

AMENDMENT NO. _____ Calendar No. _____

Purpose: To provide a complete substitute.

IN THE SENATE OF THE UNITED STATES—108th Cong., 2d Sess.

S. 344

Expressing the policy of the United States regarding the United States relationship with Native Hawaiians and to provide a process for the recognition by the United States of the Native Hawaiian governing entity, and for other purposes.

Referred to the Committee on _____
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended to be proposed by Mr. INOUE to the Committee amendment

Viz:

1 In lieu of the matter to be inserted, insert the following:
2

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Native Hawaiian Government Reorganization Act of 2004”.
5

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

1 (1) the Constitution vests Congress with the au-
2 thority to address the conditions of the indigenous,
3 native people of the United States;

4 (2) Native Hawaiians, the native people of the
5 Hawaiian archipelago that is now part of the United
6 States, are indigenous, native people of the United
7 States;

8 (3) the United States has a special political and
9 legal responsibility to promote the welfare of the na-
10 tive people of the United States, including Native
11 Hawaiians;

12 (4) under the treaty making power of the
13 United States, Congress exercised its constitutional
14 authority to confirm treaties between the United
15 States and the Kingdom of Hawaii, and from 1826
16 until 1893, the United States—

17 (A) recognized the sovereignty of the King-
18 dom of Hawaii;

19 (B) accorded full diplomatic recognition to
20 the Kingdom of Hawaii; and

21 (C) entered into treaties and conventions
22 with the Kingdom of Hawaii to govern com-
23 merce and navigation in 1826, 1842, 1849,
24 1875, and 1887;

1 (5) pursuant to the Hawaiian Homes Commis-
2 sion Act, 1920 (42 Stat. 108, chapter 42), the
3 United States set aside approximately 203,500 acres
4 of land to address the conditions of Native Hawai-
5 ians in the Federal territory that later became the
6 State of Hawaii;

7 (6) by setting aside 203,500 acres of land for
8 Native Hawaiian homesteads and farms, the Hawai-
9 ian Homes Commission Act assists the members of
10 the Native Hawaiian community in maintaining dis-
11 tinct native settlements throughout the State of Ha-
12 wahi;

13 (7) approximately 6,800 Native Hawaiian fami-
14 lies reside on the Hawaiian Home Lands and ap-
15 proximately 18,000 Native Hawaiians who are eligi-
16 ble to reside on the Hawaiian Home Lands are on
17 a waiting list to receive assignments of Hawaiian
18 Home Lands;

19 (8)(A) in 1959, as part of the compact with the
20 United States admitting Hawaii into the Union,
21 Congress established a public trust (commonly
22 known as the “ceded lands trust”), for 5 purposes,
23 1 of which is the betterment of the conditions of Na-
24 tive Hawaiians;

1 (B) the public trust consists of lands, including
2 submerged lands, natural resources, and the reve-
3 nues derived from the lands; and

4 (C) the assets of this public trust have never
5 been completely inventoried or segregated;

6 (9) Native Hawaiians have continuously sought
7 access to the ceded lands in order to establish and
8 maintain native settlements and distinct native com-
9 munities throughout the State;

10 (10) the Hawaiian Home Lands and other
11 ceded lands provide an important foundation for the
12 ability of the Native Hawaiian community to main-
13 tain the practice of Native Hawaiian culture, lan-
14 guage, and traditions, and for the survival and eco-
15 nomic self-sufficiency of the Native Hawaiian people;

16 (11) Native Hawaiians continue to maintain
17 other distinctly native areas in Hawaii;

18 (12) on November 23, 1993, Public Law 103-
19 150 (107 Stat. 1510) (commonly known as the
20 “Apology Resolution”) was enacted into law, extend-
21 ing an apology on behalf of the United States to the
22 Native people of Hawaii for the United States’ role
23 in the overthrow of the Kingdom of Hawaii;

24 (13) the Apology Resolution acknowledges that
25 the overthrow of the Kingdom of Hawaii occurred

1 with the active participation of agents and citizens
2 of the United States and further acknowledges that
3 the Native Hawaiian people never directly relin-
4 quished to the United States their claims to their in-
5 herent sovereignty as a people over their national
6 lands, either through the Kingdom of Hawaii or
7 through a plebiscite or referendum;

8 (14) the Apology Resolution expresses the com-
9 mitment of Congress and the President—

10 (A) to acknowledge the ramifications of the
11 overthrow of the Kingdom of Hawaii;

12 (B) to support reconciliation efforts be-
13 tween the United States and Native Hawaiians;
14 and

