

**Summary of
Proposed Amendments to S. 1011 Substitute Amendment by the Office of Hawaiian Affairs**

Background. Following the public dissemination of the substitute amendment to S. 1011, the Native Hawaiian Government Reorganization Act, the Governor and Attorney General of Hawai'i issued a letter of opposition to the substitute amendment on December 15, 2009. While the members of our Hawai'i congressional delegation have continued to express the need for prompt action in securing passage of the bill in both houses of the Congress, in response to the Governor's letter, the delegation members also expressed their expectation that amendments to the substitute amendment could be negotiated to address the State's concerns so that all might move forward together once again. Addressing the State's opposition, on December 31, 2009, the Star Bulletin quoted Senator Inouye as stating, "There is a group working on it right now, from the Governor's office, the Office of Hawaiian Affairs and the congressional delegation."

While the Office of Hawaiian Affairs advocates for the Native Hawaiian community as a whole, and the Office of the Attorney General is the chief legal officer that advocates for all the citizens of Hawai'i, both are entities of the State of Hawai'i. The joint submittal of recommendations for proposed changes to the substitute amendment was intended to facilitate the review of those recommendations by the members of Hawaii's congressional delegation and the Obama Administration. Of the total number of proposed amendments, the following 10 amendments were suggested by the Office of Hawaiian Affairs. Some of these suggestions reflect positions that the OHA Trustees had previously proposed to the members of the delegation but which had not been incorporated in the substitute amendment to S. 1011. All are consistent with OHA's constitutional and statutory requirements. The changes to the substitute amendment proposed by the Attorney General were reviewed by the Trustees following the State's submittal of proposed amendments to the members of the Hawaii's congressional delegation. With the understanding that all of the proposed changes were to be the subject of ongoing negotiations, the Trustees did not take a formal position on the Attorney General's proposed amendments.

The support of the OHA Trustees for a bill that would provide authority for the reorganization of a Native Hawaiian government and its recognition by the United States is well-known and has never wavered, and the OHA Trustees continue to support Senator Akaka, Senator Inouye, Representative Abercrombie and Representative Hirono for their tireless efforts in advocating passage of the Native Hawaiian Government Reorganization Act.

The bill has had the benefit of bipartisan support over the years, and the members of our Hawai'i congressional delegation have made it clear that passage of this measure in the Congress will continue to require bipartisan support.

OHA continues to work toward finding common ground because moving this Hawaiian recognition measure forward for the benefit of all Hawaiians, and all of Hawai'i is critical.

Description of amendments proposed by the Office of Hawaiian Affairs (Note: For details of the proposed language changes to bill, see the attachment entitled, “AG Proposed Amendments OHA raised points 1 20 10 DETAIL”)

- To assure in the inclusion of all Native Hawaiians who elect to participate in the reorganization of a Native Hawaiian government, the definition of the term “Qualified Native Hawaiian Constituent” (those Native Hawaiians who will be eligible to participate in the reorganization of a Native Hawaiian government under the substitute amendment) should be amended to include: Any individual who is 1 of the indigenous, native people of Hawaii and who is a direct lineal descendant of the aboriginal, indigenous, native people who resided in the islands that now comprise the State of Hawaii and who occupied and exercised sovereignty in the area that now constitutes the State of Hawaii prior to 1778.

The inclusion of the standard definition of “Native Hawaiian” that has been employed in every Federal statute enacted into law since the 1970's for the benefit of Native Hawaiians will make clear that it is not the intent of the Congress to exclude those Native Hawaiians whom the Congress has deemed eligible to participate in Federal programs and services from the right to participate in the reorganization of the Native Hawaiian government.

- Provide authority for the Commission that will determine who is eligible to be listed on a roll of “qualified Native Hawaiian constituents” to determine that the lineal descendants of those aboriginal, indigenous, native people who resided in the islands that now comprise the State of Hawaii and who occupied and exercised sovereignty in the area that now constitutes the State of Hawaii prior to 1778, meet the requirements under the definitions of “Qualified Native Hawaiian Constituent”, with additional clarifying language which provides that the authorization for the Commission’s determination does not provide authority for an individual to qualify for or participate in any program authorized by the Hawaiian Homes Commission Act, if that individual is not otherwise eligible to participate in the Act’s programs.
- Remove the requirement of “membership” from the definition of the term “Native Hawaiian Membership Organization”, when referring to definition of Native Hawaiian organizations with whom the Secretary of the Interior and the Secretary’s appointed Commission will consult in verifying the roll of qualified Native Hawaiian constituents who can participate in reorganization of Native Hawaiian governing entity.

