

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: In the nature of a substitute.

**IN THE SENATE OF THE UNITED STATES—112th Cong., 1st Sess.**

**S. 675**

To express the policy of the United States regarding the United States relationship with Native Hawaiians and to provide parity and 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 fol-  
2 lowing:

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Native Hawaiian Gov-  
5 ernment Reorganization Act of 2012”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1) the United States has continually recog-  
9 nized and reaffirmed that—

1 (A) the Native Hawaiian people today are  
2 the political successors to the indigenous, native  
3 people who exercised original sovereignty over  
4 the Hawaiian Islands;

5 (B) the Native Hawaiian people have never  
6 relinquished their claims to sovereignty or their  
7 sovereign lands;

8 (C) the special political and legal relation-  
9 ship of American Indians, Alaska Natives, and  
10 Native Hawaiians to the United States arises  
11 out of their status as indigenous, native peoples  
12 of the United States; and

13 (D) the Native Hawaiian people are a dis-  
14 tinctly native community and one of the indige-  
15 nous, native peoples of the United States;

16 (2) the Constitution vests Congress with the au-  
17 thority to address the conditions of the indigenous,  
18 native peoples of the United States under provisions  
19 including—

20 (A) clause 3 of section 8 of article I, the  
21 Property, Treaty, and Supremacy clauses, and  
22 the War Powers clause; and

23 (B) the original Apportionment clause and  
24 the Fourteenth Amendment Citizenship and  
25 amended Apportionment clauses;

1           (3) Congress has exercised constitutional au-  
2           thority to address the conditions of the Native Ha-  
3           waiian people through the enactment of—

4                   (A) the Hawaiian Homes Commission Act,  
5                   1920 (42 Stat. 108, chapter 42);

6                   (B) the Act entitled “An Act to provide for  
7                   the admission of the State of Hawaii into the  
8                   Union”, approved March 18, 1959 (Public Law  
9                   86–3; 73 Stat. 4); and

10                  (C) more than 150 other Federal laws ad-  
11                  dressing the conditions of the Native Hawaiian  
12                  people;

13           (4) the United States has recognized and re-  
14           affirmed the special political and legal relationship  
15           between the United States and the Native Hawaiian  
16           people through the enactment of the Act entitled  
17           “An Act to provide for the admission of the State  
18           of Hawaii into the Union”, approved March 18,  
19           1959 (Public Law 86–3; 73 Stat. 4), by—

20                   (A) delegating broad authority to the State  
21                   of Hawaii to administer some of the responsibil-  
22                   ities of the United States, as those responsibil-  
23                   ities relate to the Native Hawaiian people and  
24                   their lands;

1           (B) ceding to the State of Hawaii title to  
2           the public land formerly held by the United  
3           States, and mandating that those lands be held  
4           as a public trust for 5 purposes, 1 of which is  
5           the betterment of the conditions of the Native  
6           Hawaiian people; and

7           (C) transferring the responsibility of the  
8           United States for the administration of the Ha-  
9           waiian Home Lands to the State of Hawaii, but  
10          retaining the exclusive right to consent to any  
11          actions affecting the lands included in the trust  
12          and any amendments to the Hawaiian Homes  
13          Commission Act, 1920 (42 Stat. 108, chapter  
14          42), that are enacted by the legislature of the  
15          State of Hawaii affecting the beneficiaries  
16          under that Act;

17          (5) on November 23, 1993, the Joint Resolu-  
18          tion of November 23, 1993 (Public Law 103–150;  
19          107 Stat. 1510) (commonly known as the “Apology  
20          Resolution”), was enacted into law, extending an  
21          apology on behalf of the United States to the Native  
22          Hawaiian people for the role of the United States in  
23          the overthrow of the Kingdom of Hawaii, and ac-  
24          knowledging that the Native Hawaiian people never  
25          directly relinquished to the United States their

1 claims to their inherent sovereignty as a people over  
2 their national lands, either through the Kingdom of  
3 Hawaii or through a plebiscite or referendum;

4 (6) pursuant to Public Law 103–150, on Octo-  
5 ber 23, 2000, the Department of Justice and the  
6 Department of the Interior released a report entitled  
7 “From Mauka to Makai: The River of Justice Must  
8 Flow Freely”, recommending that Congress enact  
9 legislation “to create a framework for recognizing a  
10 government-to-government relationship with a rep-  
11 resentative Native Hawaiian governing body”;

12 (7) on December 16, 2010, the United States  
13 announced its support for the United Nations Dec-  
14 laration on the Rights of Indigenous Peoples (Reso-  
15 lution 61/295, adopted September 13, 2007), which  
16 includes the Native Hawaiian people and states that  
17 indigenous peoples possess—

18 (A) the right to self-determination and to  
19 freely determine their political status and freely  
20 pursue their economic, social, and cultural de-  
21 velopment; and

22 (B) the right to autonomy or self-govern-  
23 ment in matters relating to their internal and  
24 local affairs; and

