
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, as described in
3 section 2 of this Act, are the only indigenous, aboriginal,
4 "maoli" Hawaiian population.

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



1 conditions of native Hawaiians, as defined in section 201 of the
2 Hawaiian Homes Commission Act, 1920.

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 and Hawaiians until a Native Hawaiian governing entity
10 could be reestablished reaffirmed the State's obligations to the
11 Native Hawaiian people.

12 The 1978 Constitutional Convention further amended the
13 State Constitution to reaffirm its protection of "all rights,
14 customarily and traditionally exercised for subsistence,
15 cultural and religious purposes and possessed by ahupua'a
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, Hawaii
19 statutes also specifically protect Native Hawaiians' ability to
20 practice their traditional and customary rights (Hawaii Revised
21 Statutes, sections 1-1 and 7-1). The federal and state courts
22 have regularly recognized the right of the Native Hawaiian



1 people to engage in customary and traditional practices on
2 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, commonly known as the
6 "Apology Resolution"). The Apology Resolution acknowledges that
7 the illegal overthrow of the Kingdom of Hawaii occurred with the
8 active participation of agents and citizens of the United
9 States, and further acknowledges that the Native Hawaiian people
10 never directly relinquished their claims to inherent sovereignty
11 to the United States as a people over their national lands,
12 either through the Kingdom of Hawaii or through a plebiscite or
13 referendum. The Apology Resolution expresses the commitment of
14 Congress to acknowledge the ramifications of the overthrow of
15 the Kingdom of Hawaii and urges the President to support
16 reconciliation efforts between the United States and Native
17 Hawaiians. Pursuant to the Apology Resolution, the United
18 States Departments of Justice and the Interior conducted
19 reconciliation hearings with the Native Hawaiian people in 1999
20 and issued a joint report in August 2000 entitled, "From Mauka
21 to Makai: The River of Justice Must Flow Freely", which
22 identified promoting the reorganization of a Native Hawaiian



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

7 In December 2010, the United States Departments of Justice
8 and the Interior reaffirmed the United States' support for the
9 Native Hawaiian Government Reorganization Act. This
10 reaffirmation recognized that Native Hawaiians are the only one
11 of the nation's three major indigenous groups who currently lack
12 a 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 for many additional
18 statutes benefitting Native Hawaiians such as the National
19 Historic Preservation Act, the Native Hawaiian Education Act,
20 the Native American Housing Assistance and Self-Determination
21 Act, and the Native American Graves Protection and Repatriation
22 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 legislature during the 2000 and 2001
11 sessions and subsequently by the governor's testimony in
12 Congress and other statements of support. Recognizing the
13 likelihood of a reorganized Native Hawaiian governing entity,
14 the State of Hawaii has also provided for the transfer of the
15 management and control of the island of Kahoolawe and its waters
16 to the sovereign Native Hawaiian entity.

17 The purpose of this Act is to recognize Native Hawaiians as
18 the only indigenous, aboriginal, "maoli" population of Hawaii.
19 It is also the State's desire to recognize a soon-to-be-
20 reorganized Native Hawaiian governing entity and to promote the
21 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:
- 10 (A) Is:
- 11 (i) An individual who is a descendant of the
12 aboriginal peoples inhabiting the Hawaiian
13 Islands, which peoples exercised sovereignty
14 and subsisted in the Hawaiian Islands, and
15 which peoples thereafter have continued to
16 reside in the Hawaiian Islands; or
- 17 (ii) An individual who is one of the indigenous,
18 native people of Hawaii and who was eligible
19 in 1921 for the programs authorized by the
20 Hawaiian Homes Commission Act, 1920, or a
21 direct lineal descendant of that individual;



1 (B) Wishes to participate in the organization of the
2 Native Hawaiian governing entity; and

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

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

9 (c) A vacancy on the commission shall not affect the
10 powers of the commission and shall be filled in the same manner
11 as the original appointment.

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

17 (e) The commission, without regard to chapter 76, may
18 appoint and terminate an executive director and other additional
19 personnel as are necessary to enable the commission to perform
20 the duties of the commission.

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



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

3 § -4 **Notice of qualified Native Hawaiian roll.** (a) The
4 commission shall publish notice of the certification of the
5 qualified Native Hawaiian roll, update the roll as necessary,
6 and publish notice of the updated roll of qualified Native
7 Hawaiians.

8 (b) The publication of the initial and updated rolls shall
9 serve as the basis for the eligibility of qualified Native
10 Hawaiians whose names are listed on the rolls to participate in
11 the organization of the Native Hawaiian governing entity.

12 § -5 **Interim council.** (a) After the publication of the
13 roll of qualified Native Hawaiians, the commission shall appoint
14 an interim council of nine members from the roll of qualified
15 Native Hawaiians to independently commence the organization of a
16 convention of qualified Native Hawaiians, established for the
17 purpose or organizing themselves.

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



1 § -6 **Dissolution of the Native Hawaiian roll commission.**

2 The governor shall dissolve the Native Hawaiian roll commission
3 after the interim council is appointed and the governor has
4 received notice from the interim council that it has organized
5 and is ready to commence the organization of a convention of
6 qualified Native Hawaiians.

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

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

20 (b) Consistent with the policies of the State of Hawaii,
21 the inherent powers and privileges of self-government of the
22 members of the qualified Native Hawaiian roll, as certified by



1 the Native Hawaiian roll commission, shall be acknowledged by
2 the State of Hawaii. These powers and privileges may be
3 modified by agreement with the State of Hawaii.

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

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

15 SECTION 4. The sum of \$ or so much thereof as
16 may be necessary for fiscal year 2011-2012 and the same sum or
17 so much thereof as may be necessary for fiscal year 2012-2013
18 for the purposes of this Act; provided that no additional funds
19 shall be appropriated for the purposes of this Act.

20 The sums appropriated shall be expended by the office of
21 Hawaiian affairs.



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

7 SECTION 6. This Act does not affect rights and duties that
8 matured, penalties that were incurred, and proceedings that were
9 begun before its effective date.

10 SECTION 7. This Act shall take effect upon approval.
11



Report Title:

Native Hawaiians; Qualified Native Hawaiian Roll; 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. (SD2)

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

