
A BILL FOR AN ACT

RELATING TO STATE RECOGNITION OF THE NATIVE HAWAIIAN PEOPLE,
THEIR LANDS, ENTITLEMENTS, HEALTH, EDUCATION, WELFARE,
HERITAGE, AND CULTURE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the State has never
2 explicitly acknowledged that Native Hawaiians are the only
3 indigenous, aboriginal, "maoli" Hawaiian population.

4 Native Hawaiians are the indigenous, native people of the
5 Hawaiian archipelago that is now part of the United States and
6 the State of Hawaii and are a distinctly native community. From
7 its inception, the State has had a special political and legal
8 relationship with the Native Hawaiian people, and has
9 continually enacted legislation for the betterment of their
10 conditions.

11 In Section 5(f) of the 1959 Admission Act (An Act to
12 Provide for the Admission of the State of Hawaii into the Union,
13 Public Law 86-3), Congress created what is commonly known as the
14 ceded lands trust. The ceded lands trust, consisting of lands,
15 including submerged lands, natural resources, and the proceeds
16 from the disposition or use of those lands, is for five



1 purposes, one of which remains the betterment of the conditions
2 of Native Hawaiians.

3 At the 1978 Constitutional Convention, the State
4 established the office of Hawaiian affairs, approved by the
5 voters on November 7, 1978 (Hawaii State Constitution, Article
6 XII, sections 5 and 6) and codified as Chapter 10, Hawaii
7 Revised Statutes. The State's designation of the office of
8 Hawaiian affairs as a trust vehicle to act on behalf of Native
9 Hawaiians until a Native Hawaiian governing entity could be
10 reestablished reaffirmed the State's obligations to the Native
11 Hawaiian people.

12 The 1978 Constitutional Convention further amended the
13 State Constitution to affirm its protection of all "rights,
14 customarily and traditionally exercised for subsistence,
15 cultural and religious purposes and possessed by ahupuaa
16 tenants who are descendants of native Hawaiians who inhabited
17 the Hawaiian Islands prior to 1778." (Hawaii State
18 Constitution, Article XII, section 7). Moreover, the Hawaii
19 Revised Statutes also specifically protect Native Hawaiians'
20 ability to practice their traditional and customary rights.

21 (Hawaii Revised Statutes, §§ 1-1, 7-1). The federal and state
22 courts have continuously recognized the right of the Native



1 Hawaiian people to engage in customary and traditional practices
2 on public lands.

3 In 1993, the United States formally apologized to Native
4 Hawaiians for the United States' role in the overthrow of the
5 Kingdom of Hawaii. (Public Law 103-150 (107 Stat. 1510)
6 commonly known as the "Apology Resolution"). The Apology
7 Resolution acknowledges that the illegal overthrow of the
8 Kingdom of Hawaii occurred with the active participation of
9 agents and citizens of the United States, and further
10 acknowledges that the Native Hawaiian people never directly
11 relinquished to the United States their claims to their inherent
12 sovereignty as a people over their national lands, either
13 through the Kingdom of Hawaii or through a plebiscite or
14 referendum. The Apology Resolution expresses the commitment of
15 Congress and the President to acknowledge the ramifications of
16 the overthrow of the Kingdom of Hawaii and to support
17 reconciliation efforts between the United States and Native
18 Hawaiians. Pursuant to the Apology Resolution, the United
19 States Departments of Justice and the Interior conducted
20 reconciliation hearings with the Native Hawaiian people in 1999
21 and issued a joint report entitled, "From Mauka to Makai: The
22 River of Justice Must Flow Freely", which identified promoting



1 the reorganization of a Native Hawaiian government as a priority
2 recommendation for continuing the process of reconciliation. To
3 further this process of reconciliation, Congress created the
4 Office of Native Hawaiian Relations in the Department of the
5 Interior, with one of its purposes being to consult with Native
6 Hawaiians on the reconciliation process.

7 In December 2010, the United States Justice and Interior
8 Departments reaffirmed the United States support for the Native
9 Hawaiian Government Reorganization Act. This reaffirmation
10 recognized that Native Hawaiians are the only one of the
11 Nation's three major indigenous groups that currently lack a
12 government-to-government relationship with the United States.

