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The Economic Impact of the Akaka Bill: Unintended Consequences for Hawaii

Sarah Glassman, MSEP
Michael Head, MSEP
Paul Bachman, MSIE
David G. Tuerck, PhD

GRASSroot Institute of Hawaii

The Beacon Hill Institute at Suffolk University

The mission of the Grassroot Institute of Hawaii is to promote individual liberty, the free market and limited accountable government. Through research papers, policy briefings, commentaries and conferences, the Institute seeks to educate and inform Hawaii's policymakers, news media and the general public.

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1314 S King Street, Honolulu, Hawaii 96814 (808)591-9193
www.grassrootinstitute.org

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Executive Summary

The Native Hawaiian Government Reorganization Act of 2007, S.310 and H.R.505 in the 110th Congress, also known as the Akaka Bill, after sponsor Senator Daniel Akaka, proposes to create a sovereign Native Hawaiian Governing Entity (NHGE) within the state of Hawaii. While the terms of the bill are vague, the most likely effect would be to vest this new Native Hawaiian government with the rights to land now owned by the state, to the detriment of non-Native Hawaiian taxpayers and, correspondingly, the state economy.

In this report, the Beacon Hill Institute for Public Policy Research at Suffolk University (BHI), working collaboratively with The Grassroot Institute of Hawaii, identifies the most likely effects of the Akaka Bill on the Hawaiian economy. By almost any plausible interpretation of the bill, these effects are uniformly significant and negative.

"By almost any plausible interpretation of the bill, these effects are uniformly significant and negative."

It is not an easy task that we undertake here. The idea of creating a sovereign government of this kind, within the boundaries of the United States, is unprecedented in American history. The closest example is the establishment of American Indian reservations. However, Indian reservations were established long ago on sparsely populated land for a well-defined population of Native Americans in exchange for the settlement of old disputes.

The Akaka Bill, in effect, grants rights over the use of developed land to an arbitrarily defined group of Hawaiians who must only share a single drop of Native blood at the expense of all other Hawaiians not deemed, by virtue of their bloodline, to share in the same rights. It amounts to a confiscation of land rights by a small minority of ethnic Hawaiians to the detriment of a great majority of Hawaiian citizens and of the state economy.

Our examination of the Akaka Bill leads us to conclude that it would most likely lead to a transfer of state-owned lands to persons designated as Native Hawaiians. The bill would transfer leasing rights for those lands from the state to the NHGE, which would somewhat resemble the current State of Hawaii's Office of Hawaiian Affairs (OHA). As a result, lease payments and the tax revenue currently generated by economic activity on those lands would be diverted, in one form or another, from the state treasury to the NHGE.

This diversion would have four principal effects:

1. It would cause a transfer of lease payments currently made to the state by lessees operating or living on state lands ceded to NHGE. At the same time lessees operating or living on this land could expect to see a hefty rise in their lease payments.

2. It would exempt Native Hawaiians living or shopping on land ceded to the new "tribal" government from paying state income and excise taxes.

3. It would force the state government to replace the lost lease payments and tax revenues with higher income and excise taxes for all other Hawaiian taxpayers.

4. It would bring about a significant reduction in the state economy and in the well-being of all Hawaiians, Native and non-Native alike, as measured by key economic indicators.

Table ES-1 spells out the magnitude of the effects, as measured under alternative scenarios regarding the percentage of state land ceded to the NHGE by the state. We examine High, Medium and Low case scenarios, as shown in Table ES-1, under which state tax and lease revenues would fall by $342.8 million to $689.7 million. The burden of replacing this lost revenue would fall on all tax-paying Hawaiians through higher excise and income taxes.

Table ES-1: Lost State Revenues

Line	Case	High	Medium	Low
A	% of Land Transferred	75%	50%	25%
B	Excise Tax Revenue Lost	25.17%	21.20%	15.06%
C	Excise Tax Revenue Lost ($ millions)	$536.13	$451.72	$320.89
D	Income Tax Revenue Lost	4.78%	3.19%	1.59%
E	Income Tax Revenue Lost ($ millions)	$65.75	$43.83	$21.91
F	Lease Fees Lost ($ millions)	$87.80	$58.50	0
G	Total Revenue to be Recovered ($ millions) Line C + E + F	$689.70	$554.10	$342.80

The increased taxes would have large, negative impacts on the economy as a whole. The following are the results each land transfer scenario would have on the Hawaiian economy:

- In our High Case scenario the state would lose 20,793 private-sector jobs, $417.2 million in investment and $1,461 in real per-capita disposable income annually.[1]

- In the Medium land transfer scenario the state would experience a 3.08% loss in jobs (15,796), a 2.16% decrease in investment ($321.2 million) and a 3.20% decrease in disposable income per capita ($1,119).

- In the Low Case scenario, the state can expect to lose 9,838 private-sector jobs, $203.4 million in investment and $705 in real per-capita disposable income.

"...state government would have to raise tax rates on taxpaying Hawaiians. "

Introduction

The Native Hawaiian Government Reorganization Act of 2007, also known as the Akaka Bill after Senator Daniel Akaka, is the latest in a series of efforts, beginning in 2000, which proposes to create a sovereign Native Hawaiian Governing Entity (NHGE) within the state of Hawaii. The bill "provides a process within the frame work of Federal law for the Native Hawaiian people to exercise the inherent rights as a distinct, indigenous, Native community to reorganize a single Native Hawaiian governing entity."[2] If enacted the bill requires negotiations between the NHGE (the governing agency for the new Native Hawaiian tribe), the United States government and the State of Hawaii over the control of public land and other resources.

