AMENDMENT NO. ___________________________ Calendar No. __________

Purpose: To provide a complete substitute.


S. 147

To express the policy of the United States regarding the United States relationship with Native Hawaiians and to provide a process for the recognition by the United States of the Native Hawaiian governing entity.

Referred to the Committee on __________________________ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended to be proposed by __________________________

Viz:

1 Strike all after the enacting clause and insert the following:

2

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the “Native Hawaiian Government Reorganization Act of 2005”.

5

6 SEC. 2. FINDINGS.

7 Congress finds that—

8 (1) the Constitution vests Congress with the authority to address the conditions of the indigenous, native people of the United States;
(2) Native Hawaiians, the native people of the Hawaiian archipelago that is now part of the United States, are indigenous, native people of the United States;

(3) the United States has a special political and legal relationship to promote the welfare of the native people of the United States, including Native Hawaiians;

(4) under the treaty making power of the United States, Congress exercised its constitutional authority to confirm treaties between the United States and the Kingdom of Hawaii, and from 1826 until 1893, the United States—

(A) recognized the sovereignty of the Kingdom of Hawaii;

(B) accorded full diplomatic recognition to the Kingdom of Hawaii; and

(C) entered into treaties and conventions with the Kingdom of Hawaii to govern commerce and navigation in 1826, 1842, 1849, 1875, and 1887;

(5) pursuant to the Hawaiian Homes Commission Act, 1920 (42 Stat. 108, chapter 42), the United States set aside approximately 203,500 acres of land to address the conditions of Native Hawai-
ians in the Federal territory that later became the State of Hawaii;

(6) by setting aside 203,500 acres of land for Native Hawaiian homesteads and farms, the Hawaiian Homes Commission Act assists the members of the Native Hawaiian community in maintaining distinct native settlements throughout the State of Hawaii;

(7) approximately 6,800 Native Hawaiian families reside on the Hawaiian Home Lands and approximately 18,000 Native Hawaiians who are eligible to reside on the Hawaiian Home Lands are on a waiting list to receive assignments of Hawaiian Home Lands;

(8)(A) in 1959, as part of the compact with the United States admitting Hawaii into the Union, Congress established a public trust (commonly known as the “ceded lands trust”), for 5 purposes, 1 of which is the betterment of the conditions of Native Hawaiians;

(B) the public trust consists of lands, including submerged lands, natural resources, and the revenues derived from the lands; and

(C) the assets of this public trust have never been completely inventoried or segregated;
Native Hawaiians have continuously sought access to the ceded lands in order to establish and maintain native settlements and distinct native communities throughout the State;

(10) the Hawaiian Home Lands and other ceded lands provide an important foundation for the ability of the Native Hawaiian community to maintain the practice of Native Hawaiian culture, language, and traditions, and for the survival and economic self-sufficiency of the Native Hawaiian people;

(11) Native Hawaiians continue to maintain other distinctly native areas in Hawaii;

(12) on November 23, 1993, Public Law 103–150 (107 Stat. 1510) (commonly known as the “Apology Resolution”) was enacted into law, extending an apology on behalf of the United States to the native people of Hawaii for the United States’ role in the overthrow of the Kingdom of Hawaii;

(13) the Apology Resolution acknowledges that the overthrow of the Kingdom of Hawaii occurred with the active participation of agents and citizens of the United States and further acknowledges that the Native Hawaiian people never directly relinquished to the United States their claims to their inherent sovereignty as a people over their national
lands, either through the Kingdom of Hawaii or
through a plebiscite or referendum;

(14) the Apology Resolution expresses the com-
mitment of Congress and the President—

(A) to acknowledge the ramifications of the
overthrow of the Kingdom of Hawaii;

(B) to support reconciliation efforts be-
tween the United States and Native Hawaiians;
and

(C) to consult with Native Hawaiians on
the reconciliation process as called for in the
Apology Resolution;

(15) despite the overthrow of the government of
the Kingdom of Hawaii, Native Hawaiians have con-
tinued to maintain their separate identity as a single
distinct native community through cultural, social,
and political institutions, and to give expression to
their rights as native people to self-determination,
self-governance, and economic self-sufficiency;

(16) Native Hawaiians have also given expres-
sion to their rights as native people to self-deter-
mination, self-governance, and economic self-suffi-
ciency—
(A) through the provision of governmental services to Native Hawaiians, including the provision of—

(i) health care services;

(ii) educational programs;

(iii) employment and training programs;

(iv) economic development assistance programs;

(v) children’s services;

(vi) conservation programs;

(vii) fish and wildlife protection;

(viii) agricultural programs;

(ix) native language immersion programs;

(x) native language immersion schools from kindergarten through high school;

(xi) college and master’s degree programs in native language immersion instruction; and

