



February 23, 2010

Fundamental Changes in Final Text of Native Hawaiian Bill

Today, the House of Representatives will vote on the final rewritten text ([Abercrombie substitute](#)) of the Native Hawaiian Government Reorganization Act of 2009. This latest version, written in secret without Committee review or markup, contains fundamental changes from the bill that was first introduced in the 111th Congress and from legislation (H.R. 505) that was voted on during the 110th Congress.

Hawaii Governor Linda Lingle, a longtime and vocal advocate of Native Hawaii recognition, has [announced](#) her opposition to the final rewritten version of the bill.

- **New, Undefined Sovereign Powers.** The substitute immediately grants the native governing entity with “inherent powers” (Sec 9(b)(1)) and preempts State regulation, taxation, and civil and possibly criminal jurisdiction for undefined “government activities” conducted by the entity (Sec 9(c)(3)(I)). This is in stark contrast to prior versions of the bill, which reserved decisions on what powers to grant the entity only after negotiation and consent of the State and Congress.
- **Immunity from lawsuits.** The substitute gives the native governing entity immunity from lawsuits in any Federal or State court (Sec 9(c)(3)(H)).
- **New Membership Criteria.** The substitute includes six pages of new, complex membership criteria that could possibly open enrollment to non-Hawaii residents who have only the most tenuous of connections to a distinct, Native Hawaiian community. However, once recognition is extended, the entity can discard this established criteria and grant, deny, or revoke membership according to anyone it wishes. (Sec. 9 (b) (2)). Membership in the governing entity does remain voluntary and renounceable.
- **Justice Department Attorney.** The substitute requires the U.S. Attorney General to designate a Justice Department attorney to assist and protect the entity in the implementation of the Act and to fight legal challenges (Sec. 7) - essentially ensuring that the governing entity has the resources of the Federal government at its disposal. However, a challenge against the constitutionality of this bill is inevitable, and this provision could cloud the objectivity of the Justice Department. This is also inappropriate since Department of Justice attorneys are already [known](#) to have concerns with the constitutionality of this bill.
- **White House as Lead Agency.** The substitute establishes the White House as a lead agency to implement this act. (Sec. 6 (c)(1)). It is inappropriate to inject the politically-

run White House as a lead agency to coordinate activities and policies concerning the creation of the governing entity.

- **Lack of Definitions.** The substitute leaves several key terms undefined, including “Native Hawaiian,” “Native Hawaiian community” and “citizens” of the governing entity. The lack of definition creates ambiguity that will likely result in lawyers defining these terms in court.

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