voted in  
18 the election;

19           (3) Provide authority for the first nation government to  
20 negotiate with federal, state, and local governments,  
21 and other entities;



- 1           (4) Provide for the exercise of inherent and other  
2           appropriate governmental authorities by the first  
3           nation government;
- 4           (5) Prevent the sale, disposition, lease, or encumbrance  
5           of lands, interests in lands, or other assets of the  
6           first nation government without the consent of the  
7           first nation government;
- 8           (6) Provide for the protection of the civil rights of the  
9           citizens of the first nation government and all  
10          persons affected by the exercise of governmental  
11          powers and authorities by the first nation government;
- 12          (7) Provide for the protection and preservation of the  
13          rights vested on the effective date of this Act of  
14          those Native Hawaiians who are eligible to reside on  
15          the Hawaiian home lands under the authority of the  
16          Hawaiian Homes Commission Act, 1920 (42 Stat. 108,  
17          chapter 42); and
- 18          (8) Are consistent with this Act.
- 19          (k) If the governor determines that the organic governing  
20 documents, or any part of the documents, do not meet all of the  
21 requirements set forth in this section, the governor shall  
22 resubmit the organic governing documents to the council, along



1 with a justification for each of the governor's findings as to  
2 why the provisions are not in full compliance.

3 (1) If the organic governing documents are resubmitted to  
4 the council by the governor under subsection (k), the council  
5 shall:

6 (1) Amend the organic governing documents to ensure that  
7 the documents meet all the requirements set forth in  
8 this section; and

9 (2) Resubmit the amended organic governing documents to  
10 the governor for certification in accordance with this  
11 section.

12 (m) The certifications under this section shall be deemed  
13 to have been made if the governor has not acted within ninety  
14 days after the date on which the council has submitted the  
15 organic governing documents of the first nation government to  
16 the governor.

17 (n) Upon completion of the certifications by the governor,  
18 the council, with the assistance of the governor, shall hold  
19 elections of the officers of the first nation government.

20 (o) The council shall provide a copy of the roll of  
21 qualified Native Hawaiian constituents to the governing body of  
22 the first nation government.



1 (p) The council shall cease to exist and shall have no  
2 power or authority under this Act after the officers of the  
3 governing body who are elected as provided in subsection (n) are  
4 installed.

5 (q) Notwithstanding any other provision of law to the  
6 contrary, the special political and legal relationship between  
7 the State of Hawaii and the Native Hawaiian people is hereby  
8 reaffirmed and the State of Hawaii extends recognition to the  
9 first nation government as the representative sovereign  
10 governing body of the Native Hawaiian people after the:

11 (1) Approval of the organic governing documents by the  
12 governor under this section; and

13 (2) Officers of the first nation government elected under  
14 subsection (n) have been installed.

15 § -7 **No diminishment of rights or privileges.** Nothing  
16 contained in this chapter shall diminish, alter, or amend any  
17 existing rights or privileges enjoyed by the Native Hawaiian  
18 people that are not inconsistent with the provisions of this  
19 chapter.

20 § -8 **Reaffirmation of delegation of federal authority;**  
21 **governmental authority and power; negotiations.** (a) The  
22 delegation by the United States of authority to the State of



1 Hawaii to address the conditions of the indigenous, native  
2 people of Hawaii contained in the Act entitled "An Act to  
3 provide for the admission of the State of Hawaii into the  
4 Union", approved March 18, 1959 (Public Law 86-3; 73 Stat. 4),  
5 is reaffirmed.

6 (b) Consistent with the policies of the State of Hawaii,  
7 the first nation government shall be vested with the inherent  
8 powers and privileges of self-government of a native government,  
9 except as set forth in this Act. These powers and privileges  
10 may be modified by agreement between the first nation  
11 government, and the State of Hawaii pursuant to the negotiations  
12 authorized in subsection (c).

13 (c) Upon the reaffirmation of the special political and  
14 legal relationship between the State of Hawaii and the first  
15 nation government, the State of Hawaii may enter into  
16 negotiations with the Native Hawaiian governing entity regarding  
17 the transfer of lands, natural resources, and other assets  
18 dedicated to Native Hawaiian use under existing law as in effect  
19 on the effective date of this Act to the first nation  
20 government. Negotiations may also address other Native Hawaiian  
21 claims, any residual responsibilities of the State of Hawaii,



1 and grievances regarding assertions of historical wrongs  
2 committed against Native Hawaiians by the State of Hawaii.

3 § -9 **Disclaimer.** Nothing in this chapter is intended to  
4 serve as a settlement of any claims against the State of Hawaii,  
5 or affect the rights of the Native Hawaiian people under state,  
6 federal, or international law.

7 § -10 **Rules.** The governor shall adopt rules in  
8 accordance with chapter 91 to carry out the provisions of this  
9 chapter."

10 SECTION 3. The sum of \$ or so much thereof as  
11 may be necessary for fiscal year 2011-2012 and the same sum or  
12 so much thereof as may be necessary for fiscal year 2012-2013  
13 shall be expended by the office of Hawaiian affairs for the  
14 purposes of this Act; provided that no additional funds shall be  
15 appropriated for the purposes of this Act.

16 SECTION 4. If any provision of this Act, or the  
17 application thereof to any person or circumstance is held  
18 invalid, the invalidity does not affect other provisions or  
19 applications of the Act, which can be given effect without the  
20 invalid provision or application, and to this end the provisions  
21 of this Act are severable.

22



1 SECTION 5. This Act shall take effect upon its approval.

2

INTRODUCED BY:

Cham Hee

A

Gilbert Kohde

John Ryan



**Report Title:**

Government; First Nation

**Description:**

Establishes procedures for state recognition of a first nation government.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

