

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 federal legislation,
2 referred to as the "Native Hawaiian Government Reorganization
3 Act" has been considered by the United States Congress since
4 2000, and remains under consideration. As Congress continues
5 its deliberations on this critical measure, it is the intent of
6 the legislature to address the State's response by:

7 (1) Expressing the policy of the State of Hawaii regarding
8 its relationship with Native Hawaiians; and

9 (2) Providing a process for the reorganization of a first
10 nation government by Native Hawaiians and its
11 subsequent recognition by the State of Hawaii.

12 SECTION 2. The Hawaii Revised Statutes is amended by
13 adding a new chapter to be appropriately designated and to read
14 as follows:

15 "**CHAPTER**

16 **FIRST NATION GOVERNMENT**

17 § -1 **Findings.** The legislature finds that:



- 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 agreements with the Hawaiian monarchs to govern
17 commerce and navigation in 1826, 1842, 1849, 1875, and
18 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 land



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 XIII, sections 5 and 6, Hawaii State
21 Constitution), and codified as chapter 10;



- 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, Hawaii
12 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 acknowledgment of the
16 1978 constitutional convention and the people of
17 Hawaii that assets and rights for Native Hawaiians
18 were long overdue;
- 19 (15) On November 23, 1993, Public Law 103-150 (107 Stat.
20 1510), commonly known as the "Apology Resolution", was
21 enacted into law by the United States Congress,
22 extending an apology to Native Hawaiians on behalf of



- 1 the people of the United States for the United States'
2 role in the overthrow of the 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) One of the indigenous, native people of Hawaii
5 and who is a direct lineal descendant of the
6 aboriginal, indigenous, native people who:

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

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

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

18 (2) Wishes to participate in the reorganization of the
19 Native Hawaiian governing entity;

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

21 (4) Is a citizen of the United States; and



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

5 (A) Resides in the State of Hawaii;

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

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

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

4 (i) Or was eligible to be a beneficiary of the
5 programs authorized by the Hawaiian Homes
6 Commission Act of 1920, as amended, and
7 resides or resided on land set aside as
8 Hawaiian home lands, as defined in the
9 Hawaiian Homes Commission Act of 1920, as
10 amended; or

11 (ii) A child or grandchild of an individual who
12 is or was eligible to be a beneficiary of
13 the programs authorized by the Act and who
14 resides or resided on land set aside as
15 Hawaiian home lands, as defined in the
16 Hawaiian Homes Commission Act of 1920, as
17 amended;

18 (D) Is or was eligible to be a beneficiary of the
19 programs authorized by the Hawaiian Homes
20 Commission Act of 1920, as amended;

21 (E) Is a child or grandchild of an individual who is
22 or was eligible to be a beneficiary of the



1 programs authorized by the Hawaiian Homes
2 Commission Act of 1920, as amended;
3 (F) Resides on or has an ownership interest in, or
4 has a parent or grandparent who resides on or has
5 an ownership interest in, kuleana land that is
6 owned in whole or in part by a person who,
7 pursuant to a genealogy verification by the
8 office of Hawaiian affairs or by court order, is
9 a lineal descendant of the person or persons who
10 received the original title to the kuleana land,
11 defined as lands granted to native tenants
12 pursuant to Haw. L. 1850, p. 202, entitled "An
13 Act Confirming Certain Resolutions of the King
14 and Privy Council Passed on the 21st day of
15 December, A.D. 1849, Granting to the Common
16 People Allodial Titles for Their Own Lands and
17 House Lots, and Certain Other Privileges", as
18 amended by Haw. L. 1851, p. 98, entitled "An Act
19 to Amend An Act Granting to the Common People
20 Allodial Titles for Their Own Lands and House
21 Lots, and Certain Other Privileges" and as
22 further amended by any subsequent legislation;



1 (G) Is an individual or is the child or grandchild of
2 an individual who has been or was a student for
3 at least one school year at a school or program
4 taught through the medium of the Hawaiian
5 language under chapter 302H or at a school
6 founded and operated primarily or exclusively for
7 the benefit of Native Hawaiians;

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

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

18 § -3 **State of Hawaii policy.** The State of Hawaii
19 reaffirms that:

20 (1) Native Hawaiians are a unique and distinct,
21 indigenous, native people with whom the State of
22 Hawaii has a special political and legal relationship,



1 which includes promoting the welfare of Native
2 Hawaiians;

