



EXECUTIVE CHAMBERS

HONOLULU

LINDA LINGLE  
GOVERNOR

July 13, 2010

The Honorable Lamar Alexander  
United States Senate  
455 Dirksen Senate Office Building  
Washington, DC 20510

Re: Native Hawaiian Government Reorganization Act, H.R. 2314,  
the "Akaka Bill"

Dear Senator Alexander,

I wrote to you and your Senate colleagues on March 23, 2010, reluctantly expressing my opposition to H.R. 2314, the "Akaka Bill," that would afford federal recognition to Native Hawaiians. My opposition followed years of strong and active support of previous versions of the bill during my almost eight years as Hawaii's Governor. Substantial differences between prior versions of the bill I had previously supported and the bill that passed the House justified that opposition.

The primary reason for that opposition, as I expressed to you in my letter, was the exemption of the Native Hawaiian governing entity, and its officers and employees, from the reach of many of the laws of the State of Hawaii that protect the health and safety of Hawaii's citizens.

After discussions between our Attorney General and Senate staff, Hawaii's Senators Daniel Inouye and Daniel Akaka have agreed to and will propose to the Senate changes to H.R. 2314 (attached), that address the concerns I raised.

The agreed upon changes are as follows. First, the bill will now explicitly provide that activities of the Native Hawaiian governing entity will be fully subject to all of the State's laws that protect the public health and safety (unless and until the State agrees otherwise or the Congress decides otherwise). Second, the bill gives the State the explicit authority to sue the Native Hawaiian governing entity to enforce the regulatory authority recognized in the bill. And third, the bill explicitly provides that officers and employees of the Native Hawaiian governing entity shall have no immunity from the criminal laws of the State. (The bill had already provided that members of the entity remained fully subject to the State's criminal laws).

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I believe these provisions return the bill to a form that protects health and safety in Hawaii, while providing explicit federal recognition to the only native people in the United States who lack that recognition--Native Hawaiians.

As I and my administration have said in previous communications to the Congress, Native Hawaiians have fought and died for this country in wars dating back almost 100 years. They fight today for this country in Iraq and Afghanistan. The Akaka Bill will not change the patriotism or valor of Native Hawaiians. It will not set up a foreign nation in Hawaii. It will, however, put Hawaii on an equal footing with its forty-nine sister states, and it will recognize Native Hawaiians just as America recognizes its other indigenous groups. It is fair and just--nothing more, and nothing less.

I believe that the Akaka Bill is constitutional, is good public policy, is (in its to-be-amended form) supported by Hawaii's citizens, is consistent with the Congress's approach to recognition of the other native peoples of America, and is just and fair. I strongly support it, and I respectfully urge you to support bringing it to a vote in the Senate, and then to vote to enact it into law. I thank you very much for your consideration of this letter.

Very truly yours,



LINDA LINGLE  
Governor, State of Hawaii

Attachment

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

Purpose: To modify a provision relating to negotiations.

**IN THE SENATE OF THE UNITED STATES—111th Cong., 2d Sess.**

**H. R. 2314**

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

Referred to the Committee on \_\_\_\_\_ and  
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by \_\_\_\_\_

Viz:

- 1 Beginning on page 48, strike line 12 and all that fol-
- 2 lows through page 55, line 19, and insert the following:
- 3 (c) NEGOTIATIONS.—
- 4 (1) IN GENERAL.—Upon the reaffirmation of
- 5 the special political and legal relationship between
- 6 the United States and the Native Hawaiian gov-
- 7 erning entity, the United States and the State of
- 8 Hawaii may enter into negotiations with the Native
- 9 Hawaiian governing entity designed to lead to an
- 10 agreement or agreements addressing such matters
- 11 as—

1           (A) the transfer of State of Hawaii lands  
2           and surplus Federal lands, natural resources,  
3           and other assets, and the protection of existing  
4           rights related to such lands or resources;

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

8           (C) the exercise of civil and criminal juris-  
9           diction;

10          (D) the exercise of the authority to tax and  
11          other powers and authorities that are recog-  
12          nized by the United States as powers and au-  
13          thorities typically exercised by governments rep-  
14          resenting indigenous, native people of the  
15          United States;

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

18          (F) grievances regarding assertions of his-  
19          torical wrongs committed against Native Ha-  
20          waiians by the United States or by the State of  
21          Hawaii.