15 (C) to consult with Native Hawaiians on
16 the reconciliation process as called for in the
17 Apology Resolution;

18 (15) despite the overthrow of the government of
19 the Kingdom of Hawaii, Native Hawaiians have con-
20 tinued to maintain their separate identity as a dis-
21 tinct native community through cultural, social, and
22 political institutions, and to give expression to their
23 rights as native people to self-determination, self-
24 governance, and economic self-sufficiency;

1 (16) Native Hawaiians have also given expres-
2 sion to their rights as native people to self-deter-
3 mination, self-governance, and economic self-
4 sufficiency—

5 (A) through the provision of governmental
6 services to Native Hawaiians, including the pro-
7 vision of—

8 (i) health care services;

9 (ii) educational programs;

10 (iii) employment and training pro-
11 grams;

12 (iv) economic development assistance
13 programs;

14 (v) children’s services;

15 (vi) conservation programs;

16 (vii) fish and wildlife protection;

17 (viii) agricultural programs;

18 (ix) native language immersion pro-
19 grams;

20 (x) native language immersion schools
21 from kindergarten through high school;

22 (xi) college and master’s degree pro-
23 grams in native language immersion in-
24 struction;

25 (xii) traditional justice programs, and

1 (B) by continuing their efforts to enhance
2 Native Hawaiian self-determination and local
3 control;

4 (17) Native Hawaiians are actively engaged in
5 Native Hawaiian cultural practices, traditional agri-
6 cultural methods, fishing and subsistence practices,
7 maintenance of cultural use areas and sacred sites,
8 protection of burial sites, and the exercise of their
9 traditional rights to gather medicinal plants and
10 herbs, and food sources;

11 (18) the Native Hawaiian people wish to pre-
12 serve, develop, and transmit to future generations of
13 Native Hawaiians their lands and Native Hawaiian
14 political and cultural identity in accordance with
15 their traditions, beliefs, customs and practices, lan-
16 guage, and social and political institutions, to con-
17 trol and manage their own lands, including ceded
18 lands, and to achieve greater self-determination over
19 their own affairs;

20 (19) this Act provides a process within the
21 framework of Federal law for the Native Hawaiian
22 people to exercise their inherent rights as a distinct,
23 indigenous, native community to reorganize a Native
24 Hawaiian governing entity for the purpose of giving

1 expression to their rights as native people to self-de-
2 termination and self-governance;

3 (20) Congress—

4 (A) has declared that the United States
5 has a special responsibility for the welfare of
6 the native peoples of the United States, includ-
7 ing Native Hawaiians;

8 (B) has identified Native Hawaiians as a
9 distinct group of indigenous, native people of
10 the United States within the scope of its au-
11 thority under the Constitution, and has enacted
12 scores of statutes on their behalf ; and

13 (C) has delegated broad authority to the
14 State of Hawaii to administer some of the
15 United States' responsibilities as they relate to
16 the Native Hawaiian people and their lands;

17 (21) the United States has recognized and re-
18 affirmed the special political and legal relationship
19 with the Native Hawaiian people through the enact-
20 ment of the Act entitled, “An Act to provide for the
21 admission of the State of Hawaii into the Union”,
22 approved March 18, 1959 (Public Law 86–3; 73
23 Stat. 4), by—

24 (A) ceding to the State of Hawaii title to
25 the public lands formerly held by the United

1 States, and mandating that those lands be held
2 as a public trust for 5 purposes, 1 of which is
3 for the betterment of the conditions of Native
4 Hawaiians; and

5 (B) transferring the United States' respon-
6 sibility for the administration of the Hawaiian
7 Home Lands to the State of Hawaii, but retain-
8 ing the authority to enforce the trust, including
9 the exclusive right of the United States to con-
10 sent to any actions affecting the lands that
11 comprise the corpus of the trust and any
12 amendments to the Hawaiian Homes Commis-
13 sion Act, 1920 (42 Stat. 108, chapter 42) that
14 are enacted by the legislature of the State of
15 Hawaii affecting the beneficiaries under the
16 Act;

17 (22) the United States has continually recog-
18 nized and reaffirmed that—

19 (A) Native Hawaiians have a cultural, his-
20 toric, and land-based link to the aboriginal, in-
21 digenous, native people who exercised sov-
22 ereignty over the Hawaiian Islands;

23 (B) Native Hawaiians have never relin-
24 quished their claims to sovereignty or their sov-
25 ereign lands;

1 (C) the United States extends services to
2 Native Hawaiians because of their unique sta-
3 tus as the indigenous, native people of a once-
4 sovereign nation with whom the United States
5 has a political and legal relationship; and

6 (D) the special trust relationship of Amer-
7 ican Indians, Alaska Natives, and Native Ha-
8 waiians to the United States arises out of their
9 status as aboriginal, indigenous, native people
10 of the United States; and

11 (23) the State of Hawaii supports the reaffir-
12 mation of the political and legal relationship between
13 the Native Hawaiian governing entity and the
14 United States as evidenced by 2 unanimous resolu-
15 tions enacted by the Hawaii State Legislature in the
16 2000 and 2001 sessions of the Legislature and by
17 the testimony of the Governor of the State of Hawaii
18 before the Committee on Indian Affairs of the Sen-
19 ate on February 25, 2003.

