
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 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 its
5 deliberations on this critical measure, it is the intent of the
6 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 treaties and conventions with the Hawaiian
17 monarchs to govern commerce and navigation in 1826,
18 1842, 1849, 1875, and 1887;
- 19 (4) Pursuant to the Hawaiian Homes Commission Act, 1920
20 (42 Stat. 108, chapter 42), the United States set
21 aside approximately 203,500 acres of land in trust to
22 better address the conditions of Native Hawaiians in



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

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

13 (6) Approximately nine thousand eight hundred Native
14 Hawaiian families reside on the Hawaiian home lands,
15 and approximately twenty-five thousand Native
16 Hawaiians who are eligible to reside on the Hawaiian
17 home lands are on a waiting list to receive
18 assignments of Hawaiian home lands;

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



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

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

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



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



1 Constitution), and codified as chapter 10, Hawaii
2 Revised Statutes;

3 (13) At the 1978 constitutional convention, the State of
4 Hawaii also found that many Native Hawaiian values and
5 rights should be included in the Hawaii State
6 Constitution, and the election of November 1978 also
7 established state affirmation and protection of "all
8 rights, customarily and traditionally exercised for
9 subsistence, cultural and religious purposes and
10 possessed by ahupua'a tenants who are descendants of
11 native Hawaiians who inhabited the Hawaiian Islands
12 prior to 1778, subject to the right of the State to
13 regulate such rights." (Article XII, section 7,
14 Hawaii State Constitution);

15 (14) The creation of the office of Hawaiian affairs and the
16 expression of Native Hawaiian rights in the Hawaii
17 State Constitution reflect the constitutional
18 convention's acknowledgement that assets and rights
19 for Native Hawaiians were long overdue;

20 (15) On November 23, 1993, Public Law 103-150 (107 Stat.
21 1510), commonly known as the "Apology Resolution", was
22 enacted into law, extending an apology to Native



1 Hawaiians on behalf of the people of the United States
2 for the United States' role in the overthrow of the
3 Kingdom of Hawaii;

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

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



- 1 (18) Pursuant to the Apology Resolution, the United States
2 Departments of Justice and the Interior conducted
3 reconciliation hearings with the Native Hawaiian
4 people in 1999 and issued a joint report entitled,
5 "From Mauka to Makai: The River of Justice Must Flow
6 Freely", which identified promoting the reorganization
7 of a Native Hawaiian government as a priority
8 recommendation for continuing the process of
9 reconciliation;
- 10 (19) Despite the overthrow of the government of the Kingdom
11 of Hawaii, Native Hawaiians have continued to maintain
12 their separate identity as a single distinctly native
13 political community through cultural, social, and
14 political institutions, and to give expression to
15 their rights as native people to self-determination,
16 self-governance, and economic self-sufficiency;
- 17 (20) There is clear continuity between the aboriginal,
18 indigenous, native people of the Kingdom of Hawaii and
19 their successors, the Native Hawaiian people today;
- 20 (21) Native Hawaiians have also given expression to their
21 rights as native people to self-determination, self-
22 governance, and economic self-sufficiency through the



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

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

21 (23) The Native Hawaiian people wish to preserve, develop,
22 and transmit to future generations of Native Hawaiians



1 their lands and Native Hawaiian political and cultural
2 identity in accordance with their traditions, beliefs,
3 customs and practices, language, and social and
4 political institutions; to control and manage their
5 own lands, including ceded lands; and to achieve
6 greater self-determination over their own affairs;

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

13 (25) The United States has:

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

18 (B) Identified Native Hawaiians as an indigenous,
19 distinctly native people of the United States
20 within the scope of its authority under the
21 Constitution of the United States of America and



1 has enacted scores of statutes on their behalf;
2 and

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

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

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

19 (B) Transferring the United States' responsibility
20 for the administration of the Hawaiian home lands
21 to the State of Hawaii, but retaining the
22 exclusive right of the United States to consent



1 to any actions affecting the lands included in
2 the trust and any amendments to the Hawaiian
3 Homes Commission Act, 1920 (42 Stat. 108, chapter
4 42), that are enacted by the legislature of the
5 State of Hawaii affecting the beneficiaries under
6 the Act; and

7 (27) The United States has continually recognized and
8 reaffirmed that:

