We are forwarding for your comment and review a proposed federal legislative program designed to implement the recommendations of the Native Hawaiian Study Commission. The Commission, established by Congress in 1980 pursuant to Public Law 96-565, was mandated to study the cultural needs and concerns of native Hawaiians. It published its final report in 1983, and in 1984 hearings on the report were held in Hawaii and Washington, D.C. by the U.S. Senate Committee on Energy and Natural Resources and the U.S. House of Representatives Committee on Interior and Insular Affairs.

The Commission made findings and recommendations of two types. The first involved the current condition of native Hawaiians and the need for additional federal and state efforts to develop and implement mechanisms to provide financial and programmatic assistance. All members of the Commission agreed that concerted private and governmental efforts are required to address substantial existing problems with regard to housing, employment, health, education, social services and the preservation of the native Hawaiians' historical heritage. Accordingly this program seeks to begin to implement these recommendations.

The Commission was divided on the issue of whether there existed an obligation on the part of the United States to provide reparations to native Hawaiians as a result of its participation
in the overthrow of the Kingdom of Hawaii. The majority of its members, relying upon existing common law and statutory tests, concluded that no such obligation exists. The minority concluded that, while no precise precedent exists, the critical participation of the United States in the dissolution of a sovereign people's government required the imposition of a legal and moral obligation.

The delegation concurs with the minority conclusion and will seek to ensure that the Congress recognizes the federal responsibility in this regard. The process of education can be expected to be most difficult. And, frankly, in this age of fiscal restraint the probability of achieving immediate appropriate reparations is somewhat remote. The primary objective of the reparations portion of the program is therefore to lay the groundwork for the education of the Congress and the American people. The federal obligation must be recognized before compensation will be awarded.

Substantial portions of the program also address the federal obligation to return ceded lands to the State of Hawaii and to implement the recommendations of the Federal-State Task Force on the Hawaiian Homes Commission Act.

Pursuant to the recommendations of the Native Hawaiian Study Commission minority recommendations, the ceded lands legislation attempts to facilitate the return of outstanding ceded lands by amending the standards and procedures by which such returns are made. Additionally, a commission is established to review all
existing ceded lands holdings in Hawaii and to make appropriate recommendations.

Since the issuance of the report of the Federal-State Task Force on the Hawaiian Homes Commission Act, the state has made substantial strides in recognizing its obligation to return wrongfully transferred Hawaiian homelands. Regrettably the federal government has not yet recognized its obligation. Given the centrality of the land issue, the proposed program will initially focus on securing the return of federally controlled Hawaiian homelands. The Department of Interior will also be requested to provide a detailed report on its position and planned actions with regard to each of the Task Force's recommendations.

Please advise us of your comments.

Please revise our proposed program and advise us of your comments by December 31, 1985.

Aloha,

DEI, USS
Ataka

SMM, USS
Hufk
PART I
Federal and State Programs

A. Generally

Substantial progress has been made in identifying native Hawaiians as appropriate participants in federal programs. In the 98th Congress alone, monies have been earmarked for the participation of native Hawaiians in the Vocational Education Act ($2 million), the Library Services and Construction Act ($600 thousand), the Maternal and Child Health Program ($500 thousand), and in various specific programs under the Department of Education. Federal studies have also been statutorily mandated with regard to Native Hawaiian Maritime Resources, and alcohol and drug abuse among native Hawaiians.

Pursuant to the recommendations of both the majority and minority reports of the Native Hawaiian Study Commission, the delegation will continue to pursue the inclusion of native Hawaiians in all appropriate federal programs. Actions in this regard will include:

1) The identification by each relevant department of programs in which the participation of native Hawaiians would be appropriate together with any statutory or regulatory amendments which might be necessary to achieve this end.

2) A formal parallel request to the Hawaii State legislature and administration that a comprehensive study be conducted
of governmental assistance to native Hawaiians on the state level.

3) Attempts to achieve the Congressional acceptance of the proposition that native Hawaiians are native Americans and should be included without prejudice in all appropriate federal programs designed to assist America's indigenous peoples.

4) Initiatives will be to establish a federal commission, similar to the existing Civil Rights Commission, which would formally examine and report to Congress on the nation's satisfaction of its obligation to Native Americans. Native Hawaiians will be included as a part of the Commission.

B. Identification of Relevant Federal Programs

Relevant departments are best equipped to identify legislative changes necessary to ensure that native Hawaiians are provided access to existing federal programs. The delegation will therefore forward the following letters to the Secretary of each federal department requesting that a comprehensive report be submitted on the existing scope of assistance to native Hawaiians, programs designed to assist native Americans, and legislation necessary to include native Hawaiians where appropriate.

Upon receipt of the required reports, a report will be made to the Hawaiian Community and necessary legislation will be introduced.

C. Survey of State Activity
IN THE HOUSE OF REPRESENTATIVES

Mr. AKAKA submitted the following concurrent resolution; which was referred to the Committee on

CONCURRENT RESOLUTION

Expressing the sense of the Congress that native Hawaiians should be included in the definition of native Americans.
Whereas the United States, through Congress, has recognized the unique attributes of indigenous American people as legally and morally deserving of national attention and legislation;
Whereas legislation with respect to native Americans is now imperfectly and unfairly extended to native Hawaiians;
Whereas native Hawaiians are the indigenous inhabitants of the Hawaiian Islands;
Whereas the Federal Government has long recognized native Hawaiians as a distinct indigenous group and has dealt with them in a manner similar to other native American groups;
Whereas native Hawaiians satisfy the criteria which entitle an indigenous group to Federal protection and services;
Whereas the Congress of the United States explicitly acknowledged its responsibility to native Hawaiians with the enactment of the Hawaiian Homes Commission Act of 1920, which placed over 200,000 acres of land in trust to rehabilitate native Hawaiians;
Whereas in the 1959 Admission Act, the Congress of the United States extended the scope of the Federal Government's recognition of native Hawaiians by requiring the State of Hawaii to adopt the Hawaiian Homes Commission Act as part of the State Constitution;

The Hawaii Admission Act further recognizes native Hawaiians in Section 5(f) by designating "the betterment of conditions of native Hawaiians" as one of the five trust
purposes for which proceeds and income from the ceded lands trust could be expended;

Whereas the State Admission Act singles out native Hawaiians from the general public as specific beneficiaries of the ceded land trust in recognition of the Federal Government's recognition of the status of native Hawaiians;

Whereas Congress has specifically included native Hawaiians in a number of enactments designed to benefit native Americans generally;

Whereas in 1974 Congress enacted legislation making native Hawaiians eligible for participation in the programs of the Administration for Native Americans;

Whereas in 1978 Congress amended the Comprehensive Employment and Training Act to include native Hawaiians in the Indian Manpower Program administered by the Director of Indian and Native American Programs of the United States Department of Labor;

Whereas in the same year the Congress adopted the American Indian Religious Freedom Act and included native Hawaiians in its guarantees of religious tolerance;

Whereas in 1983, native Hawaiians were included in the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act which gives special consideration to native Americans by the Federal Government for funding of programs to prevent, treat, and rehabilitate
drug abuses;
Whereas the Carl D. Perkins Vocational Educational Act of 1984 set aside 0.25 percent of funds made available under the Act for the planning, conducting, and administering of programs for the benefit of native Hawaiians;
Whereas native Hawaiians were expressly identified as a target population for the National Significance/Special Project Grant Program in the Developmental Disabilities Act of 1984;
Whereas the Library Services and Construction Act Amendments of 1984 reserves 25 percent of the Indian set-aside for native Hawaiians through a separate grant for library service and construction; and
Whereas in 1980 Congress passed three statutes for the specific identification of native Hawaiians as subjects of special Federal attention—the Native Hawaiian Education Study, the Kalaupapa National Historical Park, and the Native Hawaiians Study Commission: Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring), That the Congress recognizes that native Hawaiians share all of the attributes and needs common to other indigenous peoples and are entitled to any and all benefits extended to other native Americans. The Congress stands committed to include native Hawaiians in the definition of native American and extend to native Hawaiians
eligibility in programs affected by such definition wherever applicable.
Arguments on the federal level to augment the scope of assistance to native Hawaiians would be greatly strengthened by a demonstration of the State of Hawaii's commitment to provide such assistance as well. Accordingly, the President of the State Senate, Speaker of the State House of Representatives and Governor will be requested to have studies conducted of the existing scope of assistance provided to native Hawaiians by the State.

D. Native Hawaiians as Native Americans

Ultimately, native Hawaiians should be considered synonymously with all of America's indigenous people. However, the immediate statutory inclusion of native Hawaiian in all existing federal native American programs is not feasible. Many programs exist for which inclusion would not be appropriate or in which the extraordinary existing needs of the Indian population would lead to the opposing of including native Hawaiians. The delegation will therefore continue to work together with the native American community to identify appropriate areas of inclusion and amend the law where it is possible.

In order to enhance this process and to facilitate greater understanding in Congress regarding the propriety of such actions, the following sense of the Congress resolution will be introduced for adoption:

*attached resolution*

DRAFT RESOLUTION - Kehau

E. Native American Commission
There currently exists no single independent body which is responsible for reviewing federal legislation and programs in order to ensure that the interests of native Americans are considered and accommodated. The delegation will explore the possibility of establishing such a commission. Membership of any such commission would include at least one native Hawaiian. It is hoped that by the establishment of such a body, the needs of native Americans might receive more systematic attention and that native Hawaiians will be considered among such groups as a matter of course.
JUSTIFICATION

As a result of unjustifiable and profound involvement by the American Government in the overthrow of the Hawaiian monarchy, the native residents of Hawaii lost their self-determination. The U.S. Congress shall therefore make restitutions to compensate native Hawaiians for their losses, and shall provide them with special assistance so that they can achieve a better quality of life and more fully participate in the opportunities available to other Americans.

The issue of American involvement in the overthrow of the Hawaiian monarchy and the ensuing question of reparations have been a focus of attention in Hawaii and in Congress for many years.* Congress debated the establishment of a Native Hawaiians Study Commission for six years before approving it.

On December 22, 1980, the President approved legislation to create a Native Hawaiians Study Commission to "conduct a study of the culture, needs and concerns of the Native Hawaiians". Although the law that finally passed only provided a general directive for the commission, it was understood that Congress wanted advice on the overthrow and reparations.

The commission was established, and on June 23, 1983, it published a final report which was presented to Congress in two volumes: a majority and a minority report of dissenting views. The reports differed primarily in their interpretations and conclusions about the historical events surrounding the overthrow of the Hawaiian monarchy and in their recommendations about how Native Hawaiians should be compensated.

The majority report concluded that the actions of U.S. Minister John L. Stevens, who requested that American troops be landed to protect American lives and property, were not sanctioned by the President or Congress. This lack of authorization, in addition to "the apparent limited role of United States forces in the overthrow", thus clears the United States of responsibility for the events that ensued, according to six of the nine commissioners. The report recommends that "as an ethical or moral matter, Congress should not provide for Native Hawaiians to receive compensation either for loss of land or of sovereignty."

