

ACT 195

S.B. NO. 1520

A Bill for an Act Relating to Government.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the State has never explicitly acknowledged that Native Hawaiians are the only indigenous, aboriginal, maoli population of Hawaii.

Native Hawaiians are the indigenous, native people of the Hawaiian archipelago and are a distinctly native community. From its inception, the State has had a special political and legal relationship with the Native Hawaiian people and has continually enacted legislation for the betterment of their condition.

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

At the 1978 Constitutional Convention, the delegates proposed a constitutional amendment to establish the office of Hawaiian affairs. The amendment was ratified by the voters on November 7, 1978, and codified as article XII, sections 5 and 6 of the Hawaii State Constitution, and in chapter 10, Hawaii

Revised Statutes. The State's designation of the office of Hawaiian affairs as a trust vehicle to act on behalf of Native Hawaiians until a Native Hawaiian governing entity could be reestablished reaffirmed the State's obligations to the Native Hawaiian people.

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

In 1993, the United States formally apologized to Native Hawaiians for the United States' role in the overthrow of the Hawaiian Kingdom through Public Law 103-150 (107 Stat. 1510), commonly known as the "Apology Resolution". The Apology Resolution acknowledges that the illegal overthrow of the Hawaiian Kingdom 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 a Treaty of Annexation or through a plebiscite or referendum. The Apology Resolution expresses the commitment of Congress and the President to acknowledge the ramifications of the overthrow of the Hawaiian Kingdom and to support reconciliation efforts between the United States and Native Hawaiians. Pursuant to the Apology Resolution, the United States Departments of Justice and the Interior conducted reconciliation hearings with the Native Hawaiian people in 1999 and issued a joint report entitled, "From Mauka to Makai: The River of Justice Must Flow Freely", which identified promoting the reorganization of a Native Hawaiian government as a priority recommendation for continuing the process of reconciliation. To further this process of reconciliation, Congress created the Office of Native Hawaiian Relations within the Department of the Interior, to consult with Native Hawaiians on the reconciliation process.

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

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

### **ARTICLE 3**

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

The United States' endorsement of the United Nations Declaration on the Rights of Indigenous Peoples included recognition of its support not only for the Native Hawaiian Government Reorganization Act of 2010 but also many additional laws for Native Hawaiians such as the National Historic Preservation

Act, the Native Hawaiian Education Act, the Native American Housing Assistance and Self-Determination Act, and the Native American Graves Protection and Repatriation Act.

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

The State has supported the reorganization of a Native Hawaiian governing entity. It has supported the Sovereignty Advisory Council, the Hawaiian Sovereignty Advisory Commission, the Hawaiian Sovereignty Elections Council, and Native Hawaiian Vote, and the convening of the Aha Hawai'i 'Oiwī (the Native Hawaiian Convention). The legislature has adopted various resolutions during its regular sessions throughout the 1990s and 2000s. The Governor has testified before Congress regarding the State's support for Native Hawaiians as the indigenous people of Hawaii with the right to self-government. Recognizing the likelihood of a reorganized Native Hawaiian governing entity, the State has also provided for the transfer of the management and control of the island of Kahoolawe and its waters to the sovereign Native Hawaiian entity upon its recognition by the United States and the State of Hawaii.

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

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

## **“CHAPTER NATIVE HAWAIIAN RECOGNITION**

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

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

**§ -3 Native Hawaiian roll commission.** (a) There is established a five-member Native Hawaiian roll commission within the office of Hawaiian affairs for administrative purposes only. The Native Hawaiian roll commission shall be responsible for:

- (1) Preparing and maintaining a roll of qualified Native Hawaiians; and
- (2) Certifying that the individuals on the roll of qualified Native Hawaiians meet the definition of qualified Native Hawaiians. For purposes of establishing the roll, a “qualified Native Hawaiian” means an individual who the commission determines has satisfied

the following criteria and who makes a written statement certifying that the individual:

- (A) Is:
  - (i) An individual who is a descendant of the aboriginal peoples who, prior to 1778, occupied and exercised sovereignty in the Hawaiian islands, the area that now constitutes the State of Hawaii; or
  - (ii) An individual who is one of the indigenous, native people of Hawaii and who was eligible in 1921 for the programs authorized by the Hawaiian Homes Commission Act, 1920, or a direct lineal descendant of that individual;
- (B) Has maintained a significant cultural, social, or civic connection to the Native Hawaiian community and wishes to participate in the organization of the Native Hawaiian governing entity; and
- (C) Is eighteen years of age or older.

(b) No later than one hundred eighty days after the effective date of this chapter, the governor shall appoint the members of the Native Hawaiian roll commission from nominations submitted by qualified Native Hawaiians and qualified Native Hawaiian membership organizations. For the purposes of this subsection, a qualified Native Hawaiian membership organization includes an organization that, on the effective date of this Act, has been in existence for at least ten years, and whose purpose has been and is the betterment of the conditions of the Native Hawaiian people.

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

- (1) One member shall reside in the county of Hawaii;
  - (2) One member shall reside in the city and county of Honolulu;
  - (3) One member shall reside in the county of Kauai;
  - (4) One member shall reside in the county of Maui; and
  - (5) One member shall serve at-large.
- (c) A vacancy on the commission shall not affect the powers of the commission and shall be filled in the same manner as the original appointment.
- (d) Members of the commission shall serve without compensation but shall be allowed travel expenses, including per diem in lieu of subsistence while away from their homes or regular places of business in the performance of services for the commission.
- (e) The commission, without regard to chapter 76, may appoint and terminate an executive director and other additional personnel as are necessary to enable the commission to perform the duties of the commission.
- (f) The commission may fix the compensation of the executive director and other commission personnel.
- (g) The commission may procure temporary and intermittent services.

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

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

§ -5 **Native Hawaiian convention.** The publication of the roll of qualified Native Hawaiians, as provided in section -4, is intended to facilitate the process under which qualified Native Hawaiians may independently commence the organization of a convention of qualified Native Hawaiians, established for the purpose of organizing themselves.

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

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

§ -8 **Reaffirmation of delegation of federal authority; governmental authority and power; negotiations.** (a) 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), is reaffirmed.

(b) Consistent with the policies of the State of Hawaii, the members of the qualified Native Hawaiian roll, and their descendants, shall be acknowledged by the State of Hawaii as the indigenous, aboriginal, maoli population of Hawaii.

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

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

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

SECTION 5. The Native Hawaiian roll commission, in cooperation with the office of Hawaiian affairs, shall report to the governor and the legislature no later than twenty days prior to the convening of the regular session of 2012, on the status of the preparation of a roll of qualified Native Hawaiians, expenditures related to the responsibilities of the Native Hawaiian roll commission, and any concerns or recommendations as deemed appropriate by the Native Hawaiian roll commission.

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

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

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

(Approved July 6, 2011.)