(xii) traditional justice programs, and

(B) by continuing their efforts to enhance Native Hawaiian self-determination and local control;
(17) Native Hawaiians are actively engaged in
Native Hawaiian cultural practices, traditional agri-
cultural methods, fishing and subsistence practices,
maintenance of cultural use areas and sacred sites,
protection of burial sites, and the exercise of their
traditional rights to gather medicinal plants and
herbs, and food sources;

(18) the Native Hawaiian people wish to pre-
serve, develop, and transmit to future generations of
Native Hawaiians their lands and Native Hawaiian
political and cultural identity in accordance with
their traditions, beliefs, customs and practices, lan-
guage, and social and political institutions, to con-
trol and manage their own lands, including ceded
lands, and to achieve greater self-determination over
their own affairs;

(19) this Act provides a process within the
framework of Federal law for the Native Hawaiian
people to exercise their inherent rights as a distinct,
indigenous, native community to reorganize a single
Native Hawaiian governing entity for the purpose of
giving expression to their rights as native people to
self-determination and self-governance;

(20) Congress—
(A) has declared that the United States has a special political and legal relationship for the welfare of the native peoples of the United States, including Native Hawaiians;

(B) has identified Native Hawaiians as a distinct group of indigenous, native people of the United States within the scope of its authority under the Constitution, and has enacted scores of statutes on their behalf; and

(C) has delegated broad authority to the State of Hawaii to administer some of the United States’ responsibilities as they relate to the Native Hawaiian people and their lands;

(21) the United States has recognized and reaffirmed the special political and legal relationship with the Native Hawaiian people through the enactment of the Act entitled, “An Act to provide for the admission of the State of Hawaii into the Union”, approved March 18, 1959 (Public Law 86–3; 73 Stat. 4), by—

(A) ceding to the State of Hawaii title to the public lands formerly held by the United States, and mandating that those lands be held as a public trust for 5 purposes, 1 of which is
for the betterment of the conditions of Native Hawaiians; and

(B) transferring the United States’ responsibility for the administration of the Hawaiian Home Lands to the State of Hawaii, but retaining the exclusive right of the United States to consent to any actions affecting the lands included in the trust and any amendments to the Hawaiian Homes Commission Act, 1920 (42 Stat. 108, chapter 42) that are enacted by the legislature of the State of Hawaii affecting the beneficiaries under the Act;

(22) the United States has continually recognized and reaffirmed that—

(A) Native Hawaiians have a cultural, historic, and land-based link to the aboriginal, indigenous, native people who exercised sovereignty over the Hawaiian Islands;

(B) Native Hawaiians have never relinquished their claims to sovereignty or their sovereign lands;

(C) the United States extends services to Native Hawaiians because of their unique status as the indigenous, native people of a once-sovereign nation with whom the United States
has a special political and legal relationship; and

(D) the special relationship of American Indians, Alaska Natives, and Native Hawaiians to the United States arises out of their status as aboriginal, indigenous, native people of the United States; and

(23) the State of Hawaii supports the reaffirmation of the special political and legal relationship between the Native Hawaiian governing entity and the United States as evidenced by 2 unanimous resolutions enacted by the Hawaii State Legislature in the 2000 and 2001 sessions of the Legislature and by the testimony of the Governor of the State of Hawaii before the Committee on Indian Affairs of the Senate on February 25, 2003, and March 1, 2005.

SEC. 3. DEFINITIONS.

In this Act:

(1) ABORIGINAL, INDIGENOUS, NATIVE PEOPLE.—The term “aboriginal, indigenous, native people” means people whom Congress has recognized as the original inhabitants of the lands that later became part of the United States and who exercised sovereignty in the areas that later became part of the United States.
(2) ADULT MEMBER.—The term “adult member” means a Native Hawaiian who has attained the age of 18 and who elects to participate in the reorganization of the Native Hawaiian governing entity.

(3) APOLOGY RESOLUTION.—The term “Apology Resolution” means Public Law 103–150 (107 Stat. 1510), a Joint Resolution extending an apology to Native Hawaiians on behalf of the United States for the participation of agents of the United States in the January 17, 1893, overthrow of the Kingdom of Hawaii.

(4) COMMISSION.—The term “commission” means the Commission established under section 7(b) to provide for the certification that those adult members of the Native Hawaiian community listed on the roll meet the definition of Native Hawaiian set forth in paragraph (10).

(5) COUNCIL.—The term “council” means the Native Hawaiian Interim Governing Council established under section 7(e)(2).

(6) INDIAN PROGRAM OR SERVICE.—

(A) IN GENERAL.—The term “Indian program or service” means any federally funded or authorized program or service provided to an Indian tribe (or member of an Indian tribe) be-
cause of the status of the members of the Indian tribe as Indians.