The basis for reparations rests largely on the legality of American actions in the overthrow of the Hawaiian queen. The conclusions and recommendations of the majority report are therefore highly significant.

The U.S. Senate and U.S. House of Representatives have since held hearings on the findings of the Commission. Upon closer review of the source material available, including documents cited in the majority report, it is evident that the conclusions about...
the historical events of the overthrow contained in the majority report are seriously flawed.

Unequivocal evidence of American intent to annex Hawaii dates back to several decades before the actual overthrow. Hawaii's location as a strategic military base in the Pacific and trade route for the Far East; the expansionist and manifest destiny policies of most major nations of the world during the latter half of the nineteenth century, including those of the United States; and the increasing dollar amount of American business pursuits in Hawaii, particularly sugar, were among the pressing reasons for American interest in Hawaii.

Although a formal, explicit document from the U.S. Government to Minister Stevens ordering the landing of the troops has never been found, circumstantial evidence of such intent is overwhelming. Private correspondence between Minister Stevens and Secretary of State William Blaine describing the political situation in Hawaii and discussing what to do in the event of a revolution; formal declarations of American policy stating intent to expand American influence in the Pacific; American naval policy emphasizing the consolidation of American interests in the Pacific; and the dispatch with which the Hawaiian annexation treaty was drafted and pushed through Congress all ultimately condoned Stevens actions in doing whatever was necessary to promote Hawaii's annexation.

It has now been nearly one hundred years since these events occurred. Historical evidence easily substantiates the conclusion that without American intervention in the overthrow of the Hawaiian monarchy, the effort could not have been sustained. Furthermore, without subsequent American diplomatic support to the Provisional Government of Hawaii that was established after the monarchy, annexation may very well not have occurred. For the majority report to have concluded otherwise is erroneous and superficial, and shows little depth in its analysis and interpretation of historical events.

Self-determination is an inherent right for all people. The international-law principle of self-determination or autonomy includes economic and social rights. It also guarantees the right to a freely-chosen nationality and to territorial integrity. A major factor in the loss of self-determination is the governmental interference on the lands of indigenous people. In Hawaii, self-determination was linked to traditional use of the land. Thus, self-determination for Hawaiians would include autonomy over their own lands and politics.

There is no question that this loss of self-determination is at the root of the problems of Native Hawaiians. As a territory of the United States for sixty one years and now as a state, America has had—and continues to have—an obligation to assure that the people of Hawaii have the same right as other Americans to the pursuit of a self-chosen life style.
It is evident that the U.S. Government has not met its obligation, especially to those Hawaiians who have lost their self-determination. The demographic statistics of Native Hawaiians today speak for themselves. Hawaiians have the poorest records of educational attainment and employment, they exceed their share of the population in arrests and criminal detention, they have the lowest income, poorest health, and highest infant mortality rates of all the people of Hawaii. Study after study shows that Native Hawaiians are a depressed and disenfranchised people.

Those who were unable to or who chose not to give up their Hawaiian ways of life have been left behind. Although the U.S. Congress attempted to accommodate Hawaiians through such legislation as the Hawaiian Homes Commission Act, the United States has never fully carried out its trust responsibilities, and the Hawaiian people have never received the special assistance and consideration they are due.

Based on the majority and minority reports of the Native Hawaiians Study Commission; on the thousands of pages of testimony that have been submitted for Congressional consideration; and on the literature and documentation that was not included or considered by the Commission which relates to the past and present conditions of Native Hawaiians, it is the firm opinion of Hawaii's Congressional delegation that Hawaiians were deprived of the right to self-determination by the United States Government and are due reparations, both as a matter of legal and moral obligation.

These reparations are being requested in the form of the creation of a trust fund to be used by Native Hawaiians for the development of programs to benefit all Hawaiians; the establishment of a panel to expedite the return of ceded and surplus federal lands to Hawaii; the appointment of a high-ranking office in the U.S. Department of the Interior to serve directly and actively as a federal liaison with the State of Hawaii in matters concerning Native Hawaiian issues where they involve the federal government; and the development of educational, health and other programs that will provide Hawaiians with the tools they need to better control their own destinies.

Although these proposals could never act as full reparations for the wrongs done to Hawaiians, we feel that they are fair and reasonable. Hawaiians have waited too long for the attention they are due from the federal government. Their problems cannot wait any longer. Congress and the federal government must recognize the injustices that have caused the bleak situation of the Hawaiians and must remedy them without further delay.
PART II
Reparations

A. Generally

As discussed in volume II of the Native Hawaiian Study Commission report, securing appropriate reparations for native Hawaiians must involve the processes of 1) federal recognition of the moral and legal obligation arising from the participation of the United States in the overthrow of the Hawaiian monarchy, and 2) the development of the reparations program.

In order to effectively separate these processes, two measures are proposed. The first is a joint resolution detailing the historical circumstance and legal arguments and concluding that there in fact exists an obligation on the part of the United States. The second is a reparations bill designed to serve as a basis for Congressional examination of the issue.

B. Joint Resolution of Acknowledgement

A Joint Resolution acknowledging the obligation of the United States would be based on the following summary and argument:

C. Reparations Legislation

As a proposed reparations scheme and basis for discussion, the Native Hawaiian Claims Act would:
-- Clearly acknowledges the U.S. role in the overthrow of the Hawaiian monarchy.

-- Authorize the appropriation of funds to be paid to the Office designated by State law as the recipient of such funds over a period of ten years for the establishment of social programs to meet the needs of the Native Hawaiian community and to acquire and develop land and natural resources for the benefit of Native Hawaiians.

-- Define "Native Hawaiian" as "Any individual whose ancestors were natives of the area which constituted the Hawaiian Islands prior to 1778."

-- Permit consultation with the Hawaiian community through the formal public hearings process of the appropriate Congressional committee, and through informal processes such as this communication.
Findings and Purposes

Section 1(a) would provide that Congress recognize that the United States participated in activities which contributed to the overthrow of the Hawaiian monarchy in 1893; that the United States participation was opposed by the Native Hawaiians; that United States participation violated Hawai'i's right to independence and violated the principle of nonintervention in the internal affairs of another nation; and that the United States has a moral and legal obligation to provide reparation to the Native Hawaiians.

Section 1(b) would establish as the purpose of this Act the provision of reparations to the Native Hawaiians.

Section 2 would define "Native Hawaiian" as any individual whose ancestors were native to the area that constituted the Hawaiian Islands prior to 1778. Section 2 would also define "Office of Hawaiian Affairs" as the office established by law to provide programs to the Native Hawaiians.

Section 3(a) would provide that the Secretary of the Treasury pay to the agency designated by State law as the recipient of reparation (Agency) funds appropriated under this Act for the fiscal year by no later than thirty days after the date such funds become available.

Section 3(b)(1) would provide that payments may be made only after an agreement between the Secretary of the Interior and the
Agency in which the Agency agrees to use the funds for programs described, to submit a plan for monetary expenditures, to submit an annual report, and to make available for audit all necessary materials.

Section 3(b)(2) would specify that payments may only be used for the promotion of various economic, social, and educational programs for the Native Hawaiians. Payments may also be used for the purchase and development of land and natural resources for the benefit of the Native Hawaiian.

Section 3(c)(1) would provide that the State of Hawaii repay to the United States any portion of payment not spent on purposes described.

Section 3(c)(2) would permit the Secretary of the Treasury to offset any payment required under subsection (a) by any amount the State of Hawaii owes the United States by reason of paragraph (1).

Section 3(d)(1) would authorize the Comptroller General of the United States to have access for purposes of audit, to any materials of the Office of Hawaiian Affairs and to any grantee, contractee, or subcontractee of the Agency.

Section 3(d)(2) would specify that an audit be made of expenditures of funds by the Comptroller General of the United States at least once during each two-year period within the twelve-year period beginning on the date funds are appropriated, and for a report to the Congress on each audit conducted.

Section 3(e) would authorize appropriation of $100,000,000 for each of the ten fiscal years beginning after date of enactment.
of this Act for the purposes of making payments under subsection (a).

**Section 4** would provide that all claims of the Native Hawaiians are barred until the day that is 12 years after enactment of this Act, and that all claims of the Native Hawaiians shall be terminated on the day the aggregate amount of payments equals the amount authorized to be appropriated.

**Section 5** would provide that this Act may be cited as the "Native Hawaii Claims Settlement Act."
To provide funds for job training, education, and economic development of Native Hawaiians.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Section 1. (a) The Congress finds—

(1) that the United States participated in activities which contributed to the overthrow of the Hawaiian monarchy on January 17, 1893,

(2) that the participation of the United States in such activities was opposed by the Native Hawaiians,

(3) that the participation by the United States in such activities violated the Kingdom of Hawai`i's right to independence and violated the international law principle of nonintervention in the internal affairs of another nation, and

(4) that the United States has a moral and legal obligation to provide reparations to Native Hawaiians.

(b) the purpose of this Act is to provide reparations to Native Hawaiians for the participation of the United States in the overthrow of the Hawaiian monarchy on January 17, 1893.
Sec. 2. For purposes of this Act--

(1) The term "Native Hawaiian" means any individual whose ancestors were natives of the area that constituted the Hawaiian Islands prior to 1778.

(2) The term "designated State agency" means the office established by the laws of the State of Hawaii to serve as the recipient for federal reparations.

Sec. 3. (a) Except as otherwise provided in this Act, the Secretary of the Treasury shall pay to the Designated State agency the funds appropriated under the authority of subsection (e) for the fiscal year by no later than the date that is 30 days after the date on which such funds become available for expenditure.

(b) (1) Payments may be made under subsection (a) only if an agreement has been entered into by the Secretary of the Interior and the designated State agency under which the designated State agency agrees--

(A) to use the funds received under subsection (a) only for purposes described in paragraph (2),

(B) to submit to the Secretary of the Interior a plan for monitoring the expenditure of such funds,

(C) to submit an annual report to the Secretary of the Interior on the use of such funds by the designated State agency for each of the 12 years succeeding the year in which this Act is enacted, and

(D) to make available to the Comptroller General of the United States all books, records, documents, and papers
necessary for completion of the audits required under subsection (d).

(2) Payments received under subsection (a) may only be used--

(A) to promote the economic development and self-sufficiency of Native Hawaiians,

(B) to promote the social welfare of Native Hawaiians,

(C) to provide educational programs for Native Hawaiians,

(D) to provide health programs for Native Hawaiians,

(E) to provide programs that promote the cultural preservation of Native Hawaiians,

(F) to provide job training and employment placement of Native Hawaiians, and

(G) to acquire and develop land and natural resources for the benefit of Native Hawaiians.

