
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 "First nation government" means the governing entity
15 organized pursuant to this chapter by the qualified Native
16 Hawaiian constituents.

17 "Governor" means the governor of the State of Hawaii, or
18 the governor's designee.

19 "Indigenous, native people" means the lineal descendants of
20 the aboriginal, indigenous, native people of the United States.

21 "Native Hawaiian membership organization" means an
22 organization that:



1 (1) Serves and represents the interests of Native
2 Hawaiians, has as a primary and stated purpose the
3 provision of services to Native Hawaiians, and has
4 expertise in Native Hawaiian affairs;

5 (2) Has leaders who are elected democratically, or
6 selected through traditional Native Hawaiian
7 leadership practices, by members of the Native
8 Hawaiian community;

9 (3) Advances the cause of Native Hawaiians culturally,
10 socially, economically, or politically;

11 (4) Is a membership organization or association; and

12 (5) Has an accurate and reliable list of Native Hawaiian
13 members.

14 "Qualified Native Hawaiian constituent" means, prior to the
15 recognition by the United States of the Native Hawaiian
16 governing entity, an individual who satisfies the following
17 criteria and who makes a written statement certifying that the
18 individual:

19 (1) Is:

20 (A) An individual who is one of the indigenous,
21 native people of Hawaii and who is a direct



- 1 lineal descendant of the aboriginal, indigenous,
- 2 native people who:
 - 3 (i) Resided in the islands that now comprise the
 - 4 State of Hawaii on or before January 1,
 - 5 1893; and
 - 6 (ii) Occupied and exercised sovereignty in the
 - 7 Hawaiian archipelago, including the area
 - 8 that now constitutes the State of Hawaii; or
- 9 (B) An individual who is one of the indigenous,
- 10 native people of Hawaii and who was eligible in
- 11 1921 for the programs authorized by the Hawaiian
- 12 Homes Commission Act, 1920 (42 Stat. 108, chapter
- 13 42), or a direct lineal descendant of such an
- 14 individual;
- 15 (2) Wishes to participate in the reorganization of the
- 16 Native Hawaiian governing entity;
- 17 (3) Is eighteen years of age or older;
- 18 (4) Is a citizen of the United States; and
- 19 (5) Maintains a significant cultural, social, or civic
- 20 connection to the Native Hawaiian community, as
- 21 evidenced by satisfying two or more of the following
- 22 ten criteria:



- 1 (A) Resides in the State of Hawaii;
- 2 (B) Resides outside the State of Hawaii and:
 - 3 (i) Currently serves or has served, or has a
 - 4 parent or spouse who currently serves or has
 - 5 served, as a member of the armed forces or
 - 6 as an employee of the federal government;
 - 7 and resided in the State of Hawaii prior to
 - 8 the time the individual or the individual's
 - 9 parent or spouse left the State of Hawaii to
 - 10 serve as a member of the armed forces or as
 - 11 an employee of the federal government; or
 - 12 (ii) Currently is or was enrolled, or has a
 - 13 parent or spouse who currently is or was
 - 14 enrolled, in an accredited institution of
 - 15 higher education outside the State of
 - 16 Hawaii, and resided in the State of Hawaii
 - 17 prior to the time the individual or the
 - 18 individual's parent or spouse left the State
 - 19 of Hawaii to attend the institution;
 - 20 (C) (i) Is or was eligible to be a beneficiary of
 - 21 the programs authorized by the Hawaiian
 - 22 Homes Commission Act, 1920 (42 Stat. 108,



1 chapter 42), and resides or resided on land
2 set aside as Hawaiian home lands, as defined
3 in the Hawaiian Homes Commission Act; or
4 (ii) Is a child or grandchild of an individual
5 who is or was eligible to be a beneficiary
6 of the programs authorized by the Act and
7 who resides or resided on land set aside as
8 Hawaiian home lands, as defined in the
9 Hawaiian Homes Commission Act;
10 (D) Is or was eligible to be a beneficiary of the
11 programs authorized by the Hawaiian Homes
12 Commission Act, 1920 (42 Stat. 108, chapter 42);
13 (E) Is a child or grandchild of an individual who is
14 or was eligible to be a beneficiary of the
15 programs authorized by the Hawaiian Homes
16 Commission Act, 1920 (42 Stat. 108, chapter 42);
17 (F) Resides on or has an ownership interest in, or
18 has a parent or grandparent who resides on or has
19 an ownership interest in, kuleana land that is
20 owned in whole or in part by a person who,
21 pursuant to a genealogy verification by the
22 office of Hawaiian affairs or by court order, is