(B) Inclusions.—The term “Indian program or service” includes a program or service provided by the Bureau of Indian Affairs, the Indian Health Service, or any other Federal agency.

(7) Indian tribe.—The term “Indian tribe” has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(8) Indigenous, native people.—The term “indigenous, native people” means the lineal descendants of the aboriginal, indigenous, native people of the United States.

(9) Interagency Coordinating Group.—The term “Interagency Coordinating Group” means the Native Hawaiian Interagency Coordinating Group established under section 6.

(10) Native Hawaiian.—

(A) In general.—Subject to subparagraph (B), for the purpose of establishing the roll authorized under section 7(e)(1) and before the reaffirmation of the special political and legal relationship between the United States
and the Native Hawaiian governing entity, the term "Native Hawaiian" means—

(i) an individual who is 1 of the indigenous, native people of Hawaii and who is a direct lineal descendant of the aboriginal, indigenous, native people who—

(I) resided in the islands that now comprise the State of Hawaii on or before January 1, 1893; and

(II) occupied and exercised sovereignty in the Hawaiian archipelago, including the area that now constitutes the State of Hawaii; or

(ii) an individual who is 1 of the indigenous, native people of Hawaii and who was eligible in 1921 for the programs authorized by the Hawaiian Homes Commission Act (42 Stat. 108, chapter 42) or a direct lineal descendant of that individual.

(B) NO EFFECT ON OTHER DEFINITIONS.—Nothing in this paragraph affects the definition of the term “Native Hawaiian” under any other Federal or State law (including a regulation).
(11) Native Hawaiian Governing Entity.—
The term “Native Hawaiian Governing Entity”
means the governing entity organized by the Native
Hawaiian people pursuant to this Act.

(12) Native Hawaiian Program or Service.—The term “Native Hawaiian program or service”
means any program or service provided to Native Hawaiians because of their status as Native Hawaiians.

(13) Office.—The term “Office” means the
United States Office for Native Hawaiian Relations
established by section 5(a).

(14) Secretary.—The term “Secretary”
means the Secretary of the Interior.

(15) Special Political and Legal Relationship.—The term “special political and legal relationship”
shall refer, except where differences are
specifically indicated elsewhere in the Act, to the
type of and nature of relationship the United States
has with the several federally recognized Indian tribes.

SEC. 4. UNITED STATES POLICY AND PURPOSE.

(a) Policy.—The United States reaffirms that—
(1) Native Hawaiians are a unique and distinct, indigenous, native people with whom the United States has a special political and legal relationship;

(2) the United States has a special political and legal relationship with the Native Hawaiian people which includes promoting the welfare of Native Hawaiians;

(3) Congress possesses the authority under the Constitution, including but not limited to Article I, section 8, clause 3, to enact legislation to address the conditions of Native Hawaiians and has exercised this authority through the enactment of—

(A) the Hawaiian Homes Commission Act, 1920 (42 Stat. 108, chapter 42);

(B) the Act entitled “An Act to provide for the admission of the State of Hawaii into the Union”, approved March 18, 1959 (Public Law 86–3, 73 Stat. 4); and

(C) more than 150 other Federal laws addressing the conditions of Native Hawaiians;

(4) Native Hawaiians have—

(A) an inherent right to autonomy in their internal affairs;

(B) an inherent right of self-determination and self-governance;
(C) the right to reorganize a Native Hawaiian governing entity; and

(D) the right to become economically self-sufficient; and

(5) the United States shall continue to engage in a process of reconciliation and political relations with the Native Hawaiian people.

(b) PURPOSE.—The purpose of this Act is to provide a process for the reorganization of the single Native Hawaiian governing entity and the reaffirmation of the special political and legal relationship between the United States and that Native Hawaiian governing entity for purposes of continuing a government-to-government relationship.

SEC. 5. UNITED STATES OFFICE FOR NATIVE HAWAIIAN RELATIONS.

(a) ESTABLISHMENT.—There is established within the Office of the Secretary, the United States Office for Native Hawaiian Relations.

(b) DUTIES.—The Office shall—

(1) continue the process of reconciliation with the Native Hawaiian people in furtherance of the Apology Resolution;

(2) upon the reaffirmation of the special political and legal relationship between the single Native
Hawaiian governing entity and the United States, effectuate and coordinate the special political and legal relationship between the Native Hawaiian governing entity and the United States through the Secretary, and with all other Federal agencies;

(3) fully integrate the principle and practice of meaningful, regular, and appropriate consultation with the Native Hawaiian governing entity by providing timely notice to, and consulting with, the Native Hawaiian people and the Native Hawaiian governing entity before taking any actions that may have the potential to significantly affect Native Hawaiian resources, rights, or lands;

(4) consult with the Interagency Coordinating Group, other Federal agencies, and the State of Hawaii on policies, practices, and proposed actions affecting Native Hawaiian resources, rights, or lands; and

(5) prepare and submit to the Committee on Indian Affairs and the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives an annual report detailing the activities of the Interagency Coordinating Group that are undertaken with respect to the continuing process of reconciliation and
to effect meaningful consultation with the Native Hawaiian governing entity and providing recommendations for any necessary changes to Federal law or regulations promulgated under the authority of Federal law.