22          (2) AMENDMENTS TO EXISTING LAWS.—Upon  
23          agreement on any matter or matters negotiated with  
24          the United States or the State of Hawaii, and the

1 Native Hawaiian governing entity, the parties may  
2 submit—

3 (A) to the Committee on Indian Affairs of  
4 the Senate, the Committee on Energy and Nat-  
5 ural Resources of the Senate, and the Com-  
6 mittee on Natural Resources of the House of  
7 Representatives recommendations for proposed  
8 amendments to Federal law that will enable the  
9 implementation of agreements reached between  
10 the governments; and

11 (B) to the Governor and the legislature of  
12 the State of Hawaii, recommendations for pro-  
13 posed amendments to State law that will enable  
14 the implementation of agreements reached be-  
15 tween the governments.

16 (3) During the period between the reaffirmation  
17 of the special political and legal relationship between  
18 the United States and the Native Hawaiian gov-  
19 erning entity, and the subsequent enactment of leg-  
20 islation to implement the agreement or agreements  
21 negotiated under paragraph (1):

22 (A) There shall be no Indian country with-  
23 in the State of Hawaii.

24 (B) The United States shall not take land  
25 in trust for the benefit of the Native Hawaiian

1 governing entity or for the benefit of members  
2 of the Native Hawaiian governing entity.

3 (C) The United States shall not restrict  
4 the alienability of land owned by the Native Ha-  
5 waiian governing entity.

6 (D) Members of the Native Hawaiian gov-  
7 erning entity shall continue to be subject to the  
8 civil and criminal jurisdiction of Federal and  
9 State courts.

10 (E) Nothing in this Act alters or preempts  
11 the existing legislative, regulatory, or taxation  
12 authority of the State of Hawaii over individ-  
13 uals who are members of the Native Hawaiian  
14 governing entity or over property owned by  
15 those individuals.

16 (F) The Native Hawaiian governing entity  
17 shall not exercise criminal, civil, adjudicative,  
18 legislative, regulatory, or taxation authority or  
19 jurisdiction over individuals who are not mem-  
20 bers of the Native Hawaiian governing entity  
21 without their express consent.

22 (G) The Native Hawaiian governing entity  
23 shall not exercise criminal, civil, adjudicative,  
24 legislative, regulatory, or taxation authority or  
25 jurisdiction over corporations or other associa-

1 tions or entities that are owned wholly or in  
2 majority part by persons who are not members  
3 of the Native Hawaiian governing entity with-  
4 out their express consent.

5 (H) The Native Hawaiian governing entity  
6 shall be immune from any lawsuit in any Fed-  
7 eral or State court, with the exception described  
8 in section 10(c)(3) and the exceptions set forth  
9 in clauses (i) through (iv) of this subparagraph.

10 (i) The Native Hawaiian governing  
11 entity may waive its sovereign immunity,  
12 provided that it does so clearly and un-  
13 equivocally.

14 (ii) The Native Hawaiian governing  
15 entity shall not be immune from any law-  
16 suit brought by the United States in any  
17 Federal court.

18 (iii) The Native Hawaiian governing  
19 entity shall not be immune from any law-  
20 suit brought by the State of Hawaii to en-  
21 force the regulatory authority of the State  
22 recognized in this Act.

23 (iv) Real property owned in fee simple  
24 by the Native Hawaiian governing entity

1           shall not be immune from any in rem ac-  
2           tion filed by the State of Hawaii.