1           (8) the State of Hawaii has long supported the  
2           Federal reaffirmation of the special political and  
3           legal relationship with the Native Hawaiian people  
4           and a recognition of the Native Hawaiian governing  
5           entity by the United States, as evidenced by numer-  
6           ous actions, including through the enactment of Act  
7           195 (2011), which—

8                   (A) recognizes the Native Hawaiian people  
9                   as the only indigenous, native people of Hawaii;

10                   (B) urges Federal recognition of the Na-  
11                   tive Hawaiian people and the Native Hawaiian  
12                   governing entity; and

13                   (C) creates the Native Hawaiian Roll Com-  
14                   mission to develop a roll of qualified Native Ha-  
15                   waiians to facilitate the reorganization of a Na-  
16                   tive Hawaiian governing entity.

17 **SEC. 3. DEFINITIONS.**

18           In this Act:

19                   (1) COUNCIL.—The term “Council” means the  
20                   Interim Governing Council established under section  
21                   5(c).

22                   (2) INDIGENOUS, NATIVE PEOPLE.—The term  
23                   “indigenous, native people” means any of the peo-  
24                   ples referred to in the Constitution as “Indians” and  
25                   “Tribes” that are the original inhabitants who exer-

1 cised sovereignty over any area that later became  
2 part of the United States, including their lineal de-  
3 scendants.

4 (3) NATIVE HAWAIIAN GOVERNING ENTITY.—  
5 The term “Native Hawaiian governing entity”  
6 means the representative sovereign governing body  
7 of the Native Hawaiian people reorganized under  
8 section 5.

9 (4) NATIVE HAWAIIAN ROLL COMMISSION.—The  
10 term “Native Hawaiian Roll Commission” means  
11 the Commission established by the State of Hawaii  
12 under Act 195 (2011).

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

15 (6) SPECIAL POLITICAL AND LEGAL RELATION-  
16 SHIP.—The term “special political and legal rela-  
17 tionship” means the nature of the relationship be-  
18 tween the United States and federally recognized In-  
19 dian tribes.

20 **SEC. 4. POLICY AND PURPOSE.**

21 (a) POLICY.—It is the policy of the United States  
22 that—

23 (1) Congress possesses and exercises the con-  
24 stitutional authority to address the conditions of the  
25 Native Hawaiian people;

1 (2) the Native Hawaiian people have—

2 (A) an inherent right to autonomy in inter-  
3 nal affairs;

4 (B) an inherent right of self-determination  
5 and self-governance;

6 (C) the right to reorganize a Native Ha-  
7 waiian governing entity; and

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

10 (3) notwithstanding any other provision of law,  
11 the United States—

12 (A) reaffirms the special political and legal  
13 relationship between the United States and the  
14 Native Hawaiian people, which includes pro-  
15 moting the welfare of the Native Hawaiian peo-  
16 ple; and

17 (B) reaffirms the authority delegated to  
18 the State of Hawaii by the United States to ad-  
19 dress the conditions of the Native Hawaiian  
20 people in the Act entitled “An Act to provide  
21 for the admission of the State of Hawaii into  
22 the Union”, approved March 18, 1959 (Public  
23 Law 86–3; 73 Stat. 4);

24 (4) the United States ensures parity in policy  
25 and treatment among all indigenous groups with



1       which the United States has a special political and  
2       legal relationship; and

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

6       (b) PURPOSE.—The purpose of this Act is to provide  
7       a process for the reorganization and Federal recognition  
8       of a single Native Hawaiian governing entity that exer-  
9       cises the inherent powers of self-government of a native  
10      government under existing law with the same privileges  
11      and immunities available to other federally recognized In-  
12      dian tribes.

13   **SEC. 5. REORGANIZATION OF THE NATIVE HAWAIIAN GOV-**  
14                   **ERNING ENTITY.**

15      (a) RIGHT TO REORGANIZE.—

16               (1) IN GENERAL.—The right of the Native Ha-  
17      waiian people to reorganize a Native Hawaiian gov-  
18      erning entity to provide for the common welfare and  
19      to adopt an appropriate constitution and bylaws pur-  
20      suant to section 16 of the Act of June 18, 1934 (25  
21      U.S.C. 476), is recognized by the United States.

22               (2) ACTION BY SECRETARY.—In accordance  
23      with the recognition under paragraph (1), the Sec-  
24      retary shall carry out the duties and functions of the

1 Secretary pursuant to this section as soon as prac-  
2 ticable after the date of enactment of this Act.

3 (b) MEMBERS.—The individuals listed on the roll  
4 compiled and certified by the Native Hawaiian Roll Com-  
5 mission shall be considered members of the Native Hawai-  
6 ian people for the purposes of reorganization of a Native  
7 Hawaiian governing entity, provided that the roll is pub-  
8 lished, available for inspection, and compiled in accordance  
9 with applicable due process principles.