(c) Applicability to Department of Defense.—This section shall have no applicability to the Department of Defense or to any agency or component of the Department of Defense, but the Secretary of Defense may designate 1 or more officials as liaison to the Office.

SEC. 6. NATIVE HAWAIIAN INTERAGENCY COordinating GROUP.

(a) Establishment.—In recognition that Federal programs authorized to address the conditions of Native Hawaiians are largely administered by Federal agencies other than the Department of the Interior, there is established an interagency coordinating group to be known as the “Native Hawaiian Interagency Coordinating Group”.

(b) Composition.—The Interagency Coordinating Group shall be composed of officials, to be designated by the President, from—

(1) each Federal agency that administers Native Hawaiian programs, establishes or implements policies that affect Native Hawaiians, or whose ac-
tions may significantly or uniquely impact Native Hawaiian resources, rights, or lands; and

(2) the Office.

(c) LEAD AGENCY.—

(1) IN GENERAL.—The Department of the Interior shall serve as the lead agency of the Interagency Coordinating Group.

(2) MEETINGS.—The Secretary shall convene meetings of the Interagency Coordinating Group.

(d) DUTIES.—The Interagency Coordinating Group shall—

(1) coordinate Federal programs and policies that affect Native Hawaiians or actions by any agency or agencies of the Federal Government that may significantly or uniquely affect Native Hawaiian resources, rights, or lands;

(2) consult with the Native Hawaiian governing entity, through the coordination referred to in section 6(d)(1), but the consultation obligation established in this provision shall apply only after the satisfaction of all of the conditions referred to in section 7(c)(6); and

(3) ensure the participation of each Federal agency in the development of the report to Congress authorized in section 5(b)(5).
(c) **Applicability to Department of Defense.**—This section shall have no applicability to the Department of Defense or to any agency or component of the Department of Defense, but the Secretary of Defense may designate 1 or more officials as liaison to the Interagency Coordinating Group.

**SEC. 7. PROCESS FOR THE REORGANIZATION OF THE NATIVE HAWAIIAN GOVERNING ENTITY AND THE REAFFIRMATION OF THE SPECIAL POLITICAL AND LEGAL RELATIONSHIP BETWEEN THE UNITED STATES AND THE NATIVE HAWAIIAN GOVERNING ENTITY.**

(a) **Recognition of the Native Hawaiian Governing Entity.**—The right of the Native Hawaiian people to reorganize the single Native Hawaiian governing entity to provide for their common welfare and to adopt appropriate organic governing documents is recognized by the United States.

(b) **Commission.**—

(1) **In general.**—There is authorized to be established a Commission to be composed of 9 members for the purposes of—

(A) preparing and maintaining a roll of the adult members of the Native Hawaiian community who elect to participate in the reorganiza-
tion of the single Native Hawaiian governing entity; and

(B) certifying that the adult members of the Native Hawaiian community proposed for inclusion on the roll meet the definition of Native Hawaiian in section 3(10).

(2) Membership.—

(A) Appointment.—

(i) In general.—Not later than 180 days after the date of enactment of this Act, the Secretary shall appoint the members of the Commission in accordance with subparagraph (B).

(ii) Consideration.—In making an appointment under clause (i), the Secretary may take into consideration a recommendation made by any Native Hawaiian organization.

(B) Requirements.—Each member of the Commission shall demonstrate, as determined by the Secretary—

(i) not less than 10 years of experience in the study and determination of Native Hawaiian genealogy; and
(ii) an ability to read and translate
into English documents written in the Ha-
waiian language.

(C) VACANCIES.—A vacancy on the Com-
mission—

(i) shall not affect the powers of the
Commission; and

(ii) shall be filled in the same manner
as the original appointment.

(3) EXPENSES.—Each member of the Commiss-
ion shall be allowed travel expenses, including per
diem in lieu of subsistence, at rates authorized for
employees of agencies under subchapter I of chapter
57 of title 5, United States Code, while away from
their homes or regular places of business in the per-
formance of services for the Commission.

(4) DUTIES.—The Commission shall—

(A) prepare and maintain a roll of the
adult members of the Native Hawaiian commu-
nity who elect to participate in the reorganiza-
tion of the Native Hawaiian governing entity;
and

(B) certify that each of the adult members
of the Native Hawaiian community proposed for
inclusion on the roll meets the definition of Na-
tive Hawaiian in section 3(10).