3 (2) The legislature possesses and hereby exercises the
4 authority under the Hawaii State Constitution,
5 including article XII, sections 5 through 7, to enact
6 legislation to address the conditions of Native
7 Hawaiians, and has exercised this authority previously
8 through chapter 10, which established the office of
9 Hawaiian affairs, and numerous other state laws
10 addressing the conditions of Native Hawaiians;

11 (3) Native Hawaiians have:

12 (A) An inherent right to autonomy in their internal
13 affairs;

14 (B) An inherent right of self-determination and
15 self-governance;

16 (C) The right to reorganize a first nation
17 government; and

18 (D) The right to become economically self-sufficient;

19 (4) The State of Hawaii shall continue to engage in a
20 process of reconciliation and political relations with
21 the Native Hawaiian people and their first nation
22 government, once reorganized; and



1 (5) The right of qualified Native Hawaiian constituents to
2 reorganize a first nation government to provide for
3 their common welfare and to adopt appropriate organic
4 governing documents is recognized by the State of
5 Hawaii.

6 § -4 **Commission.** (a) The governor shall establish and
7 appoint a nine-member commission for the purposes of:

8 (1) Preparing and maintaining a roll of qualified Native
9 Hawaiian constituents; and

10 (2) Certifying that the individuals on the roll of
11 qualified Native Hawaiian constituents meet the
12 definition of a qualified Native Hawaiian constituent
13 set forth in section -2.

14 The commission shall be attached to the governor's office
15 for administrative purposes only.

16 (b) No later than one hundred eighty days after the
17 effective date of this Act, the governor shall appoint the
18 members of the commission to develop the roll of qualified
19 Native Hawaiian constituents for the purpose of reorganizing a
20 first nation government.



1 In making an appointment under this subsection, the
2 governor may consider recommendations made by any Native
3 Hawaiian membership organization.

4 The governor may not appoint any official of the State of
5 Hawaii to the commission.

6 A vacancy on the commission shall:

- 7 (1) Not affect the powers of the commission; and
8 (2) Be filled in the same manner as the original
9 appointment.

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

15 (d) The commission may, without regard to the civil
16 service laws under chapter 76 and rules adopted pursuant to
17 chapter 91, appoint and terminate an executive director and
18 other additional personnel as are necessary to enable the
19 commission to perform the duties of the commission.

20 The commission may fix the compensation of the executive
21 director and other personnel.



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

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

5 § -5 Roll. (a) The roll shall include the names of the
6 qualified Native Hawaiian constituents who are certified by the
7 commission to be qualified Native Hawaiian constituents.

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

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

17 (d) The commission shall:

18 (1) Identify the types of documentation that may be
19 submitted to the commission that would enable the
20 commission to determine whether an individual meets
21 the definition of qualified Native Hawaiian
22 constituent set forth in section -2;



1 (2) Recognize an individual's identification of lineal
2 ancestors on the 1890 Census by the Kingdom of Hawaii
3 as reliable indicators of lineal descent from the
4 aboriginal, indigenous, native people who resided in
5 the islands that now comprise the State of Hawaii on
6 or before January 1, 1893; and

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

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

17 (f) In making determinations that each individual who is
18 proposed for inclusion on the roll of qualified Native Hawaiian
19 constituents meets the definition of qualified Native Hawaiian
20 constituent in section -2, the commission may consult with
21 bona fide Native Hawaiian membership organizations, agencies of
22 the State of Hawaii, including the department of Hawaiian home



1 lands, the office of Hawaiian affairs, and the department of
2 health, and other entities with expertise and experience in the
3 determination of Native Hawaiian ancestry and lineal
4 descendency.

5 (g) The commission shall inform an individual:

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

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

11 (h) The commission shall:

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

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

21 (i) Upon certification by the commission to the governor
22 that those listed on the roll meet the definition of qualified



1 Native Hawaiian constituent in section -2, the commission
2 shall publish the notice of the certification of the roll,
3 notwithstanding pending appeals pursuant to subsection (j).

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

9 (k) The commission shall:

10 (1) Publish the notice of the certification of the roll
11 regardless of whether appeals are pending;

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

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

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

21 (1) The publication of the initial and updated roll shall
22 serve as the basis for the eligibility of qualified Native



1 Hawaiian constituents whose names are listed on those rolls to
2 participate in the reorganization of the Native Hawaiian
3 governing entity.