20 **SEC. 3. DEFINITIONS.**

21 In this Act:

22 (1) ABORIGINAL, INDIGENOUS, NATIVE PEO-
23 PLE.—The term “aboriginal, indigenous, native peo-
24 ple” means people whom Congress has recognized as
25 the original inhabitants of the lands that later be-

1 came part of the United States and who exercised
2 sovereignty in the areas that later became part of
3 the United States.

4 (2) ADULT MEMBER.—The term “adult mem-
5 ber” means a Native Hawaiian who has attained the
6 age of 18 and who elects to participate in the reor-
7 ganization of the Native Hawaiian governing entity.

8 (3) APOLOGY RESOLUTION.—The term “Apol-
9 ogy Resolution” means Public Law 103–150, (107
10 Stat. 1510), a Joint Resolution extending an apol-
11 ogy to Native Hawaiians on behalf of the United
12 States for the participation of agents of the United
13 States in the January 17, 1893 overthrow of the
14 Kingdom of Hawaii.

15 (4) COMMISSION.—The term “commission”
16 means the Commission established under section
17 7(b) to provide for the certification that those adult
18 members of the Native Hawaiian community listed
19 on the roll meet the definition of Native Hawaiian
20 set forth in section 3(8).

21 (5) COUNCIL.—The term “council” means the
22 Native Hawaiian Interim Governing Council estab-
23 lished under section 7(c)(2).

24 (6) INDIGENOUS, NATIVE PEOPLE.—The term
25 “indigenous, native people” means the lineal de-

1 scendants of the aboriginal, indigenous, native peo-
2 ple of the United States.

3 (7) INTERAGENCY COORDINATING GROUP.—The
4 term “Interagency Coordinating Group” means the
5 Native Hawaiian Interagency Coordinating Group
6 established under section 6.

7 (8) NATIVE HAWAIIAN.—For the purpose of es-
8 tablishing the roll authorized under section 7(c)(1)
9 and before the reaffirmation of the political and
10 legal relationship between the United States and the
11 Native Hawaiian governing entity, the term “Native
12 Hawaiian” means—

13 (A) an individual who is one of the indige-
14 nous, native people of Hawaii and who is a di-
15 rect lineal descendant of the aboriginal, indige-
16 nous, native people who—

17 (i) resided in the islands that now
18 comprise the State of Hawaii on or before
19 January 1, 1893; and

20 (ii) occupied and exercised sovereignty
21 in the Hawaiian archipelago, including the
22 area that now constitutes the State of Ha-
23 waii; or

24 (B) an individual who is one of the indige-
25 nous, native people of Hawaii and who was eli-

1 gible in 1921 for the programs authorized by
2 the Hawaiian Homes Commission Act (42 Stat.
3 108, chapter 42) or a direct lineal descendant
4 of that individual.

5 (9) NATIVE HAWAIIAN GOVERNING ENTITY.—
6 The term “Native Hawaiian Governing Entity”
7 means the governing entity organized by the Native
8 Hawaiian people pursuant to this Act.

9 (10) OFFICE.—The term “Office” means the
10 United States Office for Native Hawaiian Relations
11 established under section 5(a).

12 (11) SECRETARY.—The term “Secretary”
13 means the Secretary of the Department of the Inte-
14 rior.