(5) STAFF.—

(A) IN GENERAL.—The Commission may, without regard to the civil service laws (includ-
ing regulations), appoint and terminate an exec-
utive director and such other additional per-
sonnel as are necessary to enable the Commiss-
sion to perform the duties of the Commission.

(B) COMPENSATION.—

(i) IN GENERAL.—Except as provided in clause (ii), the Commission may fix the compensation of the executive director and other personnel without regard to the pro-
visions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates.

(ii) MAXIMUM RATE OF PAY.—The rate of pay for the executive director and other personnel shall not exceed the rate payable for level V of the Executive Sched-
ule under section 5316 of title 5, United States Code.
(6) Detail of Federal Government Employees.—

(A) In General.—An employee of the Federal Government may be detailed to the Commission without reimbursement.

(B) Civil Service Status.—The detail of the employee shall be without interruption or loss of civil service status or privilege.

(7) Procurement of Temporary and Intermittent Services.—The Commission may procure temporary and intermittent services in accordance with section 3109(b) of title 5, United States Code, at rates for individuals that do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of that title.

(8) Expiration.—The Secretary shall dissolve the Commission upon the reaffirmation of the special political and legal relationship between the Native Hawaiian governing entity and the United States.

(c) Process for the Reorganization of the Native Hawaiian Governing Entity.—

(1) Roll.—
(A) CONTENTS.—The roll shall include the names of the adult members of the Native Hawaiian community who elect to participate in the reorganization of the Native Hawaiian governing entity and are certified to be Native Hawaiian as defined in section 3(10) by the Commission.

(B) FORMATION OF ROLL.—Each adult member of the Native Hawaiian community who elects to participate in the reorganization of the Native Hawaiian governing entity shall submit to the Commission documentation in the form established by the Commission that is sufficient to enable the Commission to determine whether the individual meets the definition of Native Hawaiian in section 3(10).

(C) DOCUMENTATION.—The Commission shall—

(i) identify the types of documentation that may be submitted to the Commission that would enable the Commission to determine whether an individual meets the definition of Native Hawaiian in section 3(10);
(ii) establish a standard format for the submission of documentation; and

(iii) publish information related to clauses (i) and (ii) in the Federal Register.

(D) CONSULTATION.—In making determinations that each of the adult members of the Native Hawaiian community proposed for inclusion on the roll meets the definition of Native Hawaiian in section 3(10), the Commission may consult with Native Hawaiian organizations, agencies of the State of Hawaii including but not limited to the Department of Hawaiian Home Lands, the Office of Hawaiian Affairs, and the State Department of Health, and other entities with expertise and experience in the determination of Native Hawaiian ancestry and lineal descendancy.

(E) CERTIFICATION AND SUBMITTAL OF ROLL TO SECRETARY.—The Commission shall—

(i) submit the roll containing the names of the adult members of the Native Hawaiian community who meet the definition of Native Hawaiian in section 3(10) to the Secretary within two years from the
date on which the Commission is fully composed; and

(ii) certify to the Secretary that each of the adult members of the Native Hawaiian community proposed for inclusion on the roll meets the definition of Native Hawaiian in section 3(10).

(F) Publication.—Upon certification by the Commission to the Secretary that those listed on the roll meet the definition of Native Hawaiian in section 3(10), the Secretary shall publish the roll in the Federal Register.

(G) Appeal.—The Secretary may establish a mechanism for an appeal for any person whose name is excluded from the roll who claims to meet the definition of Native Hawaiian in section 3(10) and to be 18 years of age or older.

(H) Publication; Update.—The Secretary shall—

(i) publish the roll regardless of whether appeals are pending;

(ii) update the roll and the publication of the roll on the final disposition of any appeal; and
(iii) update the roll to include any Na-
tive Hawaiian who has attained the age of
18 and who has been certified by the Com-
mission as meeting the definition of Native
Hawaiian in section 3(10) after the initial
publication of the roll or after any subse-
quent publications of the roll.

(I) FAILURE TO ACT.—If the Secretary
fails to publish the roll, not later than 90 days
after the date on which the roll is submitted to
the Secretary, the Commission shall publish the
roll notwithstanding any order or directive
issued by the Secretary or any other official of
the Department of the Interior to the contrary.

(J) EFFECT OF PUBLICATION.—The publi-
cation of the initial and updated roll shall serve
as the basis for the eligibility of adult members
of the Native Hawaiian community whose
names are listed on those rolls to participate in
the reorganization of the Native Hawaiian gov-
erning entity.

(2) ORGANIZATION OF THE NATIVE HAWAIIAN
INTERIM GOVERNING COUNCIL.—
(A) ORGANIZATION.—The adult members of the Native Hawaiian community listed on the roll published under this section may—

(i) develop criteria for candidates to be elected to serve on the Native Hawaiian Interim Governing Council;

(ii) determine the structure of the Council; and

(iii) elect members from individuals listed on the roll published under this subsection to the Council.

