



**GOV. MSG. NO. 1299**

**EXECUTIVE CHAMBERS  
HONOLULU**

**NEIL ABERCROMBIE  
GOVERNOR**

July 6, 2011

The Honorable Shan Tsutsui, President  
and Members of the Senate  
Twenty-Sixth State Legislature  
State Capitol, Room 409  
Honolulu, Hawaii 96813

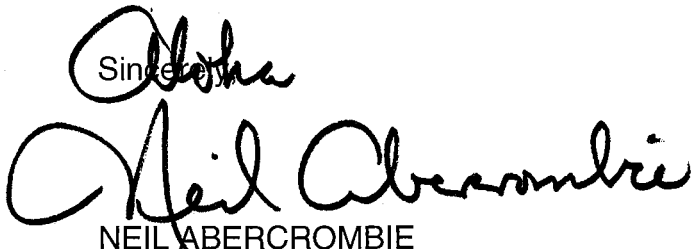
The Honorable Calvin Say, Speaker  
and Members of the House  
Twenty-Sixth State Legislature  
State Capitol, Room 431  
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say and Members of the Legislature:

This is to inform you that on July 6, 2011, the following bill was signed into law:

SB1520 SD2 HD3 CD1

RELATING TO GOVERNMENT  
**Act 195 (11)**

*Sincerely,*  
  
NEIL ABERCROMBIE  
Governor, State of Hawaii

---

# A BILL FOR AN ACT

RELATING TO GOVERNMENT.

**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 are the only  
3 indigenous, aboriginal, maoli population of Hawaii.

4           Native Hawaiians are the indigenous, native people of the  
5 Hawaiian archipelago and are a distinctly native community.  
6 From its inception, the State has had a special political and  
7 legal relationship with the Native Hawaiian people and has  
8 continually enacted legislation for the betterment of their  
9 condition.

10           In section 5(f) of the Admission Act of 1959, Congress  
11 created what is commonly known as the ceded lands trust. The  
12 ceded lands trust, consisting of lands, including submerged  
13 lands, natural resources, and the proceeds from the disposition  
14 or use of those lands - purportedly ceded to the United States  
15 by the Republic of Hawaii - is for five purposes, one of which  
16 remains the betterment of the conditions of native Hawaiians.

17           At the 1978 Constitutional Convention, the delegates  
18 proposed a constitutional amendment to establish the office of



1 Hawaiian affairs. The amendment was ratified by the voters on  
2 November 7, 1978, and codified as article XII, sections 5 and 6  
3 of the Hawaii State Constitution, and in chapter 10, Hawaii  
4 Revised Statutes. The State's designation of the office of  
5 Hawaiian affairs as a trust vehicle to act on behalf of Native  
6 Hawaiians until a Native Hawaiian governing entity could be  
7 reestablished reaffirmed the State's obligations to the Native  
8 Hawaiian people.

9 Delegates to the 1978 Constitutional Convention further  
10 proposed to amend the Hawaii State Constitution to affirm  
11 protection of all "rights, customarily and traditionally  
12 exercised for subsistence, cultural and religious purposes and  
13 possessed by ahupua'a tenants who are descendants of native  
14 Hawaiians who inhabited the Hawaiian Islands prior to  
15 1778 . . ." Moreover, state law also specifically protects  
16 Hawaiians' ability to practice their traditional and customary  
17 rights. The federal and state courts have continuously  
18 recognized the right of the Native Hawaiian people to engage in  
19 customary and traditional practices on public lands.

20 In 1993, the United States formally apologized to Native  
21 Hawaiians for the United States' role in the overthrow of the  
22 Hawaiian Kingdom through Public Law 103-150 (107 Stat. 1510),



1 commonly known as the "Apology Resolution". The Apology  
2 Resolution acknowledges that the illegal overthrow of the  
3 Hawaiian Kingdom occurred with the active participation of  
4 agents and citizens of the United States and further  
5 acknowledges that the Native Hawaiian people never directly  
6 relinquished to the United States their claims to their inherent  
7 sovereignty as a people over their national lands, either  
8 through a Treaty of Annexation or through a plebiscite or  
9 referendum. The Apology Resolution expresses the commitment of  
10 Congress and the President to acknowledge the ramifications of  
11 the overthrow of the Hawaiian Kingdom and to support  
12 reconciliation efforts between the United States and Native  
13 Hawaiians. Pursuant to the Apology Resolution, the United  
14 States Departments of Justice and the Interior conducted  
15 reconciliation hearings with the Native Hawaiian people in 1999  
16 and issued a joint report entitled, "From Mauka to Makai: The  
17 River of Justice Must Flow Freely", which identified promoting  
18 the reorganization of a Native Hawaiian government as a priority  
19 recommendation for continuing the process of reconciliation. To  
20 further this process of reconciliation, Congress created the  
21 Office of Native Hawaiian Relations within the Department of the



