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# A BILL FOR AN ACT

RELATING TO PLANNING.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that the State has never  
2 explicitly acknowledged that Native Hawaiians, as described in  
3 section 2 of this Act, are the only indigenous, aboriginal,  
4 "maoli" Hawaiian population.

5           Native Hawaiians are the indigenous, native people of the  
6 Hawaiian archipelago that is now part of the United States and  
7 the State of Hawaii and are a distinctly native community. From  
8 its inception, the State has had a special political and legal  
9 relationship with the Native Hawaiian people and has continually  
10 enacted legislation for the betterment of their conditions.

11           In Section 5(f) of the 1959 Admission Act (An Act to  
12 Provide for the Admission of the State of Hawaii into the Union,  
13 Public Law 86-3), Congress created what is commonly known as the  
14 ceded lands trust. The ceded lands trust, consisting of lands,  
15 including submerged lands, natural resources, and the proceeds  
16 from the disposition or use of those lands, was established for  
17 five purposes, one of which remains the betterment of the



1 conditions of native Hawaiians, as defined in section 201 of the  
2 Hawaiian Homes Commission Act, 1920.

3 At the 1978 Constitutional Convention, the State  
4 established the office of Hawaiian affairs, approved by the  
5 voters on November 7, 1978 (Hawaii State Constitution, article  
6 XII, sections 5 and 6) and codified as chapter 10, Hawaii  
7 Revised Statutes. The State's designation of the office of  
8 Hawaiian affairs as a trust vehicle to act on behalf of native  
9 Hawaiians and Hawaiians, until a Native Hawaiian governing  
10 entity could be reestablished, reaffirmed the State's  
11 obligations to the Native Hawaiian people.

12 The 1978 Constitutional Convention further amended the  
13 Hawaii State Constitution to reaffirm its protection of "all  
14 rights, customarily and traditionally exercised for  
15 subsistence, cultural and religious purposes and possessed by  
16 ahupua'a tenants who are descendants of native Hawaiians who  
17 inhabited the Hawaiian Islands prior to 1778". (Hawaii State  
18 Constitution, article XII, section 7). Moreover, Hawaii  
19 statutes also specifically protect Native Hawaiians' ability to  
20 practice their traditional and customary rights (Hawaii Revised  
21 Statutes, sections 1-1 and 7-1). The federal and state courts  
22 have regularly recognized the right of the Native Hawaiian



1 people to engage in customary and traditional practices on  
2 public lands.

3 In 1993, the United States formally apologized to Native  
4 Hawaiians for the United States' role in the overthrow of the  
5 Kingdom of Hawaii. (Public Law 103-150, commonly known as the  
6 "Apology Resolution"). The Apology Resolution acknowledges that  
7 the illegal overthrow of the Kingdom of Hawaii occurred with the  
8 active participation of agents and citizens of the United  
9 States, and further acknowledges that the Native Hawaiian people  
10 never directly relinquished their claims to inherent sovereignty  
11 to the United States as a people over their national lands,  
12 either through the Kingdom of Hawaii or through a plebiscite or  
13 referendum. The Apology Resolution expresses the commitment of  
14 Congress to acknowledge the ramifications of the overthrow of  
15 the Kingdom of Hawaii and urges the President to support  
16 reconciliation efforts between the United States and Native  
17 Hawaiians. Pursuant to the Apology Resolution, the United  
18 States Departments of Justice and the Interior conducted  
19 reconciliation hearings with the Native Hawaiian people in 1999  
20 and issued a joint report in August 2000 entitled, "From Mauka  
21 to Makai: The River of Justice Must Flow Freely", which  
22 identified promoting the reorganization of a Native Hawaiian



1 government as a priority recommendation for continuing the  
2 process of reconciliation. To further this process of  
3 reconciliation, Congress created the Office of Native Hawaiian  
4 Relations within the Department of the Interior, with one of its  
5 purposes being to consult with Native Hawaiians on the  
6 reconciliation process.

7 In December 2010, the United States Departments of Justice  
8 and the Interior reaffirmed the United States' support for the  
9 Native Hawaiian Government Reorganization Act. This  
10 reaffirmation recognized that Native Hawaiians are the only one  
11 of the nation's three major indigenous groups who currently lack  
12 a government-to-government relationship with the United States.