The term “Native Hawaiian Organization” has been employed in a range of Federal statutes to mean an organization that serves and represents the interests of Native Hawaiians. The concern is that the inclusion of the word “membership” in the definition of a Native Hawaiian organization would have the effect of excluding from consideration the active participation of Native Hawaiians in significant Native Hawaiian organizations such as Alu Like, Inc., or the Native Hawaiian trusts such as the Queen Lili’uokalani Trust, the Queen Lili’uokalani Children’s Center, the Queen Emma Trust, the Bishop Museum Trust, the Lunalilo Trust and Home, or the

Native Hawaiian charter schools, non-profit Native Hawaiian organizations that are certified as such by the Small Business Administration, and Papa Ola Lokahi, the Native Hawaiian organization that administers the funding for the Native Hawaiian health care systems under the Native Hawaiian Health Care Improvement Act. Because the Commission is charged with consulting with Native Hawaiian organizations and because participation in Native Hawaiian organizations represent two of the ten criteria that one must meet to participate in the reorganization of the Native Hawaiian government, the definition of Native Hawaiian organization should be inclusive of all relevant Native Hawaiian organizations.

- Amend Finding (13) of the bill to reflect the fact that the Apology Resolution, extending the apology of the United States for its role in the illegal overthrow of the Kingdom of Hawaii, was extended to the Native Hawaiian descendants of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii. The Apology Resolution did not employ the words “native people of Hawaii” as that term is used in the substitute amendment, as the people to whom the apology was being extended.
- Provide for the protection and preservation of the rights of those Native Hawaiians who are eligible to reside on the Hawaiian homelands under the authority of the Hawaiian Homes Commission Act, 1920 (42 Stat. 108, chapter 42).

With the substitute amendment’s application of the Indian Civil Rights Act to the Native Hawaiian governing entity, and the Act’s requirement that the Native Hawaiian governing entity provide for the right to the equal protection of its laws, the Native Hawaiian governing entity could not accord rights to some, but not all of its citizens. This proposed amendment protecting the vested rights of Native Hawaiians who are eligible to receive an assignment of land under the authority of the Hawaiian Homes Commission Act, would be affirmed by the United States either under section 10 of the bill addressing the applicability of other Federal statutes or through the process of certifying the Native Hawaiian governing entity’s organic governing documents.

- Consistent with the definition of “Qualified Native Hawaiian Constituent” contained in the substitute amendment to S. 1011, provide that in Finding 16(B) of the bill that there is clear continuity between the aboriginal, indigenous, native people of Hawai’i not only with the native citizens of the Kingdom of Hawaii but, but with all of the successors of the aboriginal, indigenous, native people of Hawaii -- the Native Hawaiian people today.
- Address a conflict in the bill through the inclusion of clarifying language in the organic government documents of the Native Hawaiian governing entity that the civil rights to be protected by the Native Hawaiian governing entity also include those rights protected under the Indian Civil Rights Act.

- Update the numbers in Finding (7) of the bill to reflect the fact that there are approximately 8,039 [deleting the number 6,800] Native Hawaiian families residing on the Hawaiian Home Lands, and approximately 38,811 [deleting the number 18,000] Native Hawaiians who are eligible to reside on the Hawaiian Home Lands and who are on a waiting list to receive assignments of Hawaiian Home Lands. These are updated figures supplied by the Department of Hawaiian Home Lands in the fall of 2009 which represent the Department's records of the number of people residing on the homelands and the number of people on the Department's waiting list.
- Change subsection 4(3)(B) of the Policy and Purpose section of the bill by adding the word "indigenous" to make clear that the section refers to Congress' constitutional authority to enact legislation on behalf of the indigenous, native people of the United States.

The substitute amendment contains a definition of the term "indigenous, native people" but does not contain a definition of "native peoples".

- Change subsections of the Definition of "Qualified Native Hawaiian Constituent" to assure that Native Hawaiians who can demonstrate their close social and economic ties to the Native Hawaiian community through their participation in a Native Hawaiian organization are not excluded from these subsections merely because the Native Hawaiian organizations in which they actively participate are not "membership" organizations.
- The following proposed change was suggested by the Attorney General and Office of Hawaiian Affairs. In the "Findings" section, the reference to the "Sovereign Council of Hawaiian Homelands Assembly" is proposed for replacement with the words, "Native Hawaiian homestead associations" so that all Native Hawaiian homestead associations are included.