1 Interior, to consult with Native Hawaiians on the reconciliation  
2 process.

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

10 The United States became a charter member of the United  
11 Nations in 1945. The United States submitted Hawaii as a  
12 territory of the United States to be listed as a non-self-  
13 governing territory entitled to self-government under Article  
14 73, Charter of the United Nations, via United Nations General  
15 Assembly Resolution 66 (1946), although it was later de-listed  
16 at the time of statehood. Also in December 2010, the United  
17 States endorsed the United Nations Declaration on the Rights of  
18 Indigenous Peoples, which acknowledged, among other things:

19 **ARTICLE 3**

20 Indigenous peoples have the right to self-determination.  
21 By virtue of that right they freely determine their  
22 political status and freely pursue their economic, social  
23 and cultural development.



1 The United States' endorsement of the United Nations  
2 Declaration on the Rights of Indigenous Peoples included  
3 recognition of its support not only for the Native Hawaiian  
4 Government Reorganization Act of 2010 but also many additional  
5 laws for Native Hawaiians such as the National Historic  
6 Preservation Act, the Native Hawaiian Education Act, the Native  
7 American Housing Assistance and Self-Determination Act, and the  
8 Native American Graves Protection and Repatriation Act.

9 Native Hawaiians have continued to maintain their separate  
10 identity as a single, distinctly native political community  
11 through cultural, social, and political institutions and have  
12 continued to maintain their rights to self-determination,  
13 self-governance, and economic self-sufficiency.

14 The State has supported the reorganization of a Native  
15 Hawaiian governing entity. It has supported the Sovereignty  
16 Advisory Council, the Hawaiian Sovereignty Advisory Commission,  
17 the Hawaiian Sovereignty Elections Council, and Native Hawaiian  
18 Vote, and the convening of the Aha Hawai'i 'Oiwī (the Native  
19 Hawaiian Convention). The legislature has adopted various  
20 resolutions during its regular sessions throughout the 1990s and  
21 2000s. The Governor has testified before Congress regarding the  
22 State's support for Native Hawaiians as the indigenous people of



1 Hawaii with the right to self-government. Recognizing the  
2 likelihood of a reorganized Native Hawaiian governing entity,  
3 the State has also provided for the transfer of the management  
4 and control of the island of Kahoolawe and its waters to the  
5 sovereign Native Hawaiian entity upon its recognition by the  
6 United States and the State of Hawaii.

7 The purpose of this Act is to recognize Native Hawaiians as  
8 the only indigenous, aboriginal, maoli population of Hawaii. It  
9 is also the State's desire to support the continuing development  
10 of a reorganized Native Hawaiian governing entity and,  
11 ultimately, the federal recognition of Native Hawaiians. The  
12 legislature urges the office of Hawaiian affairs to continue to  
13 support the self-determination process by Native Hawaiians in  
14 the formation of their chosen governmental entity.

15 SECTION 2. The Hawaii Revised Statutes is amended by  
16 adding a new chapter to be appropriately designated and to read  
17 as follows:

18 "CHAPTER

19 NATIVE HAWAIIAN RECOGNITION

20 § -1 Statement of recognition. The Native Hawaiian  
21 people are hereby recognized as the only indigenous, aboriginal,  
22 maoli people of Hawaii.



1           §   -2 **Purpose.** The purpose of this chapter is to provide  
2 for and to implement the recognition of the Native Hawaiian  
3 people by means and methods that will facilitate their  
4 self-governance, including the establishment of, or the  
5 amendment to, programs, entities, and other matters pursuant to  
6 law that relate, or affect ownership, possession, or use of  
7 lands by the Native Hawaiian people, and by further promoting  
8 their culture, heritage, entitlements, health, education, and  
9 welfare.