3           (I) Governmental, nonbusiness, non-  
4           commercial activities undertaken by the Native  
5           Hawaiian governing entity, or by a corporation  
6           or other association or entity wholly owned by  
7           the Native Hawaiian governing entity, shall not  
8           be subject to the regulatory or taxation author-  
9           ity of the State of Hawaii, except such activities  
10          shall be subject to the authority of the State to  
11          regulate activities for the protection of the pub-  
12          lic health or safety until such time as the Na-  
13          tive Hawaiian governing entity and the State of  
14          Hawaii come to an interim agreement approved  
15          by the Secretary governing the extent of such  
16          regulation based on a determination by the Sec-  
17          retary that the interim agreement is consistent  
18          with applicable Federal law.

19          (J) Commercial or business activities un-  
20          dertaken by the Native Hawaiian governing en-  
21          tity, or by a corporation or other association or  
22          entity owned, operated, or sponsored by the Na-  
23          tive Hawaiian governing entity, shall be subject  
24          to the regulatory and taxation authority of the

1 State of Hawaii to the same extent as commer-  
2 cial or business activities undertaken by others.

3 (K) Subject to subparagraph (I), activities  
4 conducted on real property owned by, leased by,  
5 or subject to the control of the Native Hawaiian  
6 governing entity shall be subject to the regu-  
7 latory and taxation authority of the State of  
8 Hawaii to the same extent as activities con-  
9 ducted on real property owned by, leased by, or  
10 subject to the control of others.

11 (L) Subject to subparagraph (O), real  
12 property owned by, leased by, or subject to the  
13 control of the Native Hawaiian governing enti-  
14 ty, and development of such property, shall be  
15 subject to the regulatory and taxation authority  
16 of the State of Hawaii to the same extent as  
17 real property owned by, leased by, or subject to  
18 the control of others.

19 (M) Any commercial or business corpora-  
20 tion or other commercial or business association  
21 or entity owned, operated, or sponsored by the  
22 Native Hawaiian governing entity shall be sub-  
23 ject to the regulatory and taxation authority of  
24 the State of Hawaii to the same extent as com-  
25 mercial and business corporations and other

1 commercial and business associations and enti-  
2 ties owned, operated, or sponsored by others.

3 (N) Any specific power, authority, or re-  
4 striction set forth in this paragraph shall expire  
5 upon enactment of legislation that implements  
6 an agreement or agreements negotiated under  
7 paragraph (1) and that expressly replaces or al-  
8 ters such power, authority, or restriction.

9 (O) Nothing in this paragraph diminishes  
10 any right or immunity (including any immunity  
11 from State or local taxation) granted to Native  
12 Hawaiians or their property by the Hawaiian  
13 Homes Commission Act, 1920 (42 Stat. 108,  
14 chapter 42), the Act entitled “An Act to pro-  
15 vide for the admission of the State of Hawaii  
16 into the Union”, approved March 18, 1959  
17 (Public Law 86–3; 73 Stat. 4), or sections  
18 10001 through 10004 of the Department of  
19 Defense Appropriations Act, 1994 (sections  
20 10001 through 10004 of Public Law 103–139;  
21 107 Stat. 1418, 1480 (1993)).

22 (P) Notwithstanding any other provision of  
23 this Act—

24 (i) the officers and employees of the  
25 Native Hawaiian governing entity shall not

1                   be immune from the criminal laws of the  
2                   State of Hawaii; and

3                   (ii) the State of Hawaii shall retain  
4                   its authority to prosecute any violation of  
5                   the criminal laws of the State.

6                   (4) Nothing in paragraph (3) should be inter-  
7                   preted as establishing any presumption about the  
8                   powers or authorities that could properly be exer-  
9                   cised by the United States, the State of Hawaii, or  
10                  the Native Hawaiian governing entity after further  
11                  legislation, including legislation enacted to imple-  
12                  ment any agreement negotiated under this sub-  
13                  section.