13 Also in December 2010, the United States endorsed the
14 United Nations Declaration on the Rights of Indigenous Peoples.
15 The United States endorsement of the Declaration included
16 recognition of its support not only for the Native Hawaiian
17 Government Reorganization Act but also many additional statutes
18 for Native Hawaiians such as the National Historic Preservation
19 Act, the Native Hawaiian Education Act, the Native American
20 Housing Assistance and Self-Determination Act, and the Native
21 American Graves Protection and Repatriation Act.



1 While the Native Hawaiian community is still in the process
2 of reorganizing a governmental structure, Native Hawaiians have
3 continued to maintain their separate identity as a single
4 distinctly native political community through cultural, social,
5 and political institutions, and to give expression to their
6 rights as native people to self-determination, self-governance,
7 and economic self-sufficiency.

8 The State of Hawaii has supported the reorganization of a
9 Native Hawaiian governing entity, as evidenced by two
10 resolutions adopted by the Hawaii State Legislature in the 2000
11 and 2001 sessions of the legislature and subsequently by the
12 governor's testimony in Congress and other statements of
13 support. Recognizing the likelihood of a reorganized Native
14 Hawaiian governing entity, the State of Hawaii has also provided
15 for the transfer of the management and control of the island of
16 Kahoolawe and its waters to the sovereign Native Hawaiian
17 entity.

18 The purpose of this bill is to recognize Native Hawaiians
19 as the only indigenous, aboriginal, "maoli" population of
20 Hawaii. It is also the State's desire to recognize a soon to be
21 reorganized Native Hawaiian Governing Entity and to promote the
22 ultimate federal recognition of Native Hawaiians. The



1 legislature urges the office of Hawaiian affairs to facilitate
2 the organization process of that entity.

3 SECTION 2. The Hawaii Revised Statutes is amended by
4 adding a new chapter to be appropriately designated and to read
5 as follows:

6 "CHAPTER

7 NATIVE HAWAIIAN RECOGNITION

8 § -1 **Statement of Recognition.** The Native Hawaiian
9 people are hereby recognized as the only indigenous, aboriginal,
10 maoli people of Hawaii.

11 § -2 **Purpose.** The purpose of this chapter is to provide
12 for and to implement the recognition of the Native Hawaiian
13 people by means and methods that will facilitate their self
14 governance, including the establishment of or the amendment to
15 programs, entities, and other matters pursuant to law that
16 relate, or affect ownership, possession, or use of lands by the
17 Native Hawaiian people, and by further promoting their
18 entitlements, health, education, welfare, heritage and culture.

19 § -3 **Native Hawaiian Roll Commission.** (a) There is
20 established a nine-member Native Hawaiian roll commission for
21 the purpose of:



- 1 (1) Preparing and maintaining a roll of qualified Native
- 2 Hawaiians; and
- 3 (2) Certifying that the individuals on the roll of
- 4 qualified Native Hawaiians meet the definition of
- 5 qualified Native Hawaiians. For purposes of
- 6 establishing the roll, a "qualified Native Hawaiian"
- 7 means an individual who the commission determines has
- 8 satisfied the following criteria and who makes a
- 9 written statement certifying that the individual who:
- 10 (A) Is:
- 11 (i) An individual who is one of the indigenous,
- 12 native people of Hawaii and who is a direct
- 13 lineal descendant of the aboriginal,
- 14 indigenous, native people who resided in the
- 15 islands that now comprise the State of
- 16 Hawaii on or before January 1, 1893, and
- 17 occupied and exercised sovereignty in the
- 18 Hawaiian archipelago, including the area
- 19 that now constitutes the State of Hawaii; or
- 20 (ii) An individual who is one of the indigenous,
- 21 native people of Hawaii and who was eligible
- 22 in 1921 for the programs authorized by the



1 Hawaiian Homes Commission Act, 1920 (42
2 Stat. 108, chapter 42), or a direct lineal
3 descendant of that individual;

4 (B) Wishes to participate in the organization of the
5 Native Hawaii governing entity; and

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

7 (b) No later than one hundred eighty days after the
8 effective date of this Act, the governor, the president of the
9 senate, and the speaker of the house of representatives shall
10 each appoint three members of the commission to develop the roll
11 of qualified Native Hawaiians.