4 § -6 Process of reorganization and ratification of
5 governing documents and elections. (a) The commission shall
6 hold a minimum of three meetings, and each meeting shall be at
7 least two working days, of the qualified Native Hawaiian
8 constituents listed on the roll established under section -5,
9 to:

- 10 (1) Develop criteria for candidates to be elected to serve
11 on the interim first nation governing council;
- 12 (2) Determine the structure of the council, including the
13 number of council members; and
- 14 (3) Elect members from individuals listed on the roll
15 established under section -5 to the council.
- 16 (b) The interim first nation governing council shall
17 represent those listed on the roll established under section
18 -5 in the implementation of this chapter; provided that the
19 council shall have no powers other than powers given to the
20 council under this chapter.



1 (c) The commission and the council may enter into
2 contracts with, or obtain grants from, any federal or state
3 agency to carry out the purposes of this chapter.

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 form and structure of the first nation
13 government, including the powers and authorities to be
14 exercised by the first nation government, as well as
15 the proposed privileges and immunities of the first
16 nation government; provided that the council shall
17 consider and engage discussion on the creation of a
18 for-profit Native Hawaiian corporation that shall be a
19 body corporate and a public instrumentality of the
20 first nation government and that may serve as a
21 vehicle to receive settlement funds, as in the case of
22 the Alaska Native Claims Settlement Act, or to



1 acquire, perpetually manage, and hold settlement
2 funds, as in the case of the Narragansett Indian Land
3 Management Corporation;

4 (3) The proposed civil rights and protection of the rights
5 of the citizens of the first nation government and all
6 persons affected by the exercise of governmental
7 powers and authorities of the first nation government;

8 (4) The protection and preservation of the rights vested
9 on the effective date of this Act of those Native
10 Hawaiians who are eligible to reside on the Hawaiian
11 home lands under the authority of the Hawaiian Homes
12 Commission Act of 1920, as amended; and

13 (5) Other issues deemed appropriate by the council.

14 (e) Based on the referendum, the council shall develop
15 proposed organic governing documents for the first nation
16 government and may seek technical assistance from the governor
17 on the draft organic governing documents to ensure that the
18 draft organic governing documents comply with this chapter.

19 (f) The council shall publish to all qualified Native
20 Hawaiian constituents listed on the roll published under section

21 -5 notice of the availability of:



1 (1) A copy of the proposed organic governing documents, as
2 drafted by the council; and

3 (2) A brief impartial description of the proposed organic
4 governing documents.

5 (g) No sooner than one hundred eighty days after the
6 proposed organic governing documents are drafted and
7 distributed, the council, with the assistance of the governor,
8 shall hold elections for the purpose of ratifying the proposed
9 organic governing documents; provided that the election shall be
10 held no less than sixty days after the published notice of an
11 election.

12 (h) Upon certification of the organic governing documents
13 by the governor in accordance with subsection (j), the council,
14 with the assistance of the governor, shall hold elections of the
15 officers of the first nation government pursuant to subsection
16 (n).

17 (i) Following the reorganization of the first nation
18 government and the adoption of organic governing documents, the
19 council shall submit the organic governing documents of the
20 first nation government to the governor.

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



- 1 (1) Establish the criteria for membership in the first
2 nation government and provide that membership is
3 voluntary and can be relinquished;
- 4 (2) Were adopted by a majority vote of those qualified
5 Native Hawaiian constituents whose names are listed on
6 the roll published by the commission and who voted in
7 the election;
- 8 (3) Provide authority for the first nation government to
9 negotiate with federal, state, and local governments,
10 and other entities;
- 11 (4) Provide for the exercise of inherent and other
12 appropriate governmental authorities by the first
13 nation government;
- 14 (5) Prevent the sale, disposition, lease, or encumbrance
15 of lands, interests in lands, or other assets of the
16 first nation government without the consent of the
17 first nation government;
- 18 (6) Provide for the protection of the civil rights of the
19 citizens of the first nation government and all
20 persons affected by the exercise of governmental
21 powers and authorities by the first nation government;



1 (7) Provide for the protection and preservation of the
2 rights vested on the effective date of this Act of
3 those Native Hawaiians who are eligible to reside on
4 the Hawaiian home lands under the authority of the
5 Hawaiian Homes Commission Act of 1920, as amended; and

6 (8) Are consistent with this chapter.

7 (k) If the governor determines that the organic governing
8 documents, or any part of the documents, do not meet all of the
9 requirements set forth in this section, the governor shall
10 resubmit the organic governing documents to the council, along
11 with a justification for each of the governor's findings as to
12 why the provisions are not in full compliance.