(c)(1) The State of Hawaii shall repay to the United States any portion of a payment made under subsection (a) that is not expended for a purpose described in subsection (d)(2).

(2) The Secretary of the Treasury may offset any payment which is required to be made under subsection (a) by any amount that the State of Hawaii owes the United States by reason of paragraph (1).

(d)(1) The Comptroller General of the United States, and any duly authorized representatives of the Comptroller General of the United States, shall have access for the purpose of audit and examination to any books, documents, papers, and records of--
(A) the designated State agency, and
(B) any grantee, contractee, or subcontractee of the
designated State agency,
that are pertinent to the expenditure of funds provided under subsection (a).

(2) At least once during each 2-year period within the 12-year period beginning on the date funds are appropriated under the authority of subsection (e), the Comptroller General of the United States shall conduct an audit of the expenditure of the funds paid under subsection (a) during the period under investigation. The Comptroller General of the United States shall submit to the Congress a report on each audit conducted under this paragraph.

(e) There are authorized to be appropriated for each of the 10 fiscal years beginning after the date of enactment of this Act $100,000,000 for the purpose of making payments under subsection (a).

Sec. 4. All claims of Native Hawaiians against the United States arising out of the overthrow of the Hawaiian monarchy—
(1) are hereby barred until the day that is 12 years after the date of enactment of this Act, and
(2) shall be extinguished on the day on which the aggregate amount of payments that have been made under section 3(a) equals the amount authorized to be appropriated under section 3(e).

Sec. 5. This Act may be cited as the "Native Hawaiian Claims Settlement Act."
PART III
Ceded Lands

Ceded Lands Amendments Summary

The following draft has been developed pursuant to the recommendations of the Native Hawaiian Study Commission minority and discussions with the State regarding difficulties experienced in implementing existing law.

I. Hawaii Ceded Lands Review Commission

Establishes a four-member commission to review the inventory of federal ceded lands and make recommendations to the President and GSA with respect to any ceded lands which are suitable to return to the State. The Commission shall consist of two members appointed by the President and two appointed by the Governor. It is required to report within one year after its first meeting and is thereafter subject to reestablishment by the Governor every five years.

II. Amendments to P.L. 88-233

A. Definition of Surplus Property

Under current law, as interpreted by the GSA, ceded lands are returned only after the property has been
designated as "surplus", i.e. not needed by the controlling agency or desired by any other federal agency. Additionally, the agency currently in control of the property must concur with the transfer.

Pursuant to the theory that the ceded lands were set aside to satisfy specific and immediate needs, and that there existed federal intention to return parcels when that need no longer existed, the triggering status has been amended to read "property no longer necessary to satisfy the original purpose to which the property was set aside". The requirement of concurrence by the controlling agency has been eliminated and the GSA is required to implement the recommendations of the Ceded Lands Review Commission.

B. Conditions of Return

Under current law the GSA may impose any desired conditions upon the return of ceded lands. Additionally, it must require payment by the State at the fair market value of any improvements placed on the property by the federal government. The GSA is authorized to value the improvements. If the State does not agree to pay the required sum, the GSA can then dispose of the land and must pay the State proceeds he estimates to be equal to the value of the land involved.

These provisions would be amended as follows:
1) The only permissible condition of transfer would be that the State compensate the federal government for improvements of commercial value. The commercial value limitation is imposed because many of the existing improvements retain no value except for specific purposes related to the needs of the military. Requiring compensation therefore has the effect of providing the federal government with a windfall, i.e., a return on property with no value other than to the government.

2) The improvements are to be valued by the cost less depreciation formula. The formula is intended to represent the current value of money actually spent by the federal government on improvements. It effectively precludes the possibility that a profit will be made at Hawaii's expense by virtue of inflation or increased market value.

3) The federal government will be required to return the land in a condition sufficient to permit the State to make reasonable use of the property. This change is designed to address the particular situation where land has been used as target ranges. Remaining live ordnance would leave the land with no actual value.
4) Requires the GSA to pay the State the value of the
property if the State elects not to pay for
improvements. Current law requires payment only for
that portion of any proceeds attributable to the land.
The State would therefore not receive the value of the
land if little or no proceeds were received from federal
disposition.

C. Sovereign Immunity

Under current law sovereign immunity appears to prevent
the State from judicial enforcement of the ceded lands
obligation. Sovereign immunity is waived by the language of
the bill.

III. Anticipated Difficulties

A. The question of federal intent

The legislation is based on the assumption that there
exists an affirmative obligation on the part of the federal
government to return ceded lands. It can, however, be argued
that the existing statutory mechanism is in fact merely
federal largess. This argument is supported by the
legislative history of P.L. 88-233, which very much appears
to suggest an intention that the lands be returned only at
the discretion of the government and if there is absolutely
no federal need for the property. The GSA can probably be anticipated to take this position.

Support for the State's position must therefore be based principally on a theory of moral obligation -- that the federal government has had the use of Hawaiian lands for almost a hundred years and has provided the people of Hawaii with no direct benefit as a result of this use. And linked to a reparations argument -- that the federal government initially came into possession of the property in a wrongful manner.

B. The Native Hawaiians

Both OHA and the Native Hawaiian Study Commission argue that a benefit should flow to the native Hawaiians from the federal disposition of ceded lands. Included in the suggestions has been the transfer of some or all such property to Hawaiians.

No such provisions are provided for in the bill. The Admissions Act provides for the transfer of ceded lands to the State with native Hawaiians benefitting only from a portion of any proceeds generated from such property. Other beneficiaries of the Ceded Lands Trust are the schools, farm and home ownership, public improvements, and lands for public use. Inasmuch as the Admissions Act constitutes a compact
between the people of Hawaii and the federal government, and P.L. 88-233 is an extension and interpretation of the Admissions Act, the direct transfer of property to, or exclusively for, native Hawaiians might constitute a deprivation of benefits owing to the people of the State generally as a condition of Admissions.

A second issue of concern to native Hawaiians is the State's satisfaction of its obligation under the ceded lands trust. OHA asserts that the State has not fully or properly satisfied its obligation and that the federal government as trustor has a right and duty to require the State to do so.

While this issue is almost certain to be raised in Hawaii, raising it as part of the bill would have the effect of setting the Hawaiians against the State in front of Congress.
HAWAIIAN CEDED LANDS AMENDMENTS ACT OF 1985

Section-by-Section Description

Popular Name

Section 1 would provide that this Act may be cited as the "Hawaiian Ceded Lands Amendments Act of 1985."

Findings and Purposes

Section 2(a) would determine that at the time of annexation of Hawaii to the United States, certain lands were held in trust for the people of Hawaii. When Hawaii was admitted into the Union, most of these lands were given to the State of Hawaii. Section 2(a) would further determine that the remaining portion of land should be returned to the State of Hawaii, but that existing mechanisms to make such a transfer are inadequate and should be revised.

Section 2(b) would establish a mechanism for review and identification of Federal land holdings eligible for return to the State of Hawaii; amend the formula for compensation to the United States for improvements on ceded lands; and permit the State of Hawaii to enforce ceded lands obligation of the United States via the courts.

TITLE I--HAWAIIAN CEDED LANDS REVIEW COMMISSION

Establishment of Commission

Section 101 would establish a Hawaiian Ceded Lands Review Commission composed of two members appointed by the President, and two members appointed by the Governor of Hawaii. Section 101
would also provide for the filling of vacancies on the Commission, time of meeting, compensation of members, and additional staffing of the Commission. Section 101 would further allow the Commission to obtain from any agency or department of the United States Government information necessary to carry out this title.

Duties of the Commission

Section 102 would require the Commission to review the inventory of Federal ceded lands and to make recommendations regarding the return to the State of Hawaii of any eligible ceded lands. Section 102 would further require the Commission to hold public hearings, and within one year of the first meeting of the Commission, to submit a report to the President, to the Congress, to the General Services Administration, and to the Governor of Hawaii.

Termination of the Commission

Section 103 would provide for the termination of the Commission sixty days after the submission of the Commission's report.

Additional Review

Section 104(a) would allow, on the request of the Governor of Hawaii, a new Commission to be established five years after enactment of this Act and each subsequent 5-year period.

Section 104(b) would provide for the termination of authority to convene a new Commission at such time as all ceded lands have been returned to the State of Hawaii.

Authorization
Section 105 would authorize the appropriation of necessary funds to carry out the provisions of this title.

TITLE II—AMENDMENTS TO PUBLIC LAW 88-233 RELATING TO HAWAIIAN LAND CONVEYANCE

Definition of Surplus Property

Section 201(a) would amend Public Law 88-233 by defining "surplus property" as "property no longer necessary to satisfy the original purpose for which the property was set aside."

Section 201(b) would further amend Public Law 88-233 by providing for the prompt review by the Administrator of the General Services Administration of any recommendations of the Hawaiian Ceded Lands Commission, and for the conveyance of any lands based on the Commission's recommendations.

Assessment of Improvements on Conveyed Lands

Section 202 would amend Public Law 88-233 by providing for the conveyance of lands to the State of Hawaii without monetary consideration. Section 202 would further provide that the Administrator may require payment by the State of Hawaii of the estimated value (based on original cost less depreciation) of any improvements made on such lands.

TITLE III—WAIVER OF SOVEREIGN IMMUNITY

Jurisdiction

Section 301(a) would confer on the United States District Court for the District of Hawaii jurisdiction to hear, determine, and render judgment on any claims against the United States

Section 301(b) would provide that nothing in this section shall be construed as an inference of liability on the part of the United States.
DRAFT OF LEGISLATION TO BE INTRODUCED BY HAWAII'S CONGRESSIONAL DELEGATION

A BILL

To facilitate the return of ceded lands in Hawaii currently subject to the control by the Federal Government to the Kingdom and Republic of Hawaii.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Hawaiian Ceded Lands Amendments Act of 1985".

FINDINGS AND PURPOSES

Sec. 2. (a). The Congress hereby finds that--

(1) at the time of the annexation of the Republic of Hawaii by the United States, the United States assumed ownership and control of over two million acres of crown and government lands previously belonging to the Republic and Kingdom of Hawaii (Joint Resolution of Annexation, 30 Stat. 750);

(2) such lands were by law expressly excluded from the Federal public domain and instead held in trust for the benefit of the people of Hawaii;

(3) in recognition of this trust obligation, all such "ceded lands" were conveyed to the State of Hawaii at the
time of its admission into the Union with the exception of approximately 400,000 acres for which the United States had an identified continuing need (Public Law 86-3);

(4) it was, and remains, an obligation on the party of the United States to return such ceded lands to the State of Hawaii at the earliest possible date (Public Law 88-233);

(5) despite this continuing obligation only a small part of the federally retained ceded lands have been returned to the State in the 25 years since Hawaii's statehood; and

(6) the existing mechanisms and standards to facilitate such transfers have proven inadequate and in need of review and revision.