(B) POWERS.—

(i) IN GENERAL.—The Council—

(I) may represent those listed on the roll published under this section in the implementation of this Act; and

(II) shall have no powers other than powers given to the Council under this Act.

(ii) FUNDING.—The Council may enter into a contract with, or obtain a grant from, any Federal or State agency to carry out clause (iii).

(iii) ACTIVITIES.—
(I) **IN GENERAL.**—The Council may conduct a referendum among the adult members of the Native Hawaiian community listed on the roll published under this subsection for the purpose of determining the proposed elements of the organic governing documents of the Native Hawaiian governing entity, including but not limited to—

(aa) the proposed criteria for citizenship of the Native Hawaiian governing entity;

(bb) the proposed powers and authorities to be exercised by the Native Hawaiian governing entity, as well as the proposed privileges and immunities of the Native Hawaiian governing entity;

(cc) the proposed civil rights and protection of the rights of the citizens of the Native Hawaiian governing entity and all persons affected by the exercise of
31 governmental powers and authorities of the Native Hawaiian governing entity; and
(dd) other issues determined appropriate by the Council.

(II) DEVELOPMENT OF ORGANIC GOVERNING DOCUMENTS.—Based on the referendum, the Council may develop proposed organic governing documents for the Native Hawaiian governing entity.

(III) DISTRIBUTION.—The Council may distribute to all adult members of the Native Hawaiian community listed on the roll published under this subsection—

(aa) a copy of the proposed organic governing documents, as drafted by the Council; and
(bb) a brief impartial description of the proposed organic governing documents;

(IV) ELECTIONS.—The Council may hold elections for the purpose of ratifying the proposed organic gov-
erning documents, and on certification
of the organic governing documents
by the Secretary in accordance with
paragraph (4), hold elections of the
officers of the Native Hawaiian gov-
erning entity pursuant to paragraph
(5).

(3) SUBMITTAL OF ORGANIC GOVERNING DOCU-
MENTS.—Following the reorganization of the Native
Hawaiian governing entity and the adoption of or-
ganic governing documents, the Council shall submit
the organic governing documents of the Native Ha-
waian governing entity to the Secretary.

(4) CERTIFICATIONS.—

(A) IN GENERAL.—Within the context of
the future negotiations to be conducted under
the authority of section 8(b)(1), and the subse-
quently actions by the Congress and the State of
Hawaii to enact legislation to implement the
agreements of the 3 governments, not later
than 90 days after the date on which the Coun-
cil submits the organic governing documents to
the Secretary, the Secretary shall certify that
the organic governing documents—
(i) establish the criteria for citizenship in the Native Hawaiian governing entity;

(ii) were adopted by a majority vote of the adult members of the Native Hawaiian community whose names are listed on the roll published by the Secretary;

(iii) provide authority for the Native Hawaiian governing entity to negotiate with Federal, State, and local governments, and other entities;

(iv) provide for the exercise of governmental authorities by the Native Hawaiian governing entity, including any authorities that may be delegated to the Native Hawaiian governing entity by the United States and the State of Hawaii following negotiations authorized in section 8(b)(1) and the enactment of legislation to implement the agreements of the 3 governments;

(v) prevent the sale, disposition, lease, or encumbrance of lands, interests in lands, or other assets of the Native Hawaiian governing entity without the consent of the Native Hawaiian governing entity;
(vi) provide for the protection of the
civil rights of the citizens of the Native
Hawaiian governing entity and all persons
affected by the exercise of governmental
powers and authorities by the Native Ha-
waiian governing entity; and

(vii) are consistent with applicable
Federal law and the special political and
legal relationship between the United
States and the indigenous, native people of
the United States; provided that the provi-
479a, shall not apply.

(B) RESUBMISSION IN CASE OF NON-
COMPLIANCE WITH THE REQUIREMENTS OF
SUBPARAGRAPH (A).—

(i) RESUBMISSION BY THE SEC-
RETARY.—If the Secretary determines that
the organic governing documents, or any
part of the documents, do not meet all of
the requirements set forth in subparagraph
(A), the Secretary shall resubmit the or-
ganic governing documents to the Council,
along with a justification for each of the
Secretary’s findings as to why the provisions are not in full compliance.

(ii) Amendment and resubmission of organic governing documents.—If the organic governing documents are resubmitted to the Council by the Secretary under clause (i), the Council shall—

(I) amend the organic governing documents to ensure that the documents meet all the requirements set forth in subparagraph (A); and

(II) resubmit the amended organic governing documents to the Secretary for certification in accordance with this paragraph.