15 **SEC. 4. UNITED STATES POLICY AND PURPOSE.**

16 (a) POLICY.—The United States reaffirms that—

17 (1) Native Hawaiians are a unique and distinct,
18 indigenous, native people with whom the United
19 States has a special political and legal relationship;

20 (2) the United States has a special political and
21 legal relationship with the Native Hawaiian people
22 which includes promoting the welfare of Native Ha-
23 waiians;

24 (3) Congress possesses the authority under the
25 Constitution, including but not limited to Article I,

1 section 8, clause 3, to enact legislation to address
2 the conditions of Native Hawaiians and has exer-
3 cised this authority through the enactment of—

4 (A) the Hawaiian Homes Commission Act,
5 1920 (42 Stat. 108, chapter 42);

6 (B) the Act entitled “An Act to provide for
7 the admission of the State of Hawaii into the
8 Union”, approved March 18, 1959 (Public Law
9 86–3, 73 Stat. 4); and

10 (C) more than 150 other Federal laws ad-
11 dressing the conditions of Native Hawaiians;

12 (4) Native Hawaiians have—

13 (A) an inherent right to autonomy in their
14 internal affairs;

15 (B) an inherent right of self-determination
16 and self-governance;

17 (C) the right to reorganize a Native Ha-
18 waiian governing entity; and

19 (D) the right to become economically self-
20 sufficient; and

21 (5) the United States shall continue to engage
22 in a process of reconciliation and political relations
23 with the Native Hawaiian people.

24 (b) PURPOSE.—The purpose of this Act is to provide
25 a process for the reorganization of the Native Hawaiian

1 governing entity and the reaffirmation of the political and
2 legal relationship between the United States and the Na-
3 tive Hawaiian governing entity for purposes of continuing
4 a government-to-government relationship.

5 **SEC. 5. UNITED STATES OFFICE FOR NATIVE HAWAIIAN RE-**
6 **LATIONS.**

7 (a) ESTABLISHMENT.—There is established within
8 the Office of the Secretary of the United States Office for
9 Native Hawaiian Relations.

10 (b) DUTIES.—The Office shall—

11 (1) continue the process of reconciliation with
12 the Native Hawaiian people in furtherance of the
13 Apology Resolution;

14 (2) upon the reaffirmation of the political and
15 legal relationship between the Native Hawaiian gov-
16 erning entity and the United States, effectuate and
17 coordinate the special political and legal relationship
18 between the Native Hawaiian governing entity and
19 the United States through the Secretary, and with
20 all other Federal agencies;

21 (3) fully integrate the principle and practice of
22 meaningful, regular, and appropriate consultation
23 with the Native Hawaiian governing entity by pro-
24 viding timely notice to, and consulting with, the Na-
25 tive Hawaiian people and the Native Hawaiian gov-

1 erning entity before taking any actions that may
2 have the potential to significantly affect Native Ha-
3 waiian resources, rights, or lands;

4 (4) consult with the Interagency Coordinating
5 Group, other Federal agencies, the Governor of the
6 State of Hawaii and relevant agencies of the State
7 of Hawaii on policies, practices, and proposed ac-
8 tions affecting Native Hawaiian resources, rights, or
9 lands; and

10 (5) prepare and submit to the Committee on
11 Indian Affairs and the Committee on Energy and
12 Natural Resources of the Senate, the Committee on
13 Resources of the House of Representatives, an an-
14 nual report detailing the activities of the Interagency
15 Coordinating Group that are undertaken with re-
16 spect to the continuing process of reconciliation and
17 to effect meaningful consultation with the Native
18 Hawaiian governing entity and providing rec-
19 ommendations for any necessary changes to Federal
20 law or regulations promulgated under the authority
21 of Federal law.

22 **SEC. 6. NATIVE HAWAIIAN INTERAGENCY COORDINATING**
23 **GROUP.**

24 (a) **ESTABLISHMENT.**—In recognition that Federal
25 programs authorized to address the conditions of Native

1 Hawaiians are largely administered by Federal agencies
2 other than the Department of the Interior, there is estab-
3 lished an interagency coordinating group to be known as
4 the “Native Hawaiian Interagency Coordinating Group”.

5 (b) COMPOSITION.—The Interagency Coordinating
6 Group shall be composed of officials, to be designated by
7 the President, from—

8 (1) each Federal agency that administers Na-
9 tive Hawaiian programs, establishes or implements
10 policies that affect Native Hawaiians, or whose ac-
11 tions may significantly or uniquely impact Native
12 Hawaiian resources, rights, or lands; and

13 (2) the Office.

14 (c) LEAD AGENCY.—

15 (1) IN GENERAL.—The Department of the Inte-
16 rior shall serve as the lead agency of the Interagency
17 Coordinating Group.

18 (2) MEETINGS.—The Secretary shall convene
19 meetings of the Interagency Coordinating Group.