(b) The purposes of this Act are to—

(1) establish a mechanism for the continuing review of Federal ceded land holdings in Hawaii in order to identify those parcels which are eligible for return to the State;

(2) amend the existing standard pursuant to which such lands are deemed eligible for transfer in order to permit continued Federal use only when such usage conforms to the purpose for which the property was originally set aside;

(3) amend the formula by which the United States is compensated for improvements placed upon ceded lands in order to assure just compensation while avoiding any unwarranted windfall; and

(4) permit the State of Hawaii to enforce the ceded lands obligation of the United States via the courts.
TITLE I—HAWAIIAN CEDED LANDS REVIEW COMMISSION ESTABLISHMENT OF COMMISSION

Sec. 101. There is hereby established the Hawaiian Ceded Lands Review Commission (hereinafter in this title referred to as the "Commission").

(b) The Commission shall be composed of--

(1) two members appointed by the President; and

(2) two members to be appointed by the Governor of Hawaii.

(c) The Chairman of the Commission shall be designated by the President, after consultation with the Governor of Hawaii, at the time of appointment.

(d) Vacancies in the membership of the Commission shall not affect the powers of the remaining members to execute the functions of the Commission and shall be filled in the same manner in which the original appointments were made.

(e) The president shall call the first meeting of the Commission not more than ninety days after the date of the enactment of this title.

(f) Three members of the Commission shall constitute a quorum, but a smaller number specified by the Commission may conduct hearings.

(g) Each member of the Commission shall receive $100 for each day such member is engaged in performing the duties of the Commission, except that members of the Commission who are full-time officers or employees of the United States shall receive no
addition pay on account of their service on the Commission other than official travel expenses.

(h) While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission (including members who are full-time officers or employees of the United States) shall be allowed travel expenses, including per diem, in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5, United States Code.

(i) Subject to such rules and regulations as may be adopted by the Commission, the Chairman may--

(1) appoint and fix the compensation of an executive director, a general counsel, and such additional staff as he deems necessary, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but at rates not in excess of the maximum rate of pay in effect from time to time for grade GS-18 of the General Schedule under section 5332 of such title; and

(2) procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5, United States Code, but at rates not to exceed $100 a day for individuals.
(j) Subject to section 552a of title 5, United States Code, the Commission may secure directly from any department or agency of the United States information necessary to enable it to carry out this title. Upon request of the Chairman of the Commission, the head of such department or agency shall furnish such information to the Commission.

(k) The Commission may use the United States mails in the same manner and upon the same conditions as other departments and agencies of the United States.

DUTIES OF THE COMMISSION

Sec. 102. (a) The Commission shall, with the cooperation of the Administrator of the General Services Administration, review the inventory of Federal ceded land holdings in the State of Hawaii and make recommendations to the President and the Administrator of the General Services Administration with respect to any ceded lands which are suitable for return to the State of Hawaii.

(b) The Commission shall conduct such hearings as it considers appropriate and shall provide notice of such hearings to the public, including information concerning the date, location and topic of each hearing. The Commission shall take such other actions as it considers necessary to obtain full public participation in the study undertaken by the Commission.

(c) Within one year after the date of its first meeting, the Commission shall report the recommendations of the study to the President, the Congress, the Administrator of the General Services Administration, and the Governor of Hawaii.
TERMINATION OF COMMISSION

Sec. 103. Subject to the provisions of section 104, upon the expiration of the sixty day period following the submission of the report required by section 102, the Commission shall cease to exist.

ADDITIONAL REVIEW

Sec. 104. (a) Upon the request of the Governor of Hawaii, a new Commission shall be appointed, as provided in section 101, five years after the date of enactment of this Act and each subsequent five-year period after the first five-year period. Each Commission shall be administered as provided in section 101 and the duties of the Commission shall be as provided in section 102.

(b) The authority to convene a new Commission every five years under this section shall terminate at such time as all ceded lands have been conveyed back to the State of Hawaii.

AUTHORIZATION

Sec. 105. There are authorized to be appropriated such sums as are necessary to carry out the provisions of this title.

TITLE II--AMENDMENTS TO PUBLIC LAW 88-233 RELATING TO HAWAIIAN LAND CONVEYANCE

DEFINITION OF SURPLUS PROPERTY

Sec. 201. (a) Clause (ii) of subsection (a) of the first section of Public Law 88-233 is amended by--

(1) striking out "to be surplus property" and inserting in lieu thereof "to be property no longer necessary to
satisfy the original purpose for which the property was set aside"; and

(2) striking out "with the concurrence of the head of the department or agency exercising administration or control over such lands or property."

(b) Subsection (a) is further amended by adding at the end thereof the following: "Whenever the Hawaiian Ceded Lands Review Commission issues recommendations as provided the Hawaiian Ceded Lands Amendments Act of 1985, the Administrator shall promptly review the recommendations and make any conveyances appropriate based on such recommendations pursuant to clause (ii)."

ASSESSMENT OF IMPROVEMENTS ON CONVEYED LANDS

Sec. 202. (a) Subsection (b) of the first section of Public Law 88-233 is amended by striking out the first sentence and inserting in lieu thereof the following: "Such lands and property shall be conveyed without monetary consideration and in a condition sufficient to permit the State to make reasonable use of such land and property. As a condition precedent to the conveyance of such lands, the Administrator may require payment by the State of Hawaii of the estimated value (based on original cost less depreciation) of any buildings, structures, and other improvements erected and made on such lands after they were set aside and which retain commercial value."

(b) The second sentence of such subsection is amended by--

(1) striking out "prescribed by the Administrator, he" and inserting in lieu thereof, "prescribed by this Act
(2) striking out "that portion of any proceeds from such disposal which he estimates to be" and inserting in lieu thereof "an amount".

TITLE III—WAIVER OF SOVEREIGN IMMUNITY

JURISDICTION

Sec. 301. (a) Jurisdiction is hereby conferred upon the United States District Court for the District of Hawaii to hear, determine, and render judgment on any claim against the United States arising out of the enforcement of section 5 of the Hawaii Statehood Act (73 Stat. 4) and the Land Conveyance Act of 1963 (77 Stat. 472), as amended.

(b) Nothing in this section shall be construed as an inference of liability on the part of the United States.
A. Generally

Among the federally related recommendations of the Task force on the Hawaiian Homes Commission, three themes emerge—1) the need for federal recognition and satisfaction of the trust obligation created by the passage of the Hawaiian Homes Commission Act; 2) the return of Hawaiian Homelands wrongfully conveyed and the payment of fair market value for any property licensed or leased; and 3) the providing of additional fiscal and technical support for the development of available resources. The proposed program seeks to manifest each of these objectives.

B. The Recognition of Federal Trust Obligation

An initial step in this regard is the solicitation of a formal report to Congress of the Department of Interior's action and intentions with regard to the Task Force recommendations.

An accessible mechanism to solicit such a response is the inclusion of language in the Appropriations Committee report accompanying the annual funding measure for the Department of Interior. While not expressly mandatory, such language expresses the concern of the funding committee. The following language was included in the Senate report accompanying the fiscal year 1986 Department of Interior Appropriations (HR 3174):

HAWAIIAN HOMES COMMISSION

In August of 1983 the Federal-State Task Force on the Hawaiian Homes Commission Act issued its report to the
Secretary of Interior and Governor of the State of Hawaii. In the report, recommendations were made regarding the satisfaction of the federal and state trust obligations arising from the Hawaiian Homes Commission Act of 1920. Since that time, the State has made substantial progress towards carrying out these recommendations. However, little progress appears to have been made by the Department of Interior. The Committee therefore directs that the Secretary designate from among his undersecretaries an individual to be responsible for the implementation of the Task Force report and that steps be taken as soon as practicable to identify any additional programs or resources which might be necessary to satisfy the United States' trust obligation as created by the Hawaiian Homes Commission Act. The Committee further directs that a report, including a plan of implementation, additional necessary resources, and the department's view regarding the appropriate scope of assistance, be submitted to the Committee within 180 days of the passage of this bill.

C. The Return of Wrongfully Conveyed Lands

A mechanism for the return or appropriate compensation for wrongfully conveyed Hawaiian Homelands is suggested in the following bill.
SECTION-BY-SECTION SUMMARY OF PROPOSED LEGISLATION

Hawaiian Homes Program Amendments

Section 1 would provide that this Act may be cited as the "Hawaiian Homes Program Amendments of 1985."

Section 2 would require the Secretary of Interior to submit a report to Congress at the end of each fiscal year regarding the activities of the Department with regard to Hawaiian homeland, and the progress made in correcting problems identified in the report of the Federal-State Task Force on the Hawaiian Homes Commission Act, together with such recommendations as the Secretary deems advisable.

Section 3 (a) would establish a time period, beginning on the effective date of this Act, during which the Secretary of the Interior and the State of Hawaii shall identify all leases for Hawaiian homelands between agencies of the Federal Government and the State of Hawaii.

Section 3 (b) would require the agencies of the Federal Government involved, on identification of any lease, to enter into negotiations with the State of re-lease the land for fair market values, as determined by the Secretary and the State.

Section 4 (a) would establish a time period, beginning on the effective date of this Act, for the identification of all conveyances of Hawaiian homelands made to the Federal Government.

Section 4 (b) would provide for the method of obtaining an independent appraisal of the value of lands identified in subsection (a).
Section 5 would require the Secretary to negotiate, based on identification and appraised value, with the State for the purpose of exchanging Federal lands of equal value for lands found to be conveyed under Section 4(a).

Section 6 would define terms, for purposes of this Act, as follows:

1. "Secretary" would mean the Secretary of the interior.
2. "State" would mean the State of Hawaii.

Section 9 would establish October 1, 1986, as the effective date for this Act.
SECTION 1. SHORT TITLE.

This Act may be cited as the "Hawaiian Homes Program Amendments of 1985".

SEC. 2. REPORTS -- The Secretary shall prepare and submit to the Congress at the end of each fiscal year a report--

(1) of the activities of the Department with regard to the satisfaction of the federal trust obligations created by the Hawaiian Homes Commission Act of 1920, as amended; and

(2) on the progress made in correcting the problems identified in the report entitled "Report to United States Secretary of the Interior and the Governor of the State of Hawaii" submitted by the Federal-State Task Force on the Hawaiian Homes Commission Act, dated August 15, 1983; together with such recommendations as the Secretary deems advisable.

SEC. 3. IDENTIFICATION OF LEASES AND RENEGOTIATION OF TERMS

(a) Identification -- The Secretary and the State shall, not later than the end of the (* month) period beginning on the effective date of this Act, identify--

(1) all leases in effect on the effective date of this Act; and

(2) all former leases, for Hawaiian homelands between agencies of the Federal Government and the State.

(b) Renegotiation of Terms -- Upon identification of any lease under subsection (a)(1), the agency of the Federal Government involved shall, notwithstanding the expiration date of any such
lease, enter into negotiations with the State to re-lease the land involved for fair market value, as determined by the Secretary and the State.