1 a lineal descendant of the person or persons who
2 received the original title to the kuleana land,
3 defined as lands granted to native tenants
4 pursuant to Haw. L. 1850, p. 202, entitled "An
5 Act Confirming Certain Resolutions of the King
6 and Privy Council Passed on the 21st day of
7 December, A.D. 1849, Granting to the Common
8 People Allodial Titles for Their Own Lands and
9 House Lots, and Certain Other Privileges", as
10 amended by Haw. L. 1851, p. 98, entitled "An Act
11 to Amend An Act Granting to the Common People
12 Allodial Titles for Their Own Lands and House
13 Lots, and Certain Other Privileges" and as
14 further amended by any subsequent legislation;

15 (G) Is, or is the child or grandchild of, an
16 individual who has been or was a student for at
17 least one school year at a school or program
18 taught through the medium of the Hawaiian
19 language under section 302H-6, or at a school
20 founded and operated primarily or exclusively for
21 the benefit of Native Hawaiians;



1 (H) Has been a member since September 30, 2009, of at
2 least one Native Hawaiian membership
3 organization;

4 (I) Has been a member since September 30, 2009, of at
5 least two Native Hawaiian membership
6 organizations;

7 (J) Is regarded as Native Hawaiian and whose mother
8 or father is or, if deceased, was regarded as
9 Native Hawaiian by the Native Hawaiian community,
10 as evidenced by sworn affidavits from two or more
11 citizens certified by the office of Hawaiian
12 affairs as possessing expertise in the social,
13 cultural, and civic affairs of the Native
14 Hawaiian community.

15 § -3 **State of Hawaii policy.** The State of Hawaii
16 reaffirms that:

17 (1) Native Hawaiians are a unique and distinct,
18 indigenous, native people with whom the State of
19 Hawaii has a special political and legal relationship,
20 which includes promoting the welfare of Native
21 Hawaiians;



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

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

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

12 (C) Numerous other state laws addressing the
13 conditions of Native Hawaiians;

14 (3) Native Hawaiians have:

15 (A) An inherent right to autonomy in their internal
16 affairs;

17 (B) An inherent right of self-determination and self-
18 governance;

19 (C) The right to reorganize a first nation
20 government; and

21 (D) The right to become economically self-sufficient,



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

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

10 § -4 **No diminishment of rights or privileges.** Nothing
11 contained in this chapter shall diminish, alter, or amend any
12 existing rights or privileges enjoyed by the Native Hawaiian
13 people that are not inconsistent with the provisions of this
14 chapter.

15 § -5 **Reaffirmation of delegation of federal authority;**
16 **governmental authority and power; negotiations.** (a) The
17 delegation by the United States of authority to the State of
18 Hawaii to address the conditions of the indigenous, native
19 people of Hawaii contained in the Act entitled "An Act to
20 provide for the admission of the State of Hawaii into the
21 Union", approved March 18, 1959 (Public Law 86-3; 73 Stat. 4),
22 is reaffirmed.



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

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

19 **§ -6 Disclaimer.** Nothing in this chapter is intended to
20 serve as a settlement of any claims against the State of Hawaii,
21 or affect the rights of the Native Hawaiian people under state,
22 federal, or international law.



1 **§ -7 Rules.** The governor shall adopt rules in
2 accordance with chapter 91 to carry out the provisions of this
3 chapter."

4 SECTION 3. The office of Hawaiian affairs shall submit
5 proposed legislation no later than twenty days prior to
6 convening of the 2012 regular legislative session relating to a
7 process for certification of organic documents of a first nation
8 government and approval of those documents by the governor of
9 the state of Hawaii.

10 SECTION 4. 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 for the purposes of this Act; provided that no additional funds
14 shall be appropriated for the purposes of this Act.

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

17 SECTION 5. If any provision of this Act, or the
18 application thereof to any person or circumstance is held
19 invalid, the invalidity does not affect other provisions or
20 applications of the Act, which can be given effect without the
21 invalid provision or application, and to this end the provisions
22 of this Act are severable.



1 SECTION 6. 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 7. 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. Effective July 1, 2093. (HB1627 HD2)

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