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# 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  
3 indigenous, aboriginal, maoli people of the State and are a  
4 distinct native community. From its inception, the State has  
5 had a special political and legal relationship with the Native  
6 Hawaiian people, and has enacted legislation for the betterment  
7 of their condition.

8           In section 5(f) of the 1959 Admission Act (An Act to  
9 Provide for the Admission of the State of Hawaii into the Union,  
10 Public Law 86-3), Congress created what is commonly known as the  
11 ceded lands trust. The public lands trust, consisting of lands,  
12 including submerged lands, natural resources, and the proceeds  
13 from the disposition or use of those lands that were purportedly  
14 ceded to the United States by the Republic of Hawaii, has five  
15 purposes, one of which is the betterment of the conditions of  
16 native Hawaiians.



1           At the 1978 Constitutional Convention, the State  
2 established the office of Hawaiian affairs, which was approved  
3 by the voters on November 7, 1978, and codified as article XII,  
4 sections 5 and 6 of the state constitution and in chapter 10,  
5 Hawaii Revised Statutes. The State's designation of the office  
6 of Hawaiian affairs as a trust vehicle to act on behalf of  
7 Native Hawaiians and Hawaiians until a Hawaiian governing entity  
8 could be reestablished reaffirmed the State's obligations to the  
9 Native Hawaiians.

10           The 1978 Constitutional Convention further amended the  
11 state constitution to protect all of the "rights, customarily  
12 and traditionally exercised for subsistence, cultural, and  
13 religious purposes and possessed by ahupua'a tenants who are  
14 descendants of Native Hawaiians who inhabited the Hawaiian  
15 Islands prior to 1778." See, Hawaii Constitution, article XII,  
16 section 7. Moreover, state law also specifically protects  
17 Native Hawaiians' ability to practice their traditional and  
18 customary rights. See, Hawaii Revised Statutes, sections 1-1  
19 and 7-1. The federal and state courts have recognized the right  
20 of Native Hawaiian people to engage in customary and traditional  
21 practices on public lands.



1 In 1993, Congress formally apologized to Native Hawaiians  
2 for the United States' role in the overthrow of the Kingdom of  
3 Hawaii. See, Public Law 103-150, 107 Stat. 1510, commonly known  
4 as the Apology Resolution. The Apology Resolution acknowledged  
5 that the illegal overthrow of the Hawaiian Kingdom occurred with  
6 the active participation of agents and citizens of the United  
7 States, and further acknowledged that Native Hawaiians never  
8 directly relinquished their claims to their inherent sovereignty  
9 as a people, or to their national lands, neither through the  
10 Hawaiian Kingdom, nor through a plebiscite nor referendum. The  
11 Apology Resolution expressed the commitment of Congress to  
12 acknowledge the ramifications of the United States' role against  
13 the Hawaiian Kingdom, and urged the President to support  
14 reconciliation efforts between the United States and Native  
15 Hawaiians. Subsequently, the United States Departments of  
16 Justice and the Interior conducted reconciliation hearings with  
17 Native Hawaiians, and in 1999, issued a joint report entitled,  
18 *From Mauka to Makai: The River of Justice Must Flow Freely*.  
19 The report identified promoting the reorganization of a Native  
20 Hawaiian government as a priority recommendation for continuing  
21 the process of reconciliation. To further reconciliation,  
22 Congress created the Office of Native Hawaiian Relations in the



1 Department of the Interior, to consult with Native Hawaiians on  
2 the reconciliation process.

3 In December 2010, the United States Departments of Justice  
4 and the Interior reaffirmed the United States' support for the  
5 Native Hawaiian Government Reorganization Act of 2010, commonly  
6 referred to as the Akaka bill. This reaffirmation recognized  
7 that Native Hawaiians are the only one of the nation's three  
8 major indigenous groups who currently lack a government-to-  
9 government relationship with the United States.

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

20 While the Native Hawaiian community is still in the process  
21 of reorganizing a government structure, Native Hawaiians have  
22 continued to maintain their separate identity as a single,



1 distinctly native political community. Through cultural,  
2 social, and political institutions, Native Hawaiians maintain  
3 their rights to self-determination, self-governance, and  
4 economic self-sufficiency.

