

SUBSTITUTE AMENDMENT TO H.R. 2314: SUMMARY

Senators Akaka and Inouye have agreed to amend H.R. 2314 to address outstanding concerns expressed by Hawaii Governor Linda Lingle and to secure the Governor's support. The changes address the authority of the Native Hawaiian governing entity during the interim period – the period following the Entity's recognition by the United States in which it is negotiating with the federal and state governments. In addition, language will be added to the bill to ensure it will not impact federally recognized Indian tribes outside the State of Hawaii.

Here is a summary of the changes:

1. Add Section 9(c)(3)(H)(iii) – Page 52 of the amendment

“The Native Hawaiian governing entity shall not be immune from any law suit brought by the State of Hawaii to enforce the regulatory authority of the State recognized in this Act.”

This language limits the Native Hawaiian governing entity's immunity from suits brought by the State to enforce its regulatory authority. This language does not allow suits to be brought by any other party or individual. The provision only impacts the interim period and such can be addressed during negotiations.

2. Amend Section 9(c)(3)(I) – Pages 52-53 of the amendment

“Governmental, nonbusiness, non-commercial activities undertaken by the Native Hawaiian governing entity, or by a corporation or other association or entity wholly owned by the Native Hawaiian governing entity shall not be subject to the regulatory or taxation authority of the State of Hawaii, except such activities shall be subject to the authority of the State to regulate activities for the protection of the public health or safety until such time as the Native Hawaiian governing entity and the State of Hawaii come to an interim agreement approved by the Secretary governing the extent of such regulation based on a determination by the Secretary that the interim agreement is consistent with applicable Federal law.”

During the interim period, the activities of the Native Hawaiian governing entity will be subject to state regulatory authority as it relates to public health and safety. In recognition of the unique circumstance that applies specifically to Hawaii in terms of the necessity of a interim period to address jurisdictional issues between the federal and state governments and the Native Hawaiian governing entity, the state and Native Hawaiian governing entity will negotiate an agreement, to be approved by the Secretary of the Interior, regarding the implementation of the state's authority to regulate activities for the protection of public health or safety. This agreement will only apply during the interim period. This language does not authorize permanent state regulatory authority.

3. Add Section 9(c)(3)(P) – Page 55 of the amendment

“Notwithstanding any other provision of this Act—

(i) the officers and employees of the Native Hawaiian governing entity shall not be immune from the criminal laws of the State of Hawaii; and

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

This language reiterates that during the interim period the state will preserve its criminal jurisdiction over the Entity's officer and employees. Section 9(c)(3)(D) already states that “Members of the Native Hawaiian governing entity shall continue to be subject to civil and criminal jurisdiction of Federal and State courts.” As such, all members, including officers and employees, were already subject to federal and state criminal authority.

4. Add Section 11 – Page 59 of the amendment

“SEC. 11. RULE OF CONSTRUCTION

Nothing in this Act impliedly amends, repeals, supersedes, abrogates, or overrules any provision of Federal law, including case law, affecting the privileges, immunities, powers, authorities, or jurisdiction of any Indian tribe outside the State of Hawaii.”

This language simply ensures that the provisions of this Act are not used as precedent in cases involving other federally recognized Indian tribes.