SEC. 4 IDENTIFICATION OF CONVEYANCES OF HAWAIIAN HOMELANDS

(a) Identification of Land Conveyances--The Secretary, in consultation with the State shall, not later than the end of the (* month) period beginning on the effective date of this Act, identify all conveyances of Hawaiian homelands made to the Federal Government.

(b) Determination of Value--The Secretary shall, not later than the end of the (* month) period beginning on the date that the identification is made under subsection (a), (cause an independent appraisal of the lands identified under subsection (a), together with the improvements thereon to be made by an independent appraiser he shall select who shall be approved by the State before proceeding with the appraisal, (the cost of the appraisal to be shared by the Federal Government and the State)) (cause an independent appraisal of the lands identified under subsection (a), together with improvements thereon, to be made by (number) disinterested appraisers designated by (him) (the State) (him, with the approval of the State)).

SEC. 5. COMPENSATION

(a) Alternatives Available--The Secretary shall, at the election of State--

(1) exchange Federal lands of equal value (not including the value of any buildings, structures,
or other improvements on such Federal lands) for lands found to be conveyed under section 4(a); 
(2) return the lands conveyed under section 4(a) to the State; or 
(3) pay to the State the fair market value of land conveyed under section 4(a).

(b) Environmental Restoration—Prior to conveying any Federal land to the State under this section the Secretary shall, (*at no cost to the State), provide for the removal of any—

(1) hazardous waste and debris; and 
(2) unsafe and unsightly buildings or structures, from such lands.

SEC. 6. DEFINITIONS.

For purposes of this Act:

(1) Secretary—The term "Secretary" means the Secretary of the Interior.

(2) State—The term "State" means the State of Hawaii.

(3) Statehood Act—The term "Statehood Act" means the Act entitled "An Act to provide for the admission of the State of Hawaii into the Union", approved March 18, 1959 (73 Stat.4).

SEC. 7. EFFECTIVE DATE.

This Act shall take effect October 1, 1986.
INTRODUCTION

We are forwarding for your comment and review a proposed federal legislative program designed to implement the recommendations of the Native Hawaiian Study Commission. The Commission, established by Congress in 1980 pursuant to Public Law 96-565, was mandated to study the cultural needs and concerns of native Hawaiians. It published its final report in 1983, and in 1984 hearings on the report were held in Hawaii and Washington, D.C. by the U.S. Senate Committee on Energy and Natural Resources and the U.S. House of Representatives Committee on Interior and Insular Affairs.

The Commission made findings and recommendations of two types. The first involved the current condition of native Hawaiians and the need for additional federal and state efforts to develop and implement mechanisms to provide financial and programmatic assistance. All members of the Commission agreed that concerted private and governmental efforts are required to address substantial existing problems with regard to housing, employment, health, education, social services and the preservation of the native Hawaiians' historical heritage. Accordingly this program seeks to begin to implement these recommendations.

The Commission was divided on the issue of whether there existed an obligation on the part of the United States to provide reparations to native Hawaiians as a result of its participation
in the overthrow of the Kingdom of Hawaii. The majority of its members, relying upon existing common law and statutory tests, concluded that no such obligation exists. The minority concluded that, while no precise precedent exists, the critical participation of the United States in the dissolution of a sovereign people's government required the imposition of a legal and moral obligation.

The delegation concurs with the minority conclusion and will seek to ensure that the Congress recognizes the federal responsibility in this regard. The process of education can be expected to be most difficult. And, frankly, in this age of fiscal restraint the probability of achieving immediate appropriate reparations is somewhat remote. The primary objective of the reparations portion of the program is therefore to lay the groundwork for the education of the Congress and the American people. The federal obligation must be recognized before compensation will be awarded.

Substantial portions of the program also address the federal obligation to return ceded lands to the State of Hawaii and to implement the recommendations of the Federal-State Task Force on the Hawaiian Homes Commission Act.

Pursuant to the recommendations of the Native Hawaiian Study Commission minority recommendations, the ceded lands legislation attempts to facilitate the return of outstanding ceded lands by amending the standards and procedures by which such returns are made. Additionally, a commission is established to review all
existing ceded lands holdings in Hawaii and to make appropriate recommendations.

Since the issuance of the report of the Federal-State Task Force on the Hawaiian Homes Commission Act, the state has made substantial strides in recognizing its obligation to return wrongfully transferred Hawaiian homelands. Regrettably the federal government has not yet recognized its obligation. Given the centrality of the land issue, the proposed program will initially focus on securing the return of federally controlled Hawaiian homelands. The Department of Interior will also be requested to provide a detailed report on its position and planned actions with regard to each of the Task Force’s recommendations.

Please advise us of your comments.
PART I
Federal and State Programs

A. Generally

Substantial progress has been made in identifying native Hawaiians as appropriate participants in federal programs. In the 98th Congress alone, monies have been earmarked for the participation of native Hawaiian in the Vocational Education Act ($2 million), the Library Services and Construction Act ($600 thousand), the Maternal and Child Health Program ($500 thousand), and in various specific programs under the Department of Education. Federal studies have also been statutorily mandated with regard to Native Hawaiian Maritime Resources, and alcohol and drug abuse among native Hawaiians.

Pursuant to the recommendations of both the majority and minority reports of the Native Hawaiian Study Commission, the delegation will continue to systematically pursue the inclusion of native Hawaiians in all appropriate federal programs. Actions in this regard will include:

1) The identification by each relevant department of programs in which the participation of native Hawaiians would be appropriate together with any statutory or regulatory amendments which might be necessary to achieve this end.

2) A formal parallel request to the Hawaii State legislature and administration that a comprehensive study be conducted
of governmental assistance to native Hawaiians on the state level.

3) Attempts to achieve the Congressional acceptance of the proposition that native Hawaiians are native Americans and should be included without prejudice in all appropriate federal programs designed to assist America's indigenous peoples.

4) Initiatives will be started to establish a federal commission, similar to the existing Civil Rights Commission, which would formally examine and report to Congress on the nation's satisfaction of its obligation to Native Americans. Native Hawaiians will be included as a part of the Commission.

B. Identification of Relevant Federal Programs

Relevant departments are best equipped to identify legislative changes necessary to ensure that native Hawaiians are provided access to existing federal programs. The delegation will therefore forward the following letters to the Secretary of each federal department requesting that a comprehensive report be submitted on the existing scope of assistance to native Hawaiians, programs designed to assist native Americans, and legislation necessary to include native Hawaiians where appropriate.

Upon receipt of the required reports, a report will be made to the Hawaiian Community and necessary legislation will be introduced.

C. Survey of State Activity
Arguments on the federal level to augment the scope of assistance to native Hawaiians would be greatly strengthened by a demonstration of the State of Hawaii's commitment to also provide such assistance. Accordingly, the President of the State Senate, Speaker of the State House of Representatives and Governor will be requested to have studies conducted of the existing scope of assistance provided to native Hawaiians by the State.

D. Native Hawaiians as Native Americans

Ultimately, native Hawaiians should be considered synonymously with all of America's indigenous people. However, the immediate statutory inclusion of native Hawaiian in all existing federal native American programs is not possible. Many programs exist for which inclusion would not be appropriate or in which the extraordinary existing needs of the Indian population would lead to the opposing of including native Hawaiians. The delegation will therefore continue to work together with the native American community to identify appropriate areas of inclusion and amend the law where it is possible.

In order to enhance this process and to facilitate greater understanding in Congress regarding the propriety of such actions, the following sense of the Congress resolution will be introduced for adoption.

DRAFT RESOLUTION - Kehau

E. Native American Commission
There currently exists no single independent body which is responsible for reviewing federal legislation and programs in order to ensure that the interests of native Americans are considered and accommodated. The delegation will explore the possibility of establishing such a commission. Membership of any such commission would include at least one native Hawaiian. It is hoped that by the establishment of such a body, the needs of native Americans might receive more systematic attention and native Hawaiians will be considered among such groups as a matter of course.
PART II
Reparations

A. Generally

As discussed in volume II of the Native Hawaiian Study Commission report, securing appropriate reparations for native Hawaiians must involve the processes of 1) federal recognition of the moral and legal obligation arising from the participation of the United States in the overthrow of the Hawaiian monarchy, and 2) the development of the reparations program.

In order to effectively separate these processes, two measures are proposed. The first is a joint resolution detailing the historical circumstance and legal arguments and concluding that there in fact exists an obligation on the part of the United States. The second is a reparations bill designed to serve as a basis for Congressional examination of the issue.

B. Joint Resolution of Acknowledgement

A Joint Resolution acknowledging the obligation of the United States would be based on the following summary and argument:

LURLINE'S PAPER

C. Reparations Legislation

As a proposed reparations scheme and basis for discussion, the Native Hawaiian Claims Act would:
-- Clearly acknowledges the U.S. role in the overthrow of the Hawaiian monarchy.

-- Authorize the appropriation of funds to be paid to the Office designated by State law as the recipient of such funds over a period of ten years for the establishment of social programs to meet the needs of the Native Hawaiian community and to acquire and develop land and natural resources for the benefit of Native Hawaiians.

-- Define "Native Hawaiian" as "Any individual whose ancestors were natives of the area which constituted the Hawaiian Islands prior to 1778."

-- Permit consultation with the Hawaiian community through the formal public hearings process of the appropriate Congressional committee, and through informal processes such as this communication.
NATIVE HAWAIIAN CLAIMS SETTLEMENT ACT

Section-by-Section Description

Findings and Purposes

Section 1(a) would provide that Congress recognize that United States participated in activities which contributed to the overthrow of the Hawaiian monarchy in 1893; that the United States participation was opposed by the Native Hawaiians; that United States participation violated Hawaii's right to independence and violated the principle of nonintervention in the internal affairs of another nation; and that the United States has a moral and legal obligation to provide reparation to the Native Hawaiians.

Section 1(b) would establish as the purpose of this Act the provision of reparations to the Native Hawaiians.

Section 2 would define "Native Hawaiian" as any individual whose ancestors were native to the area that constituted the Hawaiian Islands prior to 1778. Section 2 would also define "Office of Hawaiian Affairs" as the office established by law to provide programs to the Native Hawaiians.

Section 3(a) would provide that the Secretary of the Treasury pay to the agency designated by State law as the recipient of reparation (Agency) funds appropriated under this Act for the fiscal year by no later than thirty days after the date such funds become available.

Section 3(b)(1) would provide that payments may be made only after an agreement between the Secretary of the Interior and the
Agency in which the Agency agrees to use the funds for programs described, to submit a plan for monetary expenditures, to submit an annual report, and to make available for audit all necessary materials.

Section 3(b)(2) would specify that payments may only be used for the promotion of various economic, social, and educational programs for the Native Hawaiians. Payments may also be used for the purchase and development of land and natural resources for the benefit of the Native Hawaiian.