20 (d) DUTIES.—The Interagency Coordinating Group
21 shall—

22 (1) coordinate Federal programs and policies
23 that affect Native Hawaiians or actions by any agen-
24 cy or agencies of the Federal Government that may

1 significantly or uniquely affect Native Hawaiian re-
2 sources, rights, or lands;

3 (2) ensure that each Federal agency develops a
4 policy on consultation with the Native Hawaiian peo-
5 ple, and upon the reaffirmation of the political and
6 legal relationship between the Native Hawaiian gov-
7 erning entity and the United States, consultation
8 with the Native Hawaiian governing entity; and

9 (3) ensure the participation of each Federal
10 agency in the development of the report to Congress
11 authorized in section 5(b)(5).

12 **SEC. 7. PROCESS FOR THE REORGANIZATION OF THE NA-**
13 **TIVE HAWAIIAN GOVERNING ENTITY AND**
14 **THE REAFFIRMATION OF THE POLITICAL**
15 **AND LEGAL RELATIONSHIP BETWEEN THE**
16 **UNITED STATES AND THE NATIVE HAWAIIAN**
17 **GOVERNING ENTITY.**

18 (a) **RECOGNITION OF THE NATIVE HAWAIIAN GOV-**
19 **ERNING ENTITY.**—The right of the Native Hawaiian peo-
20 ple to reorganize the Native Hawaiian governing entity to
21 provide for their common welfare and to adopt appropriate
22 organic governing documents is recognized by the United
23 States.

24 (b) **COMMISSION.**—

1 (1) IN GENERAL.—There is authorized to be es-
2 tablished a Commission to be composed of nine
3 members for the purposes of—

4 (A) preparing and maintaining a roll of the
5 adult members of the Native Hawaiian commu-
6 nity who elect to participate in the reorganiza-
7 tion of the Native Hawaiian governing entity;
8 and

9 (B) certifying that the adult members of
10 the Native Hawaiian community proposed for
11 inclusion on the roll meet the definition of Na-
12 tive Hawaiian in section 3(8).

13 (2) MEMBERSHIP.—

14 (A) APPOINTMENT.—Within 180 days of
15 the date of enactment of this Act, the Secretary
16 shall appoint the members of the Commission
17 in accordance with subclause (B). Any vacancy
18 on the Commission shall not affect its powers
19 and shall be filled in the same manner as the
20 original appointment.

21 (B) REQUIREMENTS.—The members of the
22 Commission shall be Native Hawaiian, as de-
23 fined in section 3(8), and shall have expertise in
24 the determination of Native Hawaiian ancestry
25 and lineal descendancy.

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

8 (4) DUTIES.—The Commission shall—

9 (A) prepare and maintain a roll of the
10 adult members of the Native Hawaiian commu-
11 nity who elect to participate in the reorganiza-
12 tion of the Native Hawaiian governing entity;
13 and

14 (B) certify that each of the adult members
15 of the Native Hawaiian community proposed for
16 inclusion on the roll meet the definition of Na-
17 tive Hawaiian in section 3(8).

18 (5) EXPIRATION.—The Secretary shall dissolve
19 the Commission upon the reaffirmation of the polit-
20 ical and legal relationship between the Native Ha-
21 waiian governing entity and the United States.

22 (c) PROCESS FOR THE REORGANIZATION OF THE NA-
23 TIVE HAWAIIAN GOVERNING ENTITY.—

24 (1) ROLL.—

1 (A) CONTENTS.—The roll shall include the
2 names of the adult members of the Native Ha-
3 waiian community who elect to participate in
4 the reorganization of the Native Hawaiian gov-
5 erning entity and are certified to be Native Ha-
6 waiian as defined in section 3(8) by the Com-
7 mission.

8 (B) FORMATION OF ROLL.—Each adult
9 member of the Native Hawaiian community
10 who elects to participate in the reorganization
11 of the Native Hawaiian governing entity shall
12 submit to the Commission documentation in the
13 form established by the Commission that is suf-
14 ficient to enable the Commission to determine
15 whether the individual meets the definition of
16 Native Hawaiian in section 3(8).

17 (C) DOCUMENTATION.—The Commission
18 shall—

19 (i) identify the types of documentation
20 that may be submitted to the Commission
21 that would enable the Commission to de-
22 termine whether an individual meets the
23 definition of Native Hawaiian in section
24 3(8);

1 (ii) establish a standard format for
2 the submission of documentation;

3 (iii) publish information related to
4 subclauses (i) and (ii) in the Federal Reg-
5 ister;

6 (D) CONSULTATION.—In making deter-
7 minations that each of the adult members of
8 the Native Hawaiian community proposed for
9 inclusion on the roll meet the definition of Na-
10 tive Hawaiian in section 3(8), the Commission
11 may consult with Native Hawaiian organiza-
12 tions, agencies of the State of Hawaii including
13 but not limited to the Department of Hawaiian
14 Home Lands, the Office of Hawaiian Affairs,
15 and the State Department of Health, and other
16 entities with expertise and experience in the de-
17 termination of Native Hawaiian ancestry and
18 lineal descendency.