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

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

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

21 (D) The special relationship of American Indians,
22 Alaska Natives, and Native Hawaiians to the



1 United States arises out of their status as
2 aboriginal, indigenous, native people of the
3 United States.

4 § -2 Definitions. As used in this chapter:

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

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

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

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

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

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



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

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

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

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



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

3 (1) Is:

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

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

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

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

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

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



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

6 (A) Resides in the State of Hawaii;

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

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

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



- 1 individual's parent or spouse left the State
2 of Hawaii to attend the institution;
- 3 (C) (i) Is or was eligible to be a beneficiary of
4 the programs authorized by the Hawaiian
5 Homes Commission Act, 1920 (42 Stat. 108,
6 chapter 42), and resides or resided on land
7 set aside as Hawaiian home lands, as defined
8 in the Hawaiian Homes Commission Act; or
- 9 (ii) Is a child or grandchild of an individual
10 who is or was eligible to be a beneficiary
11 of the programs authorized by the Act and
12 who resides or resided on land set aside as
13 Hawaiian home lands, as defined in the
14 Hawaiian Homes Commission Act;
- 15 (D) Is or was eligible to be a beneficiary of the
16 programs authorized by the Hawaiian Homes
17 Commission Act, 1920 (42 Stat. 108, chapter 42);
- 18 (E) Is a child or grandchild of an individual who is
19 or was eligible to be a beneficiary of the
20 programs authorized by the Hawaiian Homes
21 Commission Act, 1920 (42 Stat. 108, chapter 42);



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



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

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

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

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

19 § -3 State of Hawaii policy. The State of Hawaii

20 reaffirms that:

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



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

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

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

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

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

17 (3) Native Hawaiians have:

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

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



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

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

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

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



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

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

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

9 A vacancy on the commission shall:

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

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

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

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



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

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

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

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

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

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

19 (d) The commission shall:

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



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

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

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

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



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

7 (g) The commission shall inform an individual:

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

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

13 (h) The commission shall:

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

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

22 -2.



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

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

11 (k) The commission shall:

- 12 (1) Publish the notice of the certification of the roll
13 regardless of whether appeals are pending;
- 14 (2) Update the roll and provide notice of the updated roll
15 on the final disposition of any appeal;
- 16 (3) Update the roll to include any person who has been
17 certified by the commission as meeting the definition
18 of qualified Native Hawaiian constituent in section
19 -2 after the initial publication of the roll or
20 after any subsequent publications of the roll; and
- 21 (4) Provide a copy of the roll and any updated rolls to
22 the council.



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

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

- 12 (1) Develop criteria for candidates to be elected to serve
- 13 on the interim first nation governing council;
- 14 (2) Determine the structure of the council, including the
- 15 number of council members; and
- 16 (3) Elect members from individuals listed on the roll
- 17 established under section -5 to the council.

18 (b) The interim first nation governing council shall
 19 represent those listed on the roll established under section
 20 -5 in the implementation of this chapter; provided that the
 21 council shall have no powers other than powers given to the
 22 council under this chapter.



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

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

- 9 (1) The proposed criteria for future membership in the
10 first nation governing entity, provided that
11 membership is voluntary and can be relinquished;
- 12 (2) The proposed powers and authorities to be exercised by
13 the first nation government, as well as the proposed
14 privileges and immunities of the first nation
15 government;
- 16 (3) The proposed civil rights and protection of the rights
17 of the citizens of the first nation government and all
18 persons affected by the exercise of governmental
19 powers and authorities of the first nation government;
- 20 (4) The protection and preservation of the rights vested
21 on the effective date of this Act of those Native
22 Hawaiians who are eligible to reside on the Hawaiian



1 home lands under the authority of the Hawaiian Homes
2 Commission Act, 1920 (42 Stat. 108, chapter 42); and
3 (5) Other issues determined appropriate by the council.

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

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

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

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

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



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

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

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

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

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

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



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



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

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

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

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

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

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

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



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

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

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

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

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

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



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

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

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



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

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

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

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

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



1 SECTION 5. In codifying this Act, the revisor of statutes
2 shall insert in the appropriate locations in section 2 of this
3 Act the effective date of this Act.

4 SECTION 6. This Act shall take effect on July 1, 2093.



Report Title:

Government; First Nation

Description:

Establishes procedures for state recognition of a first nation government. (HB1627 HD1)

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

