
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 the State has never
2 explicitly acknowledged that Native Hawaiians are the only
3 indigenous, aboriginal, maoli population of Hawaii.

4 Native Hawaiians are the indigenous, native people of the
5 Hawaiian archipelago and are a distinctly native community.

6 From its inception, the State has had a special political and
7 legal relationship with the Native Hawaiian people and has
8 continually enacted legislation for the betterment of their
9 condition.

10 In section 5(f) of the Admission Act of 1959, Congress
11 created what is commonly known as the ceded lands trust. The
12 ceded lands trust, consisting of lands, including submerged
13 lands, natural resources, and the proceeds from the disposition
14 or use of those lands - purportedly ceded to the United States
15 by the Republic of Hawaii - is for five purposes, one of which
16 remains the betterment of the conditions of native Hawaiians.

17 At the 1978 Constitutional Convention, the delegates
18 proposed a constitutional amendment to establish the office of



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

9 Delegates to the 1978 Constitutional Convention further
10 proposed to amend the Hawaii State Constitution to affirm
11 protection of all "rights, customarily and traditionally
12 exercised for subsistence, cultural and religious purposes and
13 possessed by ahupua'a tenants who are descendants of native
14 Hawaiians who inhabited the Hawaiian Islands prior to
15 1778 . . ." Moreover, state law also specifically protects
16 Hawaiians' ability to practice their traditional and customary
17 rights. The federal and state courts have continuously
18 recognized the right of the Native Hawaiian people to engage in
19 customary and traditional practices on public lands.

20 In 1993, the United States formally apologized to Native
21 Hawaiians for the United States' role in the overthrow of the
22 Hawaiian Kingdom through Public Law 103-150 (107 Stat. 1510),



1 commonly known as the "Apology Resolution". The Apology
2 Resolution acknowledges that the illegal overthrow of the
3 Hawaiian Kingdom occurred with the active participation of
4 agents and citizens of the United States and further
5 acknowledges that the Native Hawaiian people never directly
6 relinquished to the United States their claims to their inherent
7 sovereignty as a people over their national lands, either
8 through a Treaty of Annexation or through a plebiscite or
9 referendum. The Apology Resolution expresses the commitment of
10 Congress and the President to acknowledge the ramifications of
11 the overthrow of the Hawaiian Kingdom and to support
12 reconciliation efforts between the United States and Native
13 Hawaiians. Pursuant to the Apology Resolution, the United
14 States Departments of Justice and the Interior conducted
15 reconciliation hearings with the Native Hawaiian people in 1999
16 and issued a joint report entitled, "From Mauka to Makai: The
17 River of Justice Must Flow Freely", which identified promoting
18 the reorganization of a Native Hawaiian government as a priority
19 recommendation for continuing the process of reconciliation. To
20 further this process of reconciliation, Congress created the
21 Office of Native Hawaiian Relations within the Department of the



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

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

10 The United States became a charter member of the United
11 Nations in 1945. The United States submitted Hawaii as a
12 territory of the United States to be listed as a non-self-
13 governing territory entitled to self-government under Article
14 73, Charter of the United Nations, via United Nations General
15 Assembly Resolution 66 (1946), although it was later de-listed
16 at the time of statehood. Also in December 2010, the United
17 States endorsed the United Nations Declaration on the Rights of
18 Indigenous Peoples, which acknowledged, among other things:

19 **ARTICLE 3**

20 Indigenous peoples have the right to self-determination.
21 By virtue of that right they freely determine their
22 political status and freely pursue their economic, social
23 and cultural development.



1 The United States' endorsement of the United Nations
2 Declaration on the Rights of Indigenous Peoples included
3 recognition of its support not only for the Native Hawaiian
4 Government Reorganization Act of 2010 but also many additional
5 laws for Native Hawaiians such as the National Historic
6 Preservation Act, the Native Hawaiian Education Act, the Native
7 American Housing Assistance and Self-Determination Act, and the
8 Native American Graves Protection and Repatriation Act.

9 Native Hawaiians have continued to maintain their separate
10 identity as a single, distinctly native political community
11 through cultural, social, and political institutions and have
12 continued to maintain their rights to self-determination,
13 self-governance, and economic self-sufficiency.

14 The State has supported the reorganization of a Native
15 Hawaiian governing entity. It has supported the Sovereignty
16 Advisory Council, the Hawaiian Sovereignty Advisory Commission,
17 the Hawaiian Sovereignty Elections Council, and Native Hawaiian
18 Vote, and the convening of the Aha Hawai'i 'Oiwī (the Native
19 Hawaiian Convention). The legislature has adopted various
20 resolutions during its regular sessions throughout the 1990s and
21 2000s. The Governor has testified before Congress regarding the
22 State's support for Native Hawaiians as the indigenous people of



1 Hawaii with the right to self-government. Recognizing the
2 likelihood of a reorganized Native Hawaiian governing entity,
3 the State has also provided for the transfer of the management
4 and control of the island of Kahoolawe and its waters to the
5 sovereign Native Hawaiian entity upon its recognition by the
6 United States and the State of Hawaii.

7 The purpose of this Act is to recognize Native Hawaiians as
8 the only indigenous, aboriginal, maoli population of Hawaii. It
9 is also the State's desire to support the continuing development
10 of a reorganized Native Hawaiian governing entity and,
11 ultimately, the federal recognition of Native Hawaiians. The
12 legislature urges the office of Hawaiian affairs to continue to
13 support the self-determination process by Native Hawaiians in
14 the formation of their chosen governmental entity.