19 (E) CERTIFICATION AND SUBMITTAL OF
20 ROLL TO SECRETARY.—The Commission
21 shall—

22 (i) submit the roll containing the
23 names of the adult members of the Native
24 Hawaiian community who meet the defini-
25 tion of Native Hawaiian in section 3(8) to

1 the Secretary within two years from the
2 date on which the Commission is fully
3 composed; and

4 (ii) certify to the Secretary that each
5 of the adult members of the Native Hawai-
6 ian community proposed for inclusion on
7 the roll meet the definition of Native Ha-
8 waiian in section 3(8).

9 (F) PUBLICATION.—Upon certification by
10 the Commission to the Secretary that those list-
11 ed on the roll meet the definition of Native Ha-
12 waiian in section 3(8), the Secretary shall pub-
13 lish the roll in the Federal Register.

14 (G) APPEAL.—The Secretary may estab-
15 lish a mechanism for an appeal for any person
16 whose name is excluded from the roll who
17 claims to meet the definition of Native Hawai-
18 ian in section 3(8) and to be 18 years of age
19 or older.

20 (H) PUBLICATION; UPDATE.—The Sec-
21 retary shall—

22 (i) publish the roll regardless of
23 whether appeals are pending;

1 (ii) update the roll and the publication
2 of the roll on the final disposition of any
3 appeal;

4 (iii) update the roll to include any Na-
5 tive Hawaiian who has attained the age of
6 18 and who has been certified by the Com-
7 mission as meeting the definition of Native
8 Hawaiian in section 3(8) after the initial
9 publication of the roll or after any subse-
10 quent publications of the roll.

11 (I) FAILURE TO ACT.—If the Secretary
12 fails to publish the roll, not later than 90 days
13 after the date on which the roll is submitted to
14 the Secretary, the Commission shall publish the
15 roll notwithstanding any order or directive
16 issued by the Secretary or any other official of
17 the Department of the Interior to the contrary.

18 (J) EFFECT OF PUBLICATION.—The publi-
19 cation of the initial and updated roll shall serve
20 as the basis for the eligibility of adult members
21 of the Native Hawaiian community whose
22 names are listed on those rolls to participate in
23 the reorganization of the Native Hawaiian gov-
24 erning entity.

1 (2) ORGANIZATION OF THE NATIVE HAWAIIAN
2 INTERIM GOVERNING COUNCIL.—

3 (A) ORGANIZATION.—The adult members
4 of the Native Hawaiian community listed on the
5 roll published under this section may—

6 (i) develop criteria for candidates to
7 be elected to serve on the Native Hawaiian
8 Interim Governing Council;

9 (ii) determine the structure of the
10 Council; and

11 (iii) elect members from individuals
12 listed on the roll published under this sub-
13 section to the Council.

14 (B) POWERS.—

15 (i) IN GENERAL.—The Council—

16 (I) may represent those listed on
17 the roll published under this section in
18 the implementation of this Act; and

19 (II) shall have no powers other
20 than powers given to the Council
21 under this Act.

22 (ii) FUNDING.—The Council may
23 enter into a contract with, or obtain a
24 grant from, any Federal or State agency to
25 carry out clause (iii).

1 (iii) ACTIVITIES.—

2 (I) IN GENERAL.—The Council
3 may conduct a referendum among the
4 adult members of the Native Hawai-
5 ian community listed on the roll pub-
6 lished under this subsection for the
7 purpose of determining the proposed
8 elements of the organic governing doc-
9 uments of the Native Hawaiian gov-
10 erning entity, including but not lim-
11 ited to—

12 (aa) the proposed criteria
13 for citizenship of the Native Ha-
14 waiian governing entity;

15 (bb) the proposed powers
16 and authorities to be exercised by
17 the Native Hawaiian governing
18 entity, as well as the proposed
19 privileges and immunities of the
20 Native Hawaiian governing enti-
21 ty;

22 (cc) the proposed civil rights
23 and protection of the rights of
24 the citizens of the Native Hawai-
25 ian governing entity and all per-

1 sons affected by the exercise of
2 governmental powers and au-
3 thorities of the Native Hawaiian
4 governing entity; and

5 (dd) other issues determined
6 appropriate by the Council.

7 (II) DEVELOPMENT OF ORGANIC
8 GOVERNING DOCUMENTS.—Based on
9 the referendum, the Council may de-
10 velop proposed organic governing doc-
11 uments for the Native Hawaiian gov-
12 erning entity.