Section 3(c)(1) would provide that the State of Hawaii repay to the United States any portion of payment not spent on purposes described.

Section 3(c)(2) would permit the Secretary of the Treasury to offset any payment required under subsection (a) by any amount the State of Hawaii owes the United States by reason of paragraph (1).

Section 3(d)(1) would authorize the Comptroller General of the United States to have access for purposes of audit, to any materials of the Office of Hawaiian Affairs and to any grantee, contractee, or subcontractee of the Agency.

Section 3(d)(2) would specify that an audit be made of expenditures of funds by the Comptroller General of the United States at least once during each two-year period within the twelve-year period beginning on the date funds are appropriated, and for a report to the Congress on each audit conducted.

Section 3(e) would authorize appropriation of $100,000,000 for each of the ten fiscal years beginning after date of enactment.
of this Act for the purposes of making payments under subsection (a).

Section 4 would provide that all claims of the Native Hawaiians are barred until the day that is 12 years after enactment of this Act, and that all claims of the Native Hawaiians shall be terminated on the day the aggregate amount of payments equals the amount authorized to be appropriated.

Section 5 would provide that this Act may be cited as the "Native Hawaii Claims Settlement Act."
A BILL

To provide funds for job training, education, and economic development of Native Hawaiians.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Section 1. (a) The Congress finds—

(1) that the United States participated in activities which contributed to the overthrow of the Hawaiian monarchy on January 17, 1893,

(2) that the participation of the United States in such activities was opposed by the Native Hawaiians,

(3) that the participation by the United States in such activities violated the Kingdom of Hawaii's right to independence and violated the international law principle of nonintervention in the internal affairs of another nation, and

(4) that the United States has a moral and legal obligation to provide reparations to Native Hawaiians.

(b) the purpose of this Act is to provide reparations to Native Hawaiians for the participation of the United States in the overthrow of the Hawaiian monarchy on January 17, 1893.
Sec. 2. For purposes of this Act—

(1) The term "Native Hawaiian" means any individual whose ancestors were natives of the area that constituted the Hawaiian Islands prior to 1778.

(2) The term "designated State agency" means the office established by the laws of the State of Hawaii to serve as the recipient for federal reparations.

Sec. 3. (a) Except as otherwise provided in this Act, the Secretary of the Treasury shall pay to the Designated State agency the funds appropriated under the authority of subsection (e) for the fiscal year by no later than the date that is 30 days after the date on which such funds become available for expenditure.

(b)(1) Payments may be made under subsection (a) only if an agreement has been entered into by the Secretary of the Interior and the designated State agency under which the designated State agency agrees—

(A) to use the funds received under subsection (a) only for purposes described in paragraph (2),

(B) to submit to the Secretary of the Interior a plan for monitoring the expenditure of such funds,

(C) to submit an annual report to the Secretary of the Interior on the use of such funds by the designated State agency for each of the 12 years succeeding the year in which this Act is enacted, and

(D) to make available to the Comptroller General of the United States all books, records, documents, and papers
necessary for completion of the audits required under subsection (d).

(2) Payments received under subsection (a) may only be used—

(A) to promote the economic development and self-sufficiency of Native Hawaiians,

(B) to promote the social welfare of Native Hawaiians,

(C) to provide educational programs for Native Hawaiians,

(D) to provide health programs for Native Hawaiians,

(E) to provide programs that promote the cultural preservation of Native Hawaiians,

(F) to provide job training and employment placement of Native Hawaiians, and

(G) to acquire and develop land and natural resources for the benefit of Native Hawaiians.

(c)(1) The State of Hawaii shall repay to the United States any portion of a payment made under subsection (a) that is not expended for a purpose described in subsection (d)(2).

(2) The Secretary of the Treasury may offset any payment which is required to be made under subsection (a) by any amount that the State of Hawaii owes the United States by reason of paragraph (1).

(d)(1) The Comptroller General of the United States, and any duly authorized representatives of the Comptroller General of the United States, shall have access for the purpose of audit and examination to any books, documents, papers, and records of—
(A) the designated State agency, and

(B) any grantee, contractee, or subcontractee of the designated State agency,

that are pertinent to the expenditure of funds provided under subsection (a).

(2) At least once during each 2-year period within the 12-year period beginning on the date funds are appropriated under the authority of subsection (e), the Comptroller General of the United States shall conduct an audit of the expenditure of the funds paid under subsection (a) during the period under investigation. The Comptroller General of the United States shall submit to the Congress a report on each audit conducted under this paragraph.

(e) There are authorized to be appropriated for each of the 10 fiscal years beginning after the date of enactment of this Act $100,000,000 for the purpose of making payments under subsection (a).

Sec. 4. All claims of Native Hawaiians against the United States arising out of the overthrow of the Hawaiian monarchy—

(1) are hereby barred until the day that is 12 years after the date of enactment of this Act, and

(2) shall be extinguished on the day on which the aggregate amount of payments that have been made under section 3(a) equals the amount authorized to be appropriated under section 3(e).

Sec. 5. This Act may be cited as the "Native Hawaiian Claims Settlement Act."
PART III
Ceded Lands

Ceded Lands Amendments Summary

The following draft has been developed pursuant to the recommendations of the Native Hawaiian Study Commission minority and discussions with the State regarding difficulties experienced in implementing existing law.

I. Hawaii Ceded Lands Review Commission

Establishes a four-member commission to review the inventory of federal ceded lands and make recommendations to the President and GSA with respect to any ceded lands which are suitable to return to the State. The Commission shall consist of two members appointed by the President and two appointed by the Governor. It is required to report within one year after its first meeting and is thereafter subject to reestablishment by the Governor every five years.

II. Amendments to P.L. 88-233

A. Definition of Surplus Property

Under current law, as interpreted by the GSA, ceded lands are returned only after the property has been
designated as "surplus", i.e. not needed by the controlling agency or desired by any other federal agency. Additionally, the agency currently in control of the property must concur with the transfer.

Pursuant to the theory that the ceded lands were set aside to satisfy specific and immediate needs, and that there existed federal intention to return parcels when that need no longer existed, the triggering status has been amended to read "property no longer necessary to satisfy the original purpose to which the property was set aside". The requirement of concurrence by the controlling agency has been eliminated and the GSA is required to implement the recommendations of the Ceded Lands Review Commission.

B. Conditions of Return

Under current law the GSA may impose any desired conditions upon the return of ceded lands. Additionally, it must require payment by the State at the fair market value of any improvements placed on the property by the federal government. The GSA is authorized to value the improvements. If the State does not agree to pay the required sum, the GSA can then dispose of the land and must pay the State proceeds he estimates to be equal to the value of the land involved.

These provisions would be amended as follows:
1) The only permissible condition of transfer would be that the State compensate the federal government for improvements of commercial value. The commercial value limitation is imposed because many of the existing improvements retain no value except for specific purposes related to the needs of the military. Requiring compensation therefore has the effect of providing the federal government with a windfall, i.e., a return on property with no value other than to the government.

2) The improvements are to be valued by the cost less depreciation formula. The formula is intended to represent the current value of money actually spent by the federal government on improvements. It effectively precludes the possibility that a profit will be made at Hawaii's expense by virtue of inflation or increased market value.

3) The federal government will be required to return the land in a condition sufficient to permit the State to make reasonable use of the property. This change is designed to address the particular situation where land has been used as target ranges. Remaining live ordnance would leave the land with no actual value.
4) Requires the GSA to pay the State the value of the property if the State elects not to pay for improvements. Current law requires payment only for that portion of any proceeds attributable to the land. The State would therefore not receive the value of the land if little or no proceeds were received from federal disposition.

C. Sovereign Immunity

Under current law sovereign immunity appears to prevent the State from judicial enforcement of the ceded lands obligation. Sovereign immunity is waived by the language of the bill.

III. Anticipated Difficulties

A. The question of federal intent

The legislation is based on the assumption that there exists an affirmative obligation on the part of the federal government to return ceded lands. It can, however, be argued that the existing statutory mechanism is in fact merely federal largess. This argument is supported by the legislative history of P.L. 88-233, which very much appears to suggest an intention that the lands be returned only at the discretion of the government and if there is absolutely
no federal need for the property. The GSA can probably be anticipated to take this position.

Support for the State's position must therefore be based principally on a theory of moral obligation -- that the federal government has had the use of Hawaiian lands for almost a hundred years and has provided the people of Hawaii with no direct benefit as a result of this use. And linked to a reparations argument -- that the federal government initially came into possession of the property in a wrongful manner.

B. The Native Hawaiians

Both OHA and the Native Hawaiian Study Commission argue that a benefit should flow to the native Hawaiians from the federal disposition of ceded lands. Included in the suggestions has been the transfer of some or all such property to Hawaiians.

No such provisions are provided for in the bill. The Admissions Act provides for the transfer of ceded lands to the State with native Hawaiians benefitting only from a portion of any proceeds generated from such property. Other beneficiaries of the Ceded Lands Trust are the schools, farm and home ownership, public improvements, and lands for public use. Inasmuch as the Admissions Act constitutes a compact
between the people of Hawaii and the federal government, and P.L. 88-233 is an extension and interpretation of the Admissions Act, the direct transfer of property to, or exclusively for, native Hawaiians might constitute a deprivation of benefits owing to the people of the State generally as a condition of Admissions.

A second issue of concern to native Hawaiians is the State's satisfaction of its obligation under the ceded lands trust. OHA asserts that the State has not fully or properly satisfied its obligation and that the federal government as trustor has a right and duty to require the State to do so.

While this issue is almost certain to be raised in Hawaii, raising it as part of the bill would have the effect of setting the Hawaiians against the State in front of Congress.
HAWAIIAN CEDED LANDS AMENDMENTS ACT OF 1985

Section-by-Section Description

Popular Name

Section 1 would provide that this Act may be cited as the "Hawaiian Ceded Lands Amendments Act of 1985."

Findings and Purposes

Section 2(a) would determine that at the time of annexation of Hawaii to the United States, certain lands were held in trust for the people of Hawaii. When Hawaii was admitted into the Union, most of these lands were given to the State of Hawaii. Section 2(a) would further determine that the remaining portion of land should be returned to the State of Hawaii, but that existing mechanisms to make such a transfer are inadequate and should be revised.

Section 2(b) would establish a mechanism for review and identification of Federal land holdings eligible for return to the State of Hawaii; amend the formula for compensation to the United States for improvements on ceded lands; and permit the State of Hawaii to enforce ceded lands obligation of the United States via the courts.

TITLE I—HAWAIIAN CEDED LANDS REVIEW COMMISSION

Establishment of Commission

Section 101 would establish a Hawaiian Ceded Lands Review Commission composed of two members appointed by the President, and two members appointed by the Governor of Hawaii. Section 101
would also provide for the filling of vacancies on the Commission, time of meeting, compensation of members, and additional staffing of the Commission. Section 101 would further allow the Commission to obtain from any agency or department of the United States Government information necessary to carry out this title.