(C) Certifications deemed made.—The certifications under paragraph (4) shall be deemed to have been made if the Secretary has not acted within 90 days after the date on which the Council has submitted the organic governing documents of the Native Hawaiian governing entity to the Secretary.

(5) Elections.—On completion of the certifications by the Secretary under paragraph (4), the
Council may hold elections of the officers of the Native Hawaiian governing entity.

(6) REAFFIRMATION.—Notwithstanding any other provision of law, upon the certifications required under paragraph (4) and the election of the officers of the Native Hawaiian governing entity, the special political and legal relationship between the United States and the Native Hawaiian governing entity is hereby reaffirmed and the United States extends Federal recognition to the Native Hawaiian governing entity as the representative governing body of the Native Hawaiian people.

SEC. 8. REAFFIRMATION OF DELEGATION OF FEDERAL AUTHORITY; NEGOTIATIONS; CLAIMS.

(a) REAFFIRMATION.—The delegation by the United States of authority to the State of Hawaii to address the conditions of the indigenous, native people of Hawaii contained in the Act entitled “An Act to provide for the admission of the State of Hawaii into the Union” approved March 18, 1959 (Public Law 86–3, 73 Stat. 4), is reaffirmed.

(b) NEGOTIATIONS.—

(1) IN GENERAL.—Upon the reaffirmation of the special political and legal relationship between the United States and the Native Hawaiian gov-
erning entity, the United States and the State of Hawaii may enter into negotiations with the Native Hawaiian governing entity designed to lead to an agreement addressing such matters as—

(A) the transfer of lands, natural resources, and other assets, and the protection of existing rights related to such lands or resources;

(B) the exercise of governmental authority over any transferred lands, natural resources, and other assets, including land use;

(C) the exercise of civil and criminal jurisdiction;

(D) the delegation of governmental powers and authorities to the Native Hawaiian governing entity by the United States and the State of Hawaii;

(E) any residual responsibilities of the United States and the State of Hawaii; and

(F) grievances regarding assertions of historical wrongs committed against Native Hawaiians by the United States or by the State of Hawaii.

(2) AMENDMENTS TO EXISTING LAWS.—Upon agreement on any matter or matters negotiated with
the United States, the State of Hawai‘i, and the Na-
tive Hawaiian governing entity, the parties are au-
thorized to submit—

(A) to the Committee on Indian Affairs of
the Senate, the Committee on Energy and Nat-
ural Resources of the Senate, and the Com-
mittee on Resources of the House of Represent-
atives, recommendations for proposed amend-
ments to Federal law that will enable the imple-
mentation of agreements reached between the 3
governments; and

(B) to the Governor and the legislature of
the State of Hawai‘i, recommendations for pro-
posed amendments to State law that will enable
the implementation of agreements reached be-
tween the 3 governments.

(3) GOVERNMENTAL AUTHORITY AND
POWER.—Any governmental authority or power to
be exercised by the Native Hawaiian governing enti-
ty which is currently exercised by the State or Fed-
eral Governments shall be exercised by the Native
Hawaiian governing entity only as agreed to in nego-
tiations pursuant to section 8(b)(1) of this Act and
beginning on the date on which legislation to imple-
ment such agreement has been enacted by the
United States Congress, when applicable, and by the State of Hawaii, when applicable. This includes any required modifications to the Hawaii State Constitution in accordance with the Hawaii Revised Statutes.

(c) Claims.—

(1) Disclaimers.—Nothing in this Act—

(A) creates a cause of action against the United States or any other entity or person;

(B) alters existing law, including existing case law, regarding obligations on the part of the United States or the State of Hawaii with regard to Native Hawaiians or any Native Hawaiian entity;

(C) creates obligations that did not exist in any source of Federal law prior to the date of enactment of this Act; or

(D) establishes authority for the recognition of Native Hawaiian groups other than the single Native Hawaiian Governing Entity.

(2) Federal sovereign immunity.—

(A) Specific purpose.—Nothing in this Act is intended to create or allow to be maintained in any court any potential breach-of-trust actions, land claims, resource-protection or resource-management claims, or similar
types of claims brought by or on behalf of Na-
tive Hawaiians or the Native Hawaiian gov-
erning entity for equitable, monetary, or Ad-
ministrative Procedure Act-based relief against
the United States or the State of Hawaii,
whether or not such claims specifically assert
an alleged breach of trust, call for an account-
ing, seek declaratory relief, or seek the recovery
of or compensation for lands once held by Na-
tive Hawaiians.