12 (c) A vacancy on the commission shall not affect the
13 powers of the commission, and shall be filled in the same manner
14 as the original appointment.

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

20 (e) The commission, without regard to chapter 76, may
21 appoint and terminate an executive director and other additional



1 personnel as are necessary to enable the commission to perform
2 the duties of the commission.

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

5 (g) The commission may procure temporary and intermittent
6 services.

7 § -4 **Notice of qualified Native Hawaiian roll.** (a) The
8 commission shall publish notice of the certification of the
9 qualified Native Hawaiian roll, update the roll as necessary,
10 and publish notice of the updated roll of qualified Native
11 Hawaiians.

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

16 § -5 **Interim Council.** (a) After the publication of the
17 roll of qualified Native Hawaiians, the commission shall appoint
18 an interim council of nine members from the roll of qualified
19 Native Hawaiians to independently commence the organization of a
20 convention of qualified Native Hawaiians, established for the
21 purpose or organizing themselves.



1 (b) The commission may appoint as members of the interim
2 council members of Native Hawaiian organizations that were
3 established in April 1865 or December 1918 and are currently
4 active as a Native Hawaiian organization.

5 § -6 **Dissolution of the Native Hawaiian roll commission.**

6 The governor shall dissolve the Native Hawaiian roll commission
7 after the interim council is appointed, and notice to the
8 governor by the interim council that it has organized and ready
9 to commence the organization of a convention of qualified Native
10 Hawaiians.

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

16 § -8 **Reaffirmation of delegation of federal authority;**

17 **governmental authority and power; negotiations.** (a) The
18 delegation by the United States of authority to the State of
19 Hawaii to address the conditions of the indigenous, native
20 people of Hawaii contained in the Act entitled "An Act to
21 provide for the admission of the State of Hawaii into the

1 Union", approved March 18, 1959 (Public Law 86-3; 73 Stat. 4),
2 is reaffirmed.

3 (b) Consistent with the policies of the State of Hawaii,
4 the inherent powers and privileges of self-government of the
5 members of the qualified Native Hawaiian roll, as certified by
6 the Native Hawaiian roll commission, shall be acknowledged by
7 the State of Hawaii. These powers and privileges may be
8 modified by agreement with the State of Hawaii.

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

13 SECTION 3. The Hawaiian Homes Commission Act, 1920, shall
14 be amended, subject to approval by the United States Congress,
15 if necessary, to accomplish the purposes set forth in this Act
16 in a manner that is expeditious, timely, and consistent with the
17 current needs and requirements of the Native Hawaiian people and
18 the current beneficiaries of the Hawaiian Homes Commission Act,
19 1920.

20 SECTION 4. The sum of \$ or so much thereof as
21 may be necessary for fiscal year 2011-2012 and the same sum or
22 so much thereof as may be necessary for fiscal year 2012-2013



1 for the purposes of this Act; provided that no additional funds
2 shall be appropriated for the purposes of this Act.

3 The sums appropriated shall be expended by the office of
4 Hawaiian affairs.

5 SECTION 5. If any provision of this Act, or the
6 application thereof to any person or circumstance is held
7 invalid, the invalidity does not affect other provisions or
8 applications of the Act, which can be given effect without the
9 invalid provision or application, and to this end the provisions
10 of this Act are severable.

11 SECTION 6. This Act does not affect rights and duties that
12 matured, penalties that were incurred, and proceedings that were
13 begun before its effective date.

14 SECTION 7. This Act shall take effect upon approval.
15



Report Title:

Native Hawaiians; Appropriation

Description:

Establishes a nine-member Native Hawaiian roll commission to prepare and maintain a roll of qualified Native Hawaiians; requires the commission, after publication of the roll, to appoint an interim council of nine members from the roll to commence the organization of a convention of qualified Native Hawaiians; requires the governor to dissolve the commission after the interim council is appointed; appropriates unspecified funds. (SD1)

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