Duties of the Commission

Section 102 would require the Commission to review the inventory of Federal ceded lands and to make recommendations regarding the return to the State of Hawaii of any eligible ceded lands. Section 102 would further require the Commission to hold public hearings, and within one year of the first meeting of the Commission, to submit a report to the President, to the Congress, to the General Services Administration, and to the Governor of Hawaii.

Termination of the Commission

Section 103 would provide for the termination of the Commission sixty days after the submission of the Commission's report.

Additional Review

Section 104(a) would allow, on the request of the Governor of Hawaii, a new Commission to be established five years after enactment of this Act and each subsequent 5-year period.

Section 104(b) would provide for the termination of authority to convene a new Commission at such time as all ceded lands have been returned to the State of Hawaii.

Authorization
Section 105 would authorize the appropriation of necessary funds to carry out the provisions of this title.

TITLE II—AMENDMENTS TO PUBLIC LAW 88-233 RELATING TO HAWAIIAN LAND CONVEYANCE

Definition of Surplus Property

Section 201(a) would amend Public Law 88-233 by defining "surplus property" as "property no longer necessary to satisfy the original purpose for which the property was set aside."

Section 201(b) would further amend Public Law 88-233 by providing for the prompt review by the Administrator of the General Services Administration of any recommendations of the Hawaiian Ceded Lands Commission, and for the conveyance of any lands based on the Commission’s recommendations.

Assessment of Improvements on Conveyed Lands

Section 202 would amend Public Law 88-233 by providing for the conveyance of lands to the State of Hawaii without monetary consideration. Section 202 would further provide that the Administrator may require payment by the State of Hawaii of the estimated value (based on original cost less depreciation) of any improvements made on such lands.

TITLE III—WAIVER OF SOVEREIGN IMMUNITY

Jurisdiction

Section 301(a) would confer on the United States District Court for the District of Hawaii jurisdiction to hear, determine, and render judgment on any claims against the United States

Section 301(b) would provide that nothing in this section shall be construed as an inference of liability on the part of the United States.
A BILL

To facilitate the return of ceded lands in Hawaii currently subject to the control by the Federal Government to the Kingdom and Republic of Hawaii.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Hawaiian Ceded Lands Amendments Act of 1985".

FINDINGS AND PURPOSES

Sec. 2. (a). The Congress hereby finds that--

(1) at the time of the annexation of the Republic of Hawaii by the United States, the United States assumed ownership and control of over two million acres of crown and government lands previously belonging to the Republic and Kingdom of Hawaii (Joint Resolution of Annexation, 30 Stat. 750;)

(2) such lands were by law expressly excluded from the Federal public domain and instead held in trust for the benefit of the people of Hawaii;

(3) in recognition of this trust obligation, all such "ceded lands" were conveyed to the State of Hawaii at the
time of its admission into the Union with the exception of approximately 400,000 acres for which the United States had an identified continuing need (Public Law 86-3);

(4) it was, and remains, an obligation on the party of the United States to return such ceded lands to the State of Hawaii at the earliest possible date (Public Law 88-233);

(5) despite this continuing obligation only a small part of the federally retained ceded lands have been returned to the State in the 25 years since Hawaii's statehood; and

(6) the existing mechanisms and standards to facilitate such transfers have proven inadequate and in need of review and revision.

(b) The purposes of this Act are to—

(1) establish a mechanism for the continuing review of Federal ceded land holdings in Hawaii in order to identify those parcels which are eligible for return to the State;

(2) amend the existing standard pursuant to which such lands are deemed eligible for transfer in order to permit continued Federal use only when such usage conforms to the purpose for which the property was originally set aside;

(3) amend the formula by which the United States is compensated for improvements placed upon ceded lands in order to assure just compensation while avoiding any unwarranted windfall; and

(4) permit the State of Hawaii to enforce the ceded lands obligation of the United States via the courts.
additional pay on account of their service on the Commission other than official travel expenses.

(h) While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission (including members who are full-time officers or employees of the United States) shall be allowed travel expenses, including per diem, in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5, United States Code.

(i) Subject to such rules and regulations as may be adopted by the Commission, the Chairman may—

(1) appoint and fix the compensation of an executive director, a general counsel, and such additional staff as he deems necessary, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but at rates not in excess of the maximum rate of pay in effect from time to time for grade GS-18 of the General Schedule under section 5332 of such title;

and

(2) procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5, United States Code, but at rates not to exceed $100 a day for individuals.
(2) striking out "that portion of any proceeds from such disposal which he estimates to be" and inserting in lieu thereof "an amount".

TITLE III—WAIVER OF SOVEREIGN IMMUNITY

JURISDICTION

Sec. 301. (a) Jurisdiction is hereby conferred upon the United States District Court for the District of Hawaii to hear, determine, and render judgment on any claim against the United States arising out of the enforcement of section 5 of the Hawaii Statehood Act (73 Stat. 4) and the Land Conveyance Act of 1963 (77 Stat. 472), as amended.

(b) Nothing in this section shall be construed as an inference of liability on the part of the United States.
A. Generally

Among the federally related recommendations of the Task force on the Hawaiian Homes Commission, three themes emerge—1) the need for federal recognition and satisfaction of the trust obligation created by the passage of the Hawaiian Homes Commission Act; 2) the return of Hawaiian Homelands wrongfully conveyed and the payment of fair market value for any property licensed or leased; and 3) the providing of additional fiscal and technical support for the development of available resources. The proposed program seeks to manifest each of these objectives.

B. The Recognition of Federal Trust Obligation

An initial step in this regard is the solicitation of a formal report to Congress of the Department of Interior's action and intentions with regard to the Task Force recommendations.

An accessible mechanism to solicit such a response is the inclusion of language in the Appropriations Committee report accompanying the annual funding measure for the Department of Interior. While not expressly mandatory, such language expresses the concern of the funding committee. The following language will be proposed:

HAWAIIAN HOMES COMMISSION

In August of 1983 the Federal-State Task Force on the Hawaiian Homes Commission Act issued its report to the
Secretary of Interior and Governor of the State of Hawaii.

In the report, recommendations were made regarding the satisfaction of the federal and state trust obligations arising from the Hawaiian Homes Commission Act of 1920. Since that time, the State has made substantial progress towards carrying out these recommendations. However, little progress appears to have been made by the Department of Interior. The Committee therefore directs that the Secretary designate from among his undersecretaries an individual to be responsible for the implementation of the Task Force report and that steps be taken as soon as practicable to identify any additional programs or resources which might be necessary to satisfy the United States' trust obligation as created by the Hawaiian Homes Commission Act. The Committee further directs that a report, including a plan of implementation, additional necessary resources, and the department's view regarding the appropriate scope of assistance, be submitted to the Committee within 180 days of the passage of this bill.

C. The Return of Wrongfully Conveyed Lands

A mechanism for the return or appropriate compensation for wrongfully conveyed Hawaiian Homelands is suggested in the following bill.
SECTION-BY-SECTION SUMMARY OF PROPOSED LEGISLATION

Hawaiian Homes Program Amendments

Section 1 would provide that this Act may be cited as the "Hawaiian Homes Program Amendments of 1985."

Section 2 would require the Secretary of Interior to submit a report to Congress at the end of each fiscal year regarding the activities of the Department with regard to Hawaiian homeland, and the progress made in correcting problems identified in the report of the Federal-State Task Force on the Hawaiian Homes Commission Act, together with such recommendations as the Secretary deems advisable.

Section 3 (a) would establish a time period, beginning on the effective date of this Act, during which the Secretary of the Interior and the State of Hawaii shall identify all leases for Hawaiian homelands between agencies of the Federal Government and the State of Hawaii.

Section 3 (b) would require the agencies of the Federal Government involved, on identification of any lease, to enter into negotiations with the State of re-lease the land for fair market values, as determined by the Secretary and the State.

Section 4 (a) would establish a time period, beginning on the effective date of this Act, for the identification of all conveyances of Hawaiian homelands made to the Federal Government.

Section 4 (b) would provide for the method of obtaining an independent appraisal of the value of lands identified in subsection (a).
Section 5 would require the Secretary to negotiate, based on identification and appraised value, with the State for the purpose of exchanging Federal lands of equal value for lands found to be conveyed under Section 4(a).

Section 6 would define terms, for purposes of this Act, as follows:

1. "Secretary" would mean the Secretary of the interior.
2. "State" would mean the State of Hawaii.

Section 9 would establish October 1, 1986, as the effective date for this Act.
SECTION 1. SHORT TITLE.

This Act may be cited as the "Hawaiian Homes Program Amendments of 1985".

SEC. 2. REPORTS -- The Secretary shall prepare and submit to the Congress at the end of each fiscal year a report--

(1) of the activities of the Department with regard to the satisfaction of the federal trust obligations created by the Hawaiian Homes Commission Act of 1920, as amended; and

(2) on the progress made in correcting the problems identified in the report entitled "Report to United States Secretary of the Interior and the Governor of the State of Hawaii" submitted by the Federal-State Task Force on the Hawaiian Homes Commission Act, dated August 15, 1983; together with such recommendations as the Secretary deems advisable.

SEC. 3. IDENTIFICATION OF LEASES AND RENEGOTIATION OF TERMS

(a) Identification--The Secretary and the State shall, not later than the end of the (*) month) period beginning on the effective date of this Act, identify--

(1) all leases in effect on the effective date of this Act; and

(2) all former leases, for Hawaiian homelands between agencies of the Federal Government and the State.

(b) Renegotiation of Terms--Upon identification of any lease under subsection (a)(1), the agency of the Federal Government involved shall, notwithstanding the expiration date of any such
lease, enter into negotiations with the State to re-lease the land involved for fair market value, as determined by the Secretary and the State.

SEC. 4 IDENTIFICATION OF CONVEYANCES OF HAWAIIAN HOMELANDS

(a) Identification of Land Conveyances--The Secretary, in consultation with the State shall, not later than the end of the (* month) period beginning on the effective date of this Act, identify all conveyances of Hawaiian homelands made to the Federal Government.

(b) Determination of Value--The Secretary shall, not later than the end of the (* month) period beginning on the date that the identification is made under subsection (a), (*cause an independent appraisal of the lands identified under subsection (a), together with the improvements thereon to be made by an independent appraiser he shall select who shall be approved by the State before proceeding with the appraisal, (the cost of the appraisal to be shared by the Federal Government and the State)) (*cause an independent appraisal of the lands identified under subsection (a), together with improvements thereon, to be made by (number) disinterested appraisers designated by (him) (the State) (him, with the approval of the State)).

SEC. 5. COMPENSATION

(a) Alternatives Available--The Secretary shall, at the election of State--

(1) exchange Federal lands of equal value (not including the value of any buildings, structures,
or other improvements on such Federal lands) for lands found to be conveyed under section 4(a);
(2) return the lands conveyed under section 4(a) to the State; or
(3) pay to the State the fair market value of land conveyed under section 4(a).