13 Also in December 2010, the United States endorsed the  
14 United Nations Declaration on the Rights of Indigenous Peoples.  
15 The United States' endorsement of the Declaration included  
16 recognition of its support not only for the Native Hawaiian  
17 Government Reorganization Act but also for many additional  
18 statutes benefitting Native Hawaiians such as the National  
19 Historic Preservation Act, the Native Hawaiian Education Act,  
20 the Native American Housing Assistance and Self-Determination  
21 Act, and the Native American Graves Protection and Repatriation  
22 Act.



1           While the Native Hawaiian community is still in the process  
2 of reorganizing a governmental structure, Native Hawaiians have  
3 continued to maintain their separate identity as a single,  
4 distinctly native political community through cultural, social,  
5 and political institutions and to give expression to their  
6 rights as native people to self-determination, self-governance,  
7 and economic self-sufficiency.

8           The State of Hawaii has supported the reorganization of a  
9 Native Hawaiian governing entity, as evidenced by two  
10 resolutions adopted by the legislature during the 2000 and 2001  
11 Regular Sessions and subsequently by the governor's testimony in  
12 Congress and other statements of support. Recognizing the  
13 likelihood of a reorganized Native Hawaiian governing entity,  
14 the State of Hawaii has also provided for the transfer of the  
15 management and control of the island of Kahoolawe and its waters  
16 to the sovereign Native Hawaiian entity.

17           The purpose of this Act is to recognize Native Hawaiians as  
18 the only indigenous, aboriginal, "maoli" population of Hawaii.  
19 It is also the State's desire to recognize a soon-to-be-  
20 reorganized Native Hawaiian governing entity and to promote the  
21 ultimate federal recognition of Native Hawaiians. The



1 legislature urges the office of Hawaiian affairs to facilitate  
2 the process to organize that entity.

3 SECTION 2. The Hawaii Revised Statutes is amended by  
4 adding a new chapter to be appropriately designated and to read  
5 as follows:

6 "CHAPTER

7 NATIVE HAWAIIAN RECOGNITION

8 § -1 **Statement of recognition.** The Native Hawaiian  
9 people are hereby recognized as the only indigenous, aboriginal,  
10 maoli people of Hawaii.

11 § -2 **Purpose.** The purpose of this chapter is to provide  
12 for and to implement the recognition of the Native Hawaiian  
13 people by means and methods that will facilitate their self-  
14 governance, including the establishment of or the amendment to  
15 programs, entities, and other matters pursuant to law that  
16 relate to or affect ownership, possession, or use of lands by  
17 the Native Hawaiian people, and by further promoting their  
18 entitlements, health, education, welfare, heritage, and culture.

19 § -3 **Native Hawaiian roll commission.** (a) There is  
20 established a nine-member Native Hawaiian roll commission for  
21 the purpose of:



- 1           (1) Preparing and maintaining a roll of qualified Native
- 2           Hawaiians; and
- 3           (2) Certifying that the individuals on the roll of
- 4           qualified Native Hawaiians meet the definition of
- 5           qualified Native Hawaiians. For purposes of
- 6           establishing the roll, a "qualified Native Hawaiian"
- 7           means an individual who the commission determines has
- 8           satisfied the following criteria and who makes a
- 9           written statement certifying that the individual:
- 10          (A) Is:
- 11               (i) A descendant of the aboriginal peoples
- 12               inhabiting the Hawaiian Islands, which
- 13               peoples exercised sovereignty and subsisted
- 14               in the Hawaiian Islands, and which peoples
- 15               thereafter have continued to reside in the
- 16               Hawaiian Islands; or
- 17               (ii) One of the indigenous, native people of
- 18               Hawaii and who was eligible in 1921 for the
- 19               programs authorized by the Hawaiian Homes
- 20               Commission Act, 1920, or a direct lineal
- 21               descendant of that individual;



1 (B) Wishes to participate in the organization of the  
2 Native Hawaiian governing entity; and

3 (C) Is eighteen years of age or older.

4 (b) No later than one hundred eighty days after the  
5 effective date of this Act, the governor, president of the  
6 senate, and speaker of the house of representatives shall each  
7 appoint three members of the commission to develop the roll of  
8 qualified Native Hawaiians.

9 (c) A vacancy on the commission shall not affect the  
10 powers of the commission and shall be filled in the same manner  
11 as the original appointment.

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

17 (e) The commission, without regard to chapter 76, may  
18 appoint and terminate an executive director and other additional  
19 personnel as are necessary to enable the commission to perform  
20 the duties of the commission.

21 (f) The commission may fix the compensation of the  
22 executive director and other commission personnel.