(B) ESTABLISHMENT AND RETENTION OF
SOVEREIGN IMMUNITY.—To effectuate the ends
expressed in section 8(c)(1) and 8(c)(2)(A), and
notwithstanding any other provision of Federal
law, the United States retains its sovereign im-
munity to any claim that existed prior to the
enactment of this Act (including, but not lim-
ited to, any claim based in whole or in part on
past events), and which could be brought by
Native Hawaiians or any Native Hawaiian gov-
erning entity. Nor shall any preexisting waiver
of sovereign immunity (including, but not lim-
ited to, waivers set forth in chapter 7 of part
I of title 5, United States Code, and sections
1505 and 2409a of title 28, United States
Code) be applicable to any such claims. This complete retention or reclaiming of sovereign immunity also applies to every claim that might attempt to rely on this Act for support, without regard to the source of law under which any such claim might be asserted.

(C) EFFECT.—It is the general effect of section 8(c)(2)(B) that any claims that may already have accrued and might be brought against the United States, including any claims of the types specifically referred to in section 8(c)(2)(A), along with both claims of a similar nature and claims arising out of the same nucleus of operative facts as could give rise to claims of the specific types referred to in section 8(c)(2)(A), be rendered nonjusticiable in suits brought by plaintiffs other than the Federal Government.

(3) STATE SOVEREIGNTY IMMUNITY.—

(A) Notwithstanding any other provision of Federal law, the State retains its sovereign immunity, unless waived in accord with State law, to any claim, established under any source of law, regarding Native Hawaiians, that existed prior to the enactment of this Act.
(B) Nothing in this Act shall be construed to constitute an override pursuant to section 5 of the Fourteenth Amendment of State sovereign immunity held under the Eleventh Amendment.

SEC. 9. APPLICABILITY OF CERTAIN FEDERAL LAWS.

(a) INDIAN GAMING REGULATORY ACT.—

(1) The Native Hawaiian governing entity and Native Hawaiians may not conduct gaming activities as a matter of claimed inherent authority or under the authority of any Federal law, including the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) or under any regulations thereunder promulgated by the Secretary or the National Indian Gaming Commission.

(2) The foregoing prohibition in section 9(a)(1) on the use of Indian Gaming Regulatory Act and inherent authority to game apply regardless of whether gaming by Native Hawaiians or the Native Hawaiian governing entity would be located on land within the State of Hawaii or within any other State or Territory of the United States.

(b) TAKING LAND INTO TRUST.—Notwithstanding any other provision of law, including but not limited to part 151 of title 25, Code of Federal Regulations, the Sec-
retary shall not take land into trust on behalf of individ-
uals or groups claiming to be Native Hawaiian or on be-
half of the native Hawaiian governing entity.

(c) **REAL PROPERTY TRANSFERS.**—The Indian
Trade and Intercourse Act (25 U.S.C. 177), does not, has
never, and will not apply after enactment to lands or lands
transfers present, past, or future, in the State of Hawaii.
If despite the expression of this intent herein, a court were
to construe the Trade and Intercourse Act to apply to
lands or land transfers in Hawaii before the date of enact-
ment of this Act, then any transfer of land or natural re-
sources located within the State of Hawaii prior to the
date of enactment of this Act, by or on behalf of the Na-
tive Hawaiian people, or individual Native Hawaiians,
shall be deemed to have been made in accordance with
the Indian Trade and Intercourse Act and any other provi-
sion of Federal law that specifically applies to transfers
of land or natural resources from, by, or on behalf of an
Indian tribe, Native Hawaiians, or Native Hawaiian enti-
ties.

(d) **SINGLE GOVERNING ENTITY.**—This Act will re-
result in the recognition of the single Native Hawaiian gov-
erning entity. Additional Native Hawaiian groups shall not
be eligible for acknowledgment pursuant to the Federal
Acknowledgment Process set forth in part 83 of title 25
of the Code of Federal Regulations or any other administrative acknowledgment or recognition process.

(e) JURISDICTION.—Nothing in this Act alters the civil or criminal jurisdiction of the United States or the State of Hawaii over lands and persons within the State of Hawaii. The status quo of Federal and State jurisdiction can change only as a result of further legislation, if any, enacted after the conclusion, in relevant part, of the negotiation process established in section 8(b).

(f) INDIAN PROGRAMS AND SERVICES.—Notwithstanding section 7(c)(6), because of the eligibility of the Native Hawaiian governing entity and its citizens for Native Hawaiian programs and services in accordance with subsection (g), nothing in this Act provides an authorization for eligibility to participate in any Indian program or service to any individual or entity not otherwise eligible for the program or service under applicable Federal law.

(g) NATIVE HAWAIIAN PROGRAMS AND SERVICES.—The Native Hawaiian governing entity and its citizens shall be eligible for Native Hawaiian programs and services to the extent and in the manner provided by other applicable laws.
SEC. 10. SEVERABILITY.

If any section or provision of this Act is held invalid, it is the intent of Congress that the remaining sections or provisions shall continue in full force and effect.

SEC. 11. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.