10           §   -3 **Native Hawaiian roll commission.** (a) There is  
11 established a five-member Native Hawaiian roll commission within  
12 the office of Hawaiian affairs for administrative purposes only.  
13 The Native Hawaiian roll commission shall be responsible for:

- 14           (1) Preparing and maintaining a roll of qualified Native  
15               Hawaiians; and
- 16           (2) Certifying that the individuals on the roll of  
17               qualified Native Hawaiians meet the definition of  
18               qualified Native Hawaiians. For purposes of  
19               establishing the roll, a "qualified Native Hawaiian"  
20               means an individual who the commission determines has  
21               satisfied the following criteria and who makes a  
22               written statement certifying that the individual:





1 (A) Is:

2 (i) An individual who is a descendant of the  
3 aboriginal peoples who, prior to 1778,  
4 occupied and exercised sovereignty in the  
5 Hawaiian islands, the area that now  
6 constitutes the State of Hawaii; or

7 (ii) An individual who is one of the indigenous,  
8 native people of Hawaii and who was eligible  
9 in 1921 for the programs authorized by the  
10 Hawaiian Homes Commission Act, 1920, or a  
11 direct lineal descendant of that individual;

12 (B) Has maintained a significant cultural, social, or  
13 civic connection to the Native Hawaiian community  
14 and wishes to participate in the organization of  
15 the Native Hawaiian governing entity; and

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

17 (b) No later than one hundred eighty days after the  
18 effective date of this chapter, the governor shall appoint the  
19 members of the Native Hawaiian roll commission from nominations  
20 submitted by qualified Native Hawaiians and qualified Native  
21 Hawaiian membership organizations. For the purposes of this  
22 subsection, a qualified Native Hawaiian membership organization



1 includes an organization that, on the effective date of this  
2 Act, has been in existence for at least ten years, and whose  
3 purpose has been and is the betterment of the conditions of the  
4 Native Hawaiian people.

5 In selecting the five members from nominations submitted by  
6 qualified Native Hawaiians and qualified Native Hawaiian  
7 membership organizations, the governor shall appoint the members  
8 as follows:

9 (1) One member shall reside in the county of Hawaii;

10 (2) One member shall reside in the city and county of  
11 Honolulu;

12 (3) One member shall reside in the county of Kauai;

13 (4) One member shall reside in the county of Maui; and

14 (5) One member shall serve at-large.

15 (c) A vacancy on the commission shall not affect the  
16 powers of the commission and shall be filled in the same manner  
17 as the original appointment.

18 (d) Members of the commission shall serve without  
19 compensation but shall be allowed travel expenses, including per  
20 diem in lieu of subsistence while away from their homes or  
21 regular places of business in the performance of services for  
22 the commission.



1           (e) The commission, without regard to chapter 76, may  
2 appoint and terminate an executive director and other additional  
3 personnel as are necessary to enable the commission to perform  
4 the duties of the commission.

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

7           (g) The commission may procure temporary and intermittent  
8 services.

9           § -4 Notice of qualified Native Hawaiian roll. (a) The  
10 commission shall publish notice of the certification of the  
11 qualified Native Hawaiian roll, update the roll as necessary,  
12 and publish notice of the updated roll of qualified Native  
13 Hawaiians.

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

18           § -5 Native Hawaiian convention. The publication of the  
19 roll of qualified Native Hawaiians, as provided in section

20           -4, is intended to facilitate the process under which  
21 qualified Native Hawaiians may independently commence the



1 organization of a convention of qualified Native Hawaiians,  
2 established for the purpose of organizing themselves.

3       **§ -6 Dissolution of the Native Hawaiian roll commission.**

4 The governor shall dissolve the Native Hawaiian roll commission  
5 upon being informed by the Native Hawaiian roll commission that  
6 it has published notice of any updated roll of qualified Native  
7 Hawaiians, as provided in section -4, and thereby completed  
8 its work.

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

13       **§ -8 Reaffirmation of delegation of federal authority;**

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

21       (b) Consistent with the policies of the State of Hawaii,  
22 the members of the qualified Native Hawaiian roll, and their



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

14 SECTION 4. Funding for the Native Hawaiian roll commission  
15 shall be provided by the office of Hawaiian affairs.

16 SECTION 5. The Native Hawaiian roll commission, in  
17 cooperation with the office of Hawaiian affairs, shall report to  
18 the governor and the legislature no later than twenty days prior  
19 to the convening of the regular session of 2012, on the status  
20 of the preparation of a roll of qualified Native Hawaiians,  
21 expenditures related to the responsibilities of the Native



1 Hawaiian roll commission, and any concerns or recommendations as  
2 deemed appropriate by the Native Hawaiian roll commission.

3 SECTION 6. 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 7. 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 8. This Act shall take effect upon its approval.

APPROVED this 6 day of JUL, 2011



GOVERNOR OF THE STATE OF HAWAII