1 (g) The commission may procure temporary and intermittent  
2 services.

3 § -4 **Notice of qualified Native Hawaiian roll.** (a) The  
4 commission shall publish notice of the certification of the  
5 qualified Native Hawaiian roll, update the roll as necessary,  
6 and publish notice of the updated roll of qualified Native  
7 Hawaiians.

8 (b) The publication of the initial and updated rolls shall  
9 serve as the basis for the eligibility of qualified Native  
10 Hawaiians whose names are listed on the rolls to participate in  
11 the organization of the Native Hawaiian governing entity.

12 § -5 **Interim council.** (a) After the publication of the  
13 roll of qualified Native Hawaiians, the commission shall appoint  
14 an interim council of nine members from the roll of qualified  
15 Native Hawaiians to independently commence the organization of a  
16 convention of qualified Native Hawaiians, established for the  
17 purpose or organizing themselves.

18 (b) The commission may appoint as members of the interim  
19 council members of Native Hawaiian organizations that were  
20 established in April 1865 or December 1918 and are currently  
21 active as a Native Hawaiian organization.



1           §   -6   **Dissolution of the Native Hawaiian roll commission.**

2   The governor shall dissolve the Native Hawaiian roll commission  
3   after the interim council is appointed and the governor has  
4   received notice from the interim council that it has organized  
5   and is ready to commence the organization of a convention of  
6   qualified Native Hawaiians.

7           §   -7   **No diminishment of rights or privileges.**   Nothing  
8   contained in this chapter shall diminish, alter, or amend any  
9   existing rights or privileges enjoyed by the Native Hawaiian  
10  people that are not inconsistent with the provisions of this  
11  chapter.

12          §   -8   **Reaffirmation of delegation of federal authority;**  
13 **governmental authority and power; negotiations.**   (a)   The  
14  delegation by the United States of authority to the State of  
15  Hawaii to address the conditions of the indigenous, native  
16  people of Hawaii contained in the Act entitled "An Act to  
17  Provide for the Admission of the State of Hawaii into the  
18  Union", approved March 18, 1959 (Public Law 86-3), is  
19  reaffirmed.

20          (b)   Consistent with the policies of the State of Hawaii,  
21  the inherent powers and privileges of self-government of the  
22  members of the qualified Native Hawaiian roll, as certified by



1 the Native Hawaiian roll commission, shall be acknowledged by  
2 the State of Hawaii. These powers and privileges may be  
3 modified by agreement with the State of Hawaii.

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

8 SECTION 3. The Hawaiian Homes Commission Act, 1920, shall  
9 be amended, subject to approval by the United States Congress,  
10 if necessary, to accomplish the purposes set forth in this Act  
11 in a manner that is expeditious, timely, and consistent with the  
12 current needs and requirements of the Native Hawaiian people and  
13 the current beneficiaries of the Hawaiian Homes Commission Act,  
14 1920.

15 SECTION 4. There is appropriated out of the general  
16 revenues of the State of Hawaii the sum of \$                    or so  
17 much thereof as may be necessary for fiscal year 2011-2012 and  
18 the same sum or so much thereof as may be necessary for fiscal  
19 year 2012-2013 for the purposes of this Act; provided that no  
20 additional funds shall be appropriated for the purposes of this  
21 Act.



1           The sums appropriated shall be expended by the office of  
2 Hawaiian affairs for the purposes of this Act.

3           SECTION 5. If any provision of this Act, or the  
4 application thereof to any person or circumstance is held  
5 invalid, the invalidity does not affect other provisions or  
6 applications of the Act, which can be given effect without the  
7 invalid provision or application, and to this end the provisions  
8 of this Act are severable.

9           SECTION 6. This Act does not affect rights and duties that  
10 matured, penalties that were incurred, and proceedings that were  
11 begun before its effective date.

12           SECTION 7. The revisor of statutes shall insert the  
13 effective date of this Act in the appropriate place in section 2  
14 of this Act.

15           SECTION 8. This Act shall take effect upon its approval.

16



**Report Title:**

Native Hawaiians; Qualified Native Hawaiian Roll; Appropriation

**Description:**

Establishes a nine-member Native Hawaiian roll commission to prepare and maintain a roll of qualified Native Hawaiians; requires the commission, after publication of the roll, to appoint an interim council of nine members from the roll to commence the organization of a convention of qualified Native Hawaiians; requires the governor to dissolve the commission after the interim council is appointed; appropriates unspecified funds. (SD1)

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