13 (1) If the organic governing documents are resubmitted to
14 the council by the governor under subsection (k), the council
15 shall:

16 (1) Amend the organic governing documents to ensure that
17 the documents meet all the requirements set forth in
18 this section; and

19 (2) Resubmit the amended organic governing documents to
20 the governor for certification in accordance with this
21 section.



1 (m) The organic government documents shall be deemed
2 certified by the governor if the governor does not act within
3 ninety days after the date on which the council submits the
4 organic governing documents of the first nation government to
5 the governor.

6 (n) Upon completion of the certifications by the governor,
7 the council, with the assistance of the governor, shall hold
8 elections of the officers of the first nation government.

9 (o) The council shall provide a copy of the roll of
10 qualified Native Hawaiian constituents to the governing body of
11 the first nation government.

12 (p) The council shall cease to exist and shall have no
13 power or authority under this chapter after the officers of the
14 governing body who are elected as provided in subsection (n) are
15 installed.

16 (q) Notwithstanding any other law to the contrary, the
17 special political and legal relationship between the State of
18 Hawaii and the Native Hawaiian people is hereby reaffirmed and
19 the State of Hawaii extends recognition to the first nation
20 government as the representative sovereign governing body of the
21 Native Hawaiian people after the:



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

3 (2) Installment of the officers of the first nation
4 government elected under subsection (n).

5 § -7 **No diminishment of rights or privileges.** Nothing
6 contained in this chapter shall diminish, alter; or amend any
7 existing rights or privileges enjoyed by the Native Hawaiian
8 people pursuant to state or federal law.

9 § -8 **Reaffirmation of delegation of federal authority;**
10 **governmental authority and power; negotiations.** (a) The
11 delegation by the United States of authority to the State of
12 Hawaii to address the conditions of the indigenous, native
13 people of Hawaii contained in the Act entitled "An Act to
14 provide for the admission of the State of Hawaii into the
15 Union", approved March 18, 1959 (Public Law 86-3; 73 Stat. 4),
16 is reaffirmed.

17 (b) Consistent with the policies of the State of Hawaii,
18 upon the reaffirmation of the special political and legal
19 relationship between the State of Hawaii and the first nation
20 government, the first nation government shall be vested with the
21 inherent powers and privileges of self-government of a native
22 government, except as set forth in this chapter. These powers



1 and privileges may be modified by agreement between the first
2 nation government and the State of Hawaii pursuant to the
3 negotiations authorized in subsection (c).

4 (c) Upon the reaffirmation of the special political and
5 legal relationship between the State of Hawaii and the first
6 nation government, the State of Hawaii shall enter into
7 negotiations with the Native Hawaiian governing entity regarding
8 the transfer of lands, natural resources, and other assets
9 dedicated to Native Hawaiian use, under existing law in effect
10 on the effective date of this Act, to the first nation
11 government. Negotiations may also address other Native Hawaiian
12 claims, any residual responsibilities of the State of Hawaii,
13 and grievances regarding assertions of historical wrongs
14 committed against Native Hawaiians by the State of Hawaii.

15 § -9 **Disclaimer.** Nothing in this chapter is intended to
16 serve as a settlement of any claims against the State of Hawaii
17 or affect the rights of the Native Hawaiian people under state,
18 federal, or international law.

19 § -10 **Rules.** The governor shall adopt rules in
20 accordance with chapter 91 to carry out this chapter."

21 SECTION 3. There is appropriated out of the general
22 revenues of the State of Hawaii the sum of \$ or so



1 much thereof as may be necessary for fiscal year 2011-2012 and
2 the same sum or so much thereof as may be necessary for fiscal
3 year 2012-2013 for the purposes of this Act; provided that no
4 additional funds shall be appropriated for the purposes of this
5 Act.

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

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

14 SECTION 5. The revisor of statutes shall insert the
15 effective date of this Act in the appropriate places in section
16 2 of this Act.

17 SECTION 6. This Act shall take effect on July 1, 2050.

18



Report Title:

Government; First Nation; Appropriation

Description:

Establishes a nine-member commission to prepare, maintain, and certify a roll of qualified Native Hawaiian constituents; establishes requirements and procedures for preparation of the roll; establishes a process of recognition and ratification of governing documents and an interim first nation governing council; authorizes adoption of rules; appropriates unspecified funds for expenditure by the office of Hawaiian affairs. Effective 7/1/2050. (SD1)

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