5 The State of Hawaii has supported the reorganization of a  
6 Native Hawaiian governing entity with the Sovereignty Advisory  
7 Council, the Hawaiian Sovereignty Advisory Commission, the  
8 Hawaiian Sovereignty Elections Council, and the Native Hawaiian  
9 Vote. This led to the convening of the 'Aha Hawai'i 'Oiwi, the  
10 Native Hawaiian convention. Two resolutions supporting a Native  
11 Hawaiian governing entity were adopted by the legislature in  
12 2000 and 2001. Recognizing the likelihood of a reorganized  
13 Native Hawaiian governing entity, the State has also provided  
14 for the transfer of the management and control of the island of  
15 Kaho'olawe and its waters to the sovereign Native Hawaiian  
16 entity.

17 The purpose of this Act is to recognize Native Hawaiians as  
18 the indigenous, aboriginal, maoli population of Hawaii. It is  
19 the State's desire to support the continuing development of a  
20 reorganized Native Hawaiian governing entity and to promote  
21 federal recognition of Native Hawaiians. The legislature urges



1 the office of Hawaiian affairs to support and facilitate the  
2 process by which Native Hawaiians form that governing 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 culture,  
18 heritage, entitlements, health, education, and welfare.

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 who, prior to 1778,  
13 occupied and exercised sovereignty in the  
14 Hawaiian islands, the area that now  
15 constitutes the State of Hawaii; or

16 (ii) An individual who is one of the indigenous,  
17 native people of Hawaii and who was eligible  
18 in 1921 for the programs authorized by the  
19 Hawaiian Homes Commission Act, 1920, or a  
20 direct lineal descendant of that individual;

21 (B) Has maintained a significant cultural, social, or  
22 civic connection to the Native Hawaiian community



1                   and wishes to participate in the organization of  
2                   the 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 Chapter, 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 Native Hawaiian convention.** The publication of the  
13 roll of qualified Native Hawaiians, as provided in section  
14 -4, is intended to facilitate the process under which  
15 qualified Native Hawaiians may independently commence the  
16 organization of a convention of qualified Native Hawaiians,  
17 established for the purpose of organizing themselves.

18 **§ -6 Dissolution of the Native Hawaiian roll commission.**  
19 The governor shall dissolve the Native Hawaiian roll commission  
20 upon being informed by the Native Hawaiian roll commission that  
21 it has published notice of any updated roll of qualified Native



1 Hawaiians, as provided in section -4, and thereby completed  
2 its work.

3       **§ -7 No diminishment of rights or privileges.** Nothing  
4 contained in this chapter shall diminish, alter, or amend any  
5 existing rights or privileges enjoyed by the Native Hawaiian  
6 people that are not inconsistent with this chapter.

7       **§ -8 Reaffirmation of delegation of federal authority;**  
8 **governmental authority and power; negotiations.** (a) The  
9 delegation by the United States of authority to the State of  
10 Hawaii to address the conditions of the indigenous, native  
11 people of Hawaii contained in the Act entitled "An Act to  
12 Provide for the Admission of the State of Hawaii into the  
13 Union", approved March 18, 1959 (Public Law 86-3), is  
14 reaffirmed.

15       (b) Consistent with the policies of the State of Hawaii,  
16 the inherent powers and privileges of self-government of the  
17 members of the qualified Native Hawaiian roll, as certified by  
18 the Native Hawaiian roll commission, shall be acknowledged by  
19 the State of Hawaii. These powers and privileges may be  
20 modified by agreement with the State of Hawaii.

21       **§ -9 Disclaimer.** Nothing in this chapter is intended to  
22 serve as a settlement of any claims against the State of Hawaii,



1 or affect the rights of the Native Hawaiian people under state,  
2 federal, or international law."

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

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.

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. This Act does not affect rights and duties that  
2 matured, penalties that were incurred, and proceedings that were  
3 begun before its effective date.

4 SECTION 7. This Act shall take effect on January 7, 2059.



**Report Title:**

Native Hawaiians; Qualified Native Hawaiian Roll; Appropriation

**Description:**

Establishes a commission to prepare and maintain a roll of qualified Native Hawaiians; requires the commission to publish the roll for the purpose of organizing a convention of qualified Native Hawaiians; requires the governor to dissolve the commission after the commission publishes notice of the updated roll; appropriates unspecified funds. Effective January 7, 2059. (SB1 HD2)

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