(b) Environmental Restoration--Prior to conveying any Federal land to the State under this section the Secretary shall, (*at no cost to the State), provide for the removal of any--
(1) hazardous waste and debris; and
(2) unsafe and unsightly buildings or structures, from such lands.

SEC. 6. DEFINITIONS.

For purposes of this Act:

(1) Secretary--The term "Secretary" means the Secretary of the Interior.

(2) State--The term "State means the State of Hawaii.

(3) Statehood Act--The term "Statehood Act" means the Act entitled "An Act to provide for the admission of the State of Hawaii into the Union", approved March 18, 1959 (73 Stat.4).

SEC. 7. EFFECTIVE DATE.

This Act shall take effect October 1, 1986.
As a result of unjustifiable and profound involvement by the American Government in the overthrow of the Hawaiian monarchy, the native residents of Hawaii lost their self-determination. The U.S. Congress shall therefore make restitutions to compensate native Hawaiians for their losses and shall provide them with special assistance so that they can achieve a better quality of life and more fully participate in the opportunities available to other Americans.

The issue of American involvement in the overthrow of the Hawaiian monarchy and the ensuing question of reparations have been a focus of attention in Hawaii and in Congress for many years. Congress debated the establishment of a Native Hawaiians Study Commission for six years before approving it.

On December 22, 1980, the President approved legislation to create a Native Hawaiians Study Commission to "conduct a study of the culture, needs and concerns of the Native Hawaiians". Although the law that finally passed only provided a general directive for the commission, it was understood that Congress wanted advice on the overthrow and reparations.

The commission was established, and on June 23, 1983, it published a final report which was presented to Congress in two volumes: a majority and a minority report of dissenting views. The reports differed primarily in their interpretations and conclusions about the historical events surrounding the overthrow of the Hawaiian monarchy and in their recommendations about how Native Hawaiians should be compensated.

The majority report concluded that the actions of U.S. Minister John L. Stevens, who requested that American troops be landed to protect American lives and property, were not sanctioned by the President or Congress. This lack of authorization, in addition to "the apparent limited role of United States forces in the overthrow", thus clears the United States of responsibility for the events that ensued, according to six of the nine commissioners. The report recommends that "as an ethical or moral matter, Congress should not provide for Native Hawaiians to receive compensation either for loss of land or of sovereignty." The basis for reparations rests largely on the legality of American actions in the overthrow of the Hawaiian queen. The conclusions and recommendations of the majority report are therefore highly significant.

The U.S. Senate and U.S. House of Representatives have since held hearings on the findings of the Commission. Upon closer review of the source material available, including documents cited in the majority report, it is evident that the conclusions about
the historical events of the overthrow contained in the majority report are seriously flawed.

Unequivocal evidence of American intent to annex Hawaii dates back to several decades before the actual overthrow. Hawaii's location as a strategic military base in the Pacific and trade route for the Far East; the expansionist and manifest destiny policies of most major nations of the world during the latter half of the nineteenth century, including those of the United States; and the increasing dollar amount of American business pursuits in Hawaii, particularly sugar, were among the pressing reasons for American interest in Hawaii.

Although a formal, explicit document from the U.S. Government to Minister Stevens ordering the landing of the troops has never been found, circumstantial evidence of such intent is overwhelming. Private correspondence between Minister Stevens and Secretary of State William Blaine describing the political situation in Hawaii and discussing what to do in the event of a revolution; formal declarations of American policy stating intent to expand American influence in the Pacific; American naval policy emphasizing the consolidation of American interests in the Pacific; and the dispatch with which the Hawaiian annexation treaty was drafted and pushed through Congress all ultimately condoned Stevens actions in doing whatever was necessary to promote Hawaii's annexation.

It has now been virtually one hundred years since these events occurred. Historical evidence easily substantiates the conclusion that without American intervention in the overthrow of the Hawaiian monarchy, the effort could not have been sustained. Furthermore, without subsequent American diplomatic support to the Provisional Government of Hawaii that was established after the monarchy, annexation may very well not have occurred. For the majority report to have concluded otherwise is erroneous and superficial, and shows little depth in its analysis and interpretation of historical events.

Self-determination is an inherent right for all people. The international-law principle of self-determination or autonomy includes economic and social rights. It also guarantees the right to a freely-chosen nationality and to territorial integrity. A major factor in the loss of self-determination is the governmental interference on the lands of indigenous people. In Hawaii, self-determination was linked to traditional use of the land. Thus, self-determination for Hawaiians would include autonomy over their own lands and politics.

There is no question that this loss of self-determination is at the root of the problems of Native Hawaiians. As a territory of the United States for sixty one years and now as a state, America has had --and continues to have-- an obligation to assure that the people of Hawaii have the same right as other Americans to the pursuit of a self-chosen life style.
It is evident that the U.S. Government has not met its obligation, especially to those Hawaiians who have lost their self-determination. The demographic statistics of Native Hawaiians today speak for themselves. Hawaiians have the poorest records of educational attainment and employment, they exceed their share of the population in arrests and criminal detention, they have the lowest income, poorest health, and highest infant mortality rates of all the people of Hawaii. Study after study shows that Native Hawaiians are a depressed and disenfranchised people.

Those who were unable to or who chose not to give up their Hawaiian ways of life have been left behind. Although the U.S. Congress attempted to accommodate Hawaiians through such legislation as the Hawaiian Homes Commission Act, the United States has never fully carried out its trust responsibilities, and the Hawaiian people have never received the special assistance and consideration they are due.

Based on the majority and minority reports of the Native Hawaiians Study Commission; on the thousands of pages of testimony that have been submitted for Congressional consideration; and on the literature and documentation that was not included or considered by the Commission which relates to the past and present conditions of Native Hawaiians, it is the firm opinion of Hawaii's Congressional delegation that Hawaiians were deprived of the right to self-determination by the United States Government and are due reparations, both as a matter of legal and moral obligation.

These reparations are being requested in the form of the creation of a trust fund to be used by Native Hawaiians for the development of programs to benefit all Hawaiians; the establishment of a panel to expedite the return of ceded and surplus federal lands to Hawaii; the appointment of a high-ranking office in the U.S. Department of the Interior to serve directly and actively as a federal liaison with the State of Hawaii in matters concerning Native Hawaiian issues where they involve the federal government; and the development of educational, health and other programs that will provide Hawaiians with the tools they need to better control their own destinies.

Although these proposals could never act as full reparations for the wrongs done to Hawaiians, we feel that they are fair and reasonable. Hawaiians have waited too long for the attention they are due from the federal government. Their problems cannot wait any longer. Congress and the federal government must recognize the injustices that have caused the bleak situation of the Hawaiians and must remedy them without further delay.
SEC. 11. CLAIM OF NATIVE HAWAIIANS WITH RESPECT TO UNITED STATES
RECOGNITION OF INCLUSION OF NATIVE HAWAIIANS IN THE
DEFINITION OF NATIVE AMERICANS, WITHOUT PREJUDICE.

(a) FINDINGS.--The Congress finds that--

(1) the United States, through Congress, has recognized the
unique attributes of indigenous American people as constitutionally
and morally deserving of national attention and legislation; and

(2) the Congressional willingness to extend this recognition
to native Hawaiians is now imperfectly and unfairly extended; and

(3) native Hawaiians are the indigenous inhabitants of the
Hawaiian Islands; and

(4) at the time the Kingdom of Hawaii and its government was
illegally overthrown in 1893, it was fully recognized as a member
of the international community of nations; and

(5) native Hawaiians were citizens of an organized self-
governing nation whose status as an independent sovereign was
formally recognized by other nations; and

(6) as early as 1826, a treaty was negotiated, although never
ratified, between the United States and the Hawaiian Kingdom; and

(7) in 1841 American President John Tyler officially recognized
Hawaii as a sovereign nation and declared a policy of respecting
Hawaiian independence; and

(8) in recognition of this independence, Congress appropriated
monies for the appointment of a minister from the United States of
Hawaii; and

(9) the federal government has long recognized native Hawaiians
as a distinct indigenous group and has dealt with them in a manner
similar to other native American groups; and

(10) native Hawaiians meet many of the criteria which entitle
an indigenous group of federal protection and services; and

(11) the Congress of the United States explicitly acknowledged
its responsibility and ability to enact legislation to benefit
native Hawaiians with the enactment of the Hawaiian Homes Commission
Act of 1920, which placed over 200,000 acres of land in trust to
rehabilitate native Hawaiians; and

(12) in the 1959 Admission Act, the Congress of the United
States extended the scope of the federal government's recognition of
native Hawaiians by requiring the State of Hawaii, by compact, to
adopt the Hawaiian Homes Commission Act as part of the State
Constitution; and

(13) the State Admission Act further recognized native
Hawaiians in Section 5(f) by designating "the betterment of
conditions of native Hawaiians" as one the five trust purposes
for which proceeds and income from the ceded lands trust could
be expended; and

(14) the State Admission Act singles out native Hawaiians
from the general public as specific beneficiaries of the ceded land
trust in recognition of the federal government's recognition of the
status of native Hawaiians; and

(15) Congress has specifically included native Hawaiians in a
number of enactments designed to benefit native Americans generally;
and

(16) in 1974 Congress enacted legislation making native Hawaiians eligible for participation in the programs of the Administration for Native Americans; and

(17) in 1978 Congress amended the Comprehensive Employment and Training Act to include native Hawaiians in the Indian Manpower Program administered by the Director of Indian and Native American Programs of the U.S. Department of Labor; and

(18) in the same year the Congress adopted the American Indian Religious Freedom Act and included native Hawaiians in its guarantees of religious tolerance; and

(19) in 1983, native Hawaiians were included in the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act which gives special consideration to native Americans by the federal government for funding of programs to prevent, treat, and rehabilitate drug abuses; and

(20) the Carl D. Perkins Vocational Educational Act of 1984 deemed Hawaiians eligible for 0.25 percent of funds made available under the Act; and

(21) native Hawaiians were expressly enumerated as a target population for the National Significance/Special Project Grant program in the Developmental Disabilities Act of 1984; and

(22) the Library Services and Construction Act Amendments of 1984 reserves 25% of the Indian set-aside for a separate grant program of the library construction/services for native Hawaiians;
and

(23) in 1980 Congress passed three statutes for the specific identification of native Hawaiians as subjects of special federal attention--the Native Hawaiian Education Study, the Kalaupapa National Historical Park, and the Native Hawaiians Study Commission.

(b) Recognition of Claims of Native Hawaiians.--The Congress recognizes that native Hawaiians share all of the attributes and needs common to other indigenous peoples and are entitled to any and all benefits extended to other native Americans. The Congress stands committed to include native Hawaiians in the definition of native American and extend to native Hawaiians eligibility in all programs affected by such definition without prejudice.