13 (III) DISTRIBUTION.—The Coun-
14 cil may distribute to all adult mem-
15 bers of the Native Hawaiian commu-
16 nity listed on the roll published under
17 this subsection—

18 (aa) a copy of the proposed
19 organic governing documents, as
20 drafted by the Council; and

21 (bb) a brief impartial de-
22 scription of the proposed organic
23 governing documents;

24 (IV) ELECTIONS.—The Council
25 may hold elections for the purpose of

1 ratifying the proposed organic gov-
2 erning documents, and on certification
3 of the organic governing documents
4 by the Secretary in accordance with
5 paragraph (4), hold elections of the
6 officers of the Native Hawaiian gov-
7 erning entity pursuant to paragraph
8 (5).

9 (3) SUBMITTAL OF ORGANIC GOVERNING DOCU-
10 MENTS.—Following the reorganization of the Native
11 Hawaiian governing entity and the adoption of or-
12 ganic governing documents, the Council shall submit
13 the organic governing documents of the Native Ha-
14 waiian governing entity to the Secretary.

15 (4) CERTIFICATIONS.—

16 (A) IN GENERAL.—Within the context of
17 the future negotiations to be conducted under
18 the authority of section 8(b)(1), and the subse-
19 quent actions by the Congress and the State of
20 Hawaii to enact legislation to implement the
21 agreements of the three governments, not later
22 than 90 days after the date on which the Coun-
23 cil submits the organic governing documents to
24 the Secretary, the Secretary shall certify that
25 the organic governing documents—

- 1 (i) establish the criteria for citizenship
2 in the Native Hawaiian governing entity;
- 3 (ii) were adopted by a majority vote of
4 the adult members of the Native Hawaiian
5 community whose names are listed on the
6 roll published by the Secretary;
- 7 (iii) provide authority for the Native
8 Hawaiian governing entity to negotiate
9 with Federal, State, and local govern-
10 ments, and other entities;
- 11 (iv) provide for the exercise of govern-
12 mental authorities by the Native Hawaiian
13 governing entity; including any authorities
14 that may be delegated to the Native Ha-
15 waiian governing entity by the United
16 States and the State of Hawaii following
17 negotiations authorized in section 8(b)(1)
18 and the enactment of legislation to imple-
19 ment the agreements of the three govern-
20 ments;
- 21 (v) prevent the sale, disposition, lease,
22 or encumbrance of lands, interests in
23 lands, or other assets of the Native Hawai-
24 ian governing entity without the consent of
25 the Native Hawaiian governing entity;

1 (vi) provide for the protection of the
2 civil rights of the citizens of the Native
3 Hawaiian governing entity and all persons
4 affected by the exercise of governmental
5 powers and authorities by the Native Ha-
6 waiian governing entity; and

7 (vii) are consistent with applicable
8 Federal law and the special political and
9 legal relationship between the United
10 States and the indigenous, native people of
11 the United States; provided that the provi-
12 sions of Public Law 103-454, 25 U.S.C.
13 479a, shall not apply.

14 (B) RESUBMISSION IN CASE OF NON-
15 COMPLIANCE WITH THE REQUIREMENTS OF
16 SUBPARAGRAPH (A).—

17 (i) RESUBMISSION BY THE SEC-
18 RETARY.—If the Secretary determines that
19 the organic governing documents, or any
20 part of the documents, do not meet all of
21 the requirements set forth in subparagraph
22 (A), the Secretary shall resubmit the or-
23 ganic governing documents to the Council,
24 along with a justification for each of the

1 Secretary(s findings as to why the provi-
2 sions are not in full compliance.

3 (ii) AMENDMENT AND RESUBMISSION
4 OF ORGANIC GOVERNING DOCUMENTS.—If
5 the organic governing documents are re-
6 submitted to the Council by the Secretary
7 under clause (i), the Council shall—

8 (I) amend the organic governing
9 documents to ensure that the docu-
10 ments meet all the requirements set
11 forth in subparagraph (A);

12 (II) resubmit the amended or-
13 ganic governing documents to the Sec-
14 retary for certification in accordance
15 with this paragraph.

16 (C) CERTIFICATIONS DEEMED MADE.—
17 The certifications under paragraph (4) shall be
18 deemed to have been made if the Secretary has
19 not acted within 90 days after the date on
20 which the Council has submitted the organic
21 governing documents of the Native Hawaiian
22 governing entity to the Secretary.