15 SECTION 2. The Hawaii Revised Statutes is amended by
16 adding a new chapter to be appropriately designated and to read
17 as follows:

18 **"CHAPTER**

19 **NATIVE HAWAIIAN RECOGNITION**

20 § -1 **Statement of recognition.** The Native Hawaiian
21 people are hereby recognized as the only indigenous, aboriginal,
22 maoli people of Hawaii.



1 § -2 **Purpose.** The purpose of this chapter is to provide
2 for and to implement the recognition of the Native Hawaiian
3 people by means and methods that will facilitate their
4 self-governance, including the establishment of, or the
5 amendment to, programs, entities, and other matters pursuant to
6 law that relate, or affect ownership, possession, or use of
7 lands by the Native Hawaiian people, and by further promoting
8 their culture, heritage, entitlements, health, education, and
9 welfare.

10 § -3 **Native Hawaiian roll commission.** (a) There is
11 established a five-member Native Hawaiian roll commission within
12 the office of Hawaiian affairs for administrative purposes only.

13 The Native Hawaiian roll commission shall be responsible for:

14 (1) Preparing and maintaining a roll of qualified Native
15 Hawaiians; and

16 (2) Certifying that the individuals on the roll of
17 qualified Native Hawaiians meet the definition of
18 qualified Native Hawaiians. For purposes of
19 establishing the roll, a "qualified Native Hawaiian"
20 means an individual who the commission determines has
21 satisfied the following criteria and who makes a
22 written statement certifying that the individual:



- 1 (A) Is:
 - 2 (i) An individual who is a descendant of the
 - 3 aboriginal peoples who, prior to 1778,
 - 4 occupied and exercised sovereignty in the
 - 5 Hawaiian islands, the area that now
 - 6 constitutes the State of Hawaii; or
 - 7 (ii) An individual who is one of the indigenous,
 - 8 native people of Hawaii and who was eligible
 - 9 in 1921 for the programs authorized by the
 - 10 Hawaiian Homes Commission Act, 1920, or a
 - 11 direct lineal descendant of that individual;
- 12 (B) Has maintained a significant cultural, social, or
- 13 civic connection to the Native Hawaiian community
- 14 and wishes to participate in the organization of
- 15 the Native Hawaiian governing entity; and
- 16 (C) Is eighteen years of age or older.
- 17 (b) No later than one hundred eighty days after the
- 18 effective date of this chapter, the governor shall appoint the
- 19 members of the Native Hawaiian roll commission from nominations
- 20 submitted by qualified Native Hawaiians and qualified Native
- 21 Hawaiian membership organizations. For the purposes of this
- 22 subsection, a qualified Native Hawaiian membership organization



1 includes an organization that, on the effective date of this
2 Act, has been in existence for at least ten years, and whose
3 purpose has been and is the betterment of the conditions of the
4 Native Hawaiian people.

5 In selecting the five members from nominations submitted by
6 qualified Native Hawaiians and qualified Native Hawaiian
7 membership organizations, the governor shall appoint the members
8 as follows:

- 9 (1) One member shall reside in the county of Hawaii;
- 10 (2) One member shall reside in the city and county of
11 Honolulu;
- 12 (3) One member shall reside in the county of Kauai;
- 13 (4) One member shall reside in the county of Maui; and
- 14 (5) One member shall serve at-large.

15 (c) A vacancy on the commission shall not affect the
16 powers of the commission and shall be filled in the same manner
17 as the original appointment.

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



1 (e) The commission, without regard to chapter 76, may
2 appoint and terminate an executive director and other additional
3 personnel as are necessary to enable the commission to perform
4 the duties of the commission.

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

7 (g) The commission may procure temporary and intermittent
8 services.

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

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

18 § -5 **Native Hawaiian convention.** The publication of the
19 roll of qualified Native Hawaiians, as provided in section

20 -4, is intended to facilitate the process under which
21 qualified Native Hawaiians may independently commence the



1 organization of a convention of qualified Native Hawaiians,
2 established for the purpose of organizing themselves.

3 **§ -6 Dissolution of the Native Hawaiian roll commission.**

4 The governor shall dissolve the Native Hawaiian roll commission
5 upon being informed by the Native Hawaiian roll commission that
6 it has published notice of any updated roll of qualified Native
7 Hawaiians, as provided in section -4, and thereby completed
8 its work.

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

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

21 (b) Consistent with the policies of the State of Hawaii,
22 the members of the qualified Native Hawaiian roll, and their



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

14 SECTION 4. Funding for the Native Hawaiian roll commission
15 shall be provided by the office of Hawaiian affairs.

16 SECTION 5. The Native Hawaiian roll commission, in
17 cooperation with the office of Hawaiian affairs, shall report to
18 the governor and the legislature no later than twenty days prior
19 to the convening of the regular session of 2012, on the status
20 of the preparation of a roll of qualified Native Hawaiians,
21 expenditures related to the responsibilities of the Native



1 Hawaiian roll commission, and any concerns or recommendations as
2 deemed appropriate by the Native Hawaiian roll commission.

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

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

12 SECTION 8. This Act shall take effect upon its approval.



Report Title:

Native Hawaiians; Recognition; Native Hawaiian Roll Commission

Description:

Establishes a five-member Native Hawaiian roll commission in the office of Hawaiian affairs for administrative purposes to prepare and maintain a roll of qualified Native Hawaiians; requires the commission to publish the roll to facilitate commencement of a convention for the purpose of organization; requires the governor to dissolve the commission after publication of the roll; requires the office of Hawaiian affairs to fund expenses of the Native Hawaiian roll commission; requires a report to the governor and legislature prior to the regular session of 2012. (CD1)

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