10 (c) INTERIM GOVERNING COUNCIL.—

11 (1) ESTABLISHMENT.—The members included  
12 on the roll described in subsection (b), in consulta-  
13 tion with the Secretary, shall establish a council, to  
14 be known as the “Interim Governing Council”, by—

15 (A) developing criteria based on which can-  
16 didates included on the roll may be elected to  
17 serve on the Council;

18 (B) determining the structure of the Coun-  
19 cil, including the number of Council members;  
20 and

21 (C) electing Council members.

22 (2) POWERS.—The Council—

23 (A) shall represent the members included  
24 on the membership roll in the implementation  
25 of this Act;

1 (B) shall have no powers other than the  
2 powers provided to the Council by this Act; and

3 (C) may enter into a contract with, or ob-  
4 tain a grant from, any Federal, State, or local  
5 government agency or any private nonprofit or  
6 entity to carry out the duties of the Council  
7 under paragraph (3).

8 (3) DUTIES.—Not later than 2 years after the  
9 date on which all members of the Council are elect-  
10 ed, the Council shall—

11 (A) secure appropriate input from mem-  
12 bers included on the roll, through consultation,  
13 referenda, or other means, regarding the pro-  
14 posed elements of the constitution and bylaws  
15 for the Native Hawaiian governing entity;

16 (B) develop a proposed constitution and  
17 bylaws for the Native Hawaiian governing enti-  
18 ty;

19 (C) provide to all members the proposed  
20 constitution and bylaws, as drafted by the  
21 Council, including a brief, objective description  
22 of each such provision;

23 (D) not earlier than 90 days after the date  
24 of completion of the requirements of subpara-  
25 graph (C), submit to the Secretary a request to

1 hold an election to ratify the proposed constitu-  
2 tion and bylaws; and

3 (E) on ratification, submit to the Secretary  
4 the constitution and bylaws for approval under  
5 section 16 of the Act of June 18, 1934 (25  
6 U.S.C. 476).

7 (4) ELECTIONS.—The Council, with the assist-  
8 ance of the Secretary, shall hold elections of the offi-  
9 cers of the Native Hawaiian governing entity identi-  
10 fied in the approved constitution and bylaws.

11 (5) TERMINATION.—The Council shall cease to  
12 exist and shall have no power or authority under  
13 this Act after the date on which all officers of the  
14 Native Hawaiian governing entity elected under  
15 paragraph (4) are installed.

16 **SEC. 6. APPLICABILITY OF OTHER FEDERAL LAWS.**

17 (a) GOVERNMENTAL AUTHORITY AND POWER.—The  
18 Native Hawaiian governing entity shall—

19 (1) have the inherent powers and privileges of  
20 self-government of an Indian tribe under applicable  
21 Federal law, including the inherent power and au-  
22 thority—

23 (A) to determine membership in, and mem-  
24 bership criteria for, the Native Hawaiian peo-  
25 ple; and

1 (B) to grant, deny, revoke, or qualify mem-  
2 bership without regard to whether any indi-  
3 vidual is considered to be a member of the Na-  
4 tive Hawaiian people under this Act; and

5 (2) be considered to be an Indian tribe for pur-  
6 poses of section 104 of the Federally Recognized In-  
7 dian Tribe List Act of 1994 (25 U.S.C. 479a–1).

8 (b) INDIAN GAMING REGULATORY ACT.—The Native  
9 Hawaiian governing entity—

10 (1) is subject to the Indian Gaming Regulatory  
11 Act (25 U.S.C. 2701 et seq.) (including regulations  
12 promulgated pursuant to that Act by the Secretary  
13 or the National Indian Gaming Commission); and

14 (2) may not conduct gaming activities (within  
15 the meaning of section 4 of that Act (25 U.S.C.  
16 2703)) unless the State of Hawaii permits such an  
17 activity for any purpose by an individual, organiza-  
18 tion, or entity.

19 (c) INDIAN REORGANIZATION ACT.—

20 (1) IN GENERAL.—The Secretary may consider  
21 the Native Hawaiian governing entity to be an In-  
22 dian tribe for purposes of carrying out any activity  
23 authorized under the Act of June 18, 1934 (com-  
24 monly known as the “Indian Reorganization Act”)  
25 (25 U.S.C. 461 et seq.).

1           (2) RATIFICATION AND CONFIRMATION OF AC-  
2           TIONS.—Any action taken by the Secretary pursuant  
3           to the Act of June 18, 1934 (commonly known as  
4           the “Indian Reorganization Act”) (25 U.S.C. 461 et  
5           seq.) for the Native Hawaiian governing entity is  
6           ratified and confirmed to the extent that the action  
7           is challenged based on the question of whether the  
8           Native Hawaiian governing entity was federally rec-  
9           ognized or under Federal jurisdiction on June 18,  
10          1934.

11 **SEC. 7. SEVERABILITY.**

12          If any provision of this Act is held invalid, it is the  
13          intent of Congress that the remaining provisions shall con-  
14          tinue in full force and effect.

15 **SEC. 8. AUTHORIZATION OF APPROPRIATIONS.**

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