23 (5) ELECTIONS.—On completion of the certifi-
24 cations by the Secretary under paragraph (4), the

1 Council may hold elections of the officers of the Na-
2 tive Hawaiian governing entity.

3 (6) REAFFIRMATION.—Notwithstanding any
4 other provision of law, upon the certifications re-
5 quired under paragraph (4) and the election of the
6 officers of the Native Hawaiian governing entity, the
7 political and legal relationship between the United
8 States and the Native Hawaiian governing entity is
9 hereby reaffirmed and the United States extends
10 Federal recognition to the Native Hawaiian gov-
11 erning entity as the representative governing body of
12 the Native Hawaiian people.

13 **SEC. 8. REAFFIRMATION OF DELEGATION OF FEDERAL AU-**
14 **THORITY; NEGOTIATIONS; CLAIMS.**

15 (a) REAFFIRMATION.—The delegation by the United
16 States of authority to the State of Hawaii to address the
17 conditions of the indigenous, native people of Hawaii con-
18 tained in the Act entitled (An Act to provide for the ad-
19 mission of the State of Hawaii into the Union(approved
20 March 18, 1959 (Public Law 86–3, 73 Stat. 5) is re-
21 affirmed.

22 (b) NEGOTIATIONS.—

23 (1) IN GENERAL.—Upon the reaffirmation of
24 the political and legal relationship between the
25 United States and the Native Hawaiian governing

1 entity, the United States and the State of Hawaii
2 may enter into negotiations with the Native Hawai-
3 ian governing entity designed to lead to an agree-
4 ment addressing such matters as—

5 (A) the transfer of lands, natural re-
6 sources, and other assets, and the protection of
7 existing rights related to such lands or re-
8 sources;

9 (B) the exercise of governmental authority
10 over any transferred lands, natural resources,
11 and other assets, including land use;

12 (C) the exercise of civil and criminal juris-
13 diction;

14 (D) the delegation of governmental powers
15 and authorities to the Native Hawaiian gov-
16 erning entity by the United States and the
17 State of Hawaii; and

18 (E) any residual responsibilities of the
19 United States and the State of Hawaii.

20 (2) AMENDMENTS TO EXISTING LAWS.—Upon
21 agreement on any matter or matters negotiated with
22 the United States, the State of Hawaii, and the Na-
23 tive Hawaiian governing entity, the parties shall
24 submit—

1 (A) to the Committee on Indian Affairs of
2 the Senate, the Committee on Energy and Nat-
3 ural Resources of the Senate, and the Com-
4 mittee on Resources of the House of Represent-
5 atives, recommendations for proposed amend-
6 ments to Federal law that will enable the imple-
7 mentation of agreements reached between the
8 three governments; and

9 (B) to the Governor and the legislature of
10 the State of Hawaii, recommendations for pro-
11 posed amendments to State law that will enable
12 the implementation of agreements reached be-
13 tween the three governments.

14 (c) CLAIMS.—

15 (1) IN GENERAL.—Nothing in this Act serves
16 as a settlement of any claim against the United
17 States.

18 (2) JURISDICTION; STATUTE OF LIMITA-
19 TIONS.—The U.S. District Court for the District of
20 Hawaii shall have original jurisdiction over any ex-
21 isting claim against the United States arising under
22 Federal law existing on the date of enactment of this
23 Act and relating to the legal and political relation-
24 ship between the United States and the Native Ha-
25 waiian governing entity provided that the claim is

1 filed in the district court within 20 years of the date
2 of enactment of this Act, and provided further that
3 the Court of Federal Claims shall continue to have
4 exclusive jurisdiction over any claim otherwise within
5 the jurisdiction of that court.

6 **SEC. 9. APPLICABILITY OF CERTAIN FEDERAL LAWS.**

7 (a) INDIAN GAMING REGULATORY ACT.—Nothing in
8 this Act shall be construed to authorize the Native Hawai-
9 ian governing entity to conduct gaming activities under
10 the authority of the Indian Gaming Regulatory Act (25
11 U.S.C. 2701 et seq.).

12 (b) BUREAU OF INDIAN AFFAIRS.—Nothing con-
13 tained in this Act provides an authorization for eligibility
14 to participate in any programs and services provided by
15 the Bureau of Indian Affairs for any persons not otherwise
16 eligible for the programs or services.

17 **SEC. 10. SEVERABILITY.**

18 If any section or provision of this Act is held invalid,
19 it is the intent of Congress that the remaining sections
20 or provisions shall continue in full force and effect.

21 **SEC. 11. AUTHORIZATION OF APPROPRIATIONS.**

22 There are authorized to be appropriated such sums
23 as are necessary to carry out this Act.