Passage of the Akaka Bill would have significant implications for both the government and the citizens of Hawaii. Approximately 1.5 million acres, or 38 percent of the land in Hawaii, is owned by federal, state or local governments. Consequentially, the new NHGE stands to acquire a significant quantity of public land. The state stands to lose an equal amount, as well as the revenue generated from economic activity that currently takes place on the same land. The state collects more than $100 million annually from leases for state land – funds that would presumably now flow into the coffers of the NHGE.[3]

Because the lands likely to be transferred to the NHGE are developed and generate state economic activity and, hence, tax revenues, it is unlikely that the NHGE would simply leave existing tax laws intact and let tax revenues continue to flow into the state treasury. Rather, a more plausible scenario is that the "tribal" government would attempt to divert the revenues that are currently flowing to the state to itself. In an effort to extract profits the NHGE would exempt "Native Hawaiians" living or shopping within its "tribal" borders from existing taxes and recoup revenue through increased lease payments from all Hawaiians living or operating there. Stripped of a revenue stream consisting of existing lease payments and taxes, the state government would have to raise tax rates on taxpaying Hawaiians. If the NHGE models itself after federal Indian policy on Indian reservations, the State and counties will continue to be required to provide full services, such as law enforcement, infrastructure, and utilities, without compensation. This is an ongoing annual cost with no source of revenue recovery to the affected State and counties. Native Hawaiians would escape most taxes they currently pay while non-Native Hawaiians would see their lease payments and taxes go up. The results would be:

· a large redistribution of income, based upon ethnicity alone, from the entire Hawaiian population to the 20% of the population defined by race as having at least one drop of Native Hawaiian blood; and

· a corresponding shrinkage in the state economy as the higher taxed Hawaiians decrease future investment.

The loss in tax revenues would come about due to producers earning taxable income within the confines of the new Native Hawaiian territory who would no longer have to pay income taxes. This is likely since the NHGE would have incentives to use its leasing rights to extract funds from non-Native Hawaiians while relieving Native Hawaiians living within its borders from having to pay income taxes.

Likewise, the "tribal" government would have an incentive to eliminate excise taxes on purchases made within its borders, capturing the combined income and sales revenue stream in new lease charges. The government of Hawaii would lose revenue on purchases currently made in the transferred territory plus purchases that would be diverted from businesses operating outside the territory, as non-Native Hawaiians potentially avoid paying exicse taxes on their purchases. Additionally, firms operating there would acquire another cost advantage over firms operating elsewhere. The NHGE would be likely to impose more lenient building codes and laws regarding handicap accessibility than the state currently imposes on Hawaiian businesses. The expected transfer of wealth, profits and taxes from the state to the NHGE would be very large and could take place very rapidly.

This study examines the impacts the Akaka Bill would have on the state of Hawaii. Although these impacts will depend on the outcome of the negotiations between the newly recognized NHGE and the state and federal governments, the bill itself does not specify any details. The Beacon Hill Institute (BHI) bases the study on reasonable expectations of how the land negotiations are likely to proceed. This enables BHI to identify, at least in broad terms, the potential risks posed by the bill to Hawaii's future while performing a dynamic analysis of its effects on the state.

Since the impacts of the Akaka Bill depend heavily on the transfer of the land, we begin with a brief review of the history of public lands in Hawaii as well as the recent disputes over them. The Appendix contains an expanded history of the Hawaiian land disputes.

Background

Throughout Hawaii's history, ownership over public lands has been a topic of controversy. Prior to the mid 1800's, all land in Hawaii was held by the king. At the end of the 19th century, following the revolution of 1893, the government of the Republic of Hawaii took control of lands that had been formerly held by the monarchy and the king for the benefit of all subjects to the crown. At annexation in 1898, the public lands (government and former crown lands) were transferred to the U.S. government to be held in trust for all the people of Hawaii, without racial distinction, with all revenue to benefit all the people of Hawaii, for education and other purposes. The U.S. federal government returned most of the public lands to Hawaii when it became the 50th state in 1959, except for military bases and national parks.[4]

"The public land eligible for transfer makes up 38%...of Hawaii's total land mass..."

In 1978 the state Constitution was amended to create the Office of Hawaiian Affairs (OHA) whose purpose was to "hold title to all the real and personal property now or hereafter set aside or conveyed to it which shall be held in trust" for Native Hawaiians. The constitutional amendment gave OHA authority to manage any present or future Native Hawaiian assets. Following, legislation was passed to fund OHA by allocating 20% of the revenues generated from the public lands now held by the state.

Unfortunately, disagreements over the land continued beyond the establishment of OHA. To this day, Hawaiian sovereignty groups insist that all the former government and crown lands of the Kingdom rightfully belong collectively to today's people who have at least one drop of Hawaiian Native blood.

Originally presented in 2000, the Akaka Bill proposes a radical solution to the existing disputes.[5] The bill was introduced in the Senate following the U.S. Supreme Court case *Rice v. Cayetano*. The Court ruled that the provision in the Hawaii Constitution allowing only "Native Hawaiians" to vote for trustees of OHA violated the 15th Amendment, which states that the right to vote shall not be denied or abridged on account of race. By using ancestry as a proxy for race, the state's definition of "Hawaiian", which is anyone having as least one ancestor who lived in Hawaii prior to 1778, violated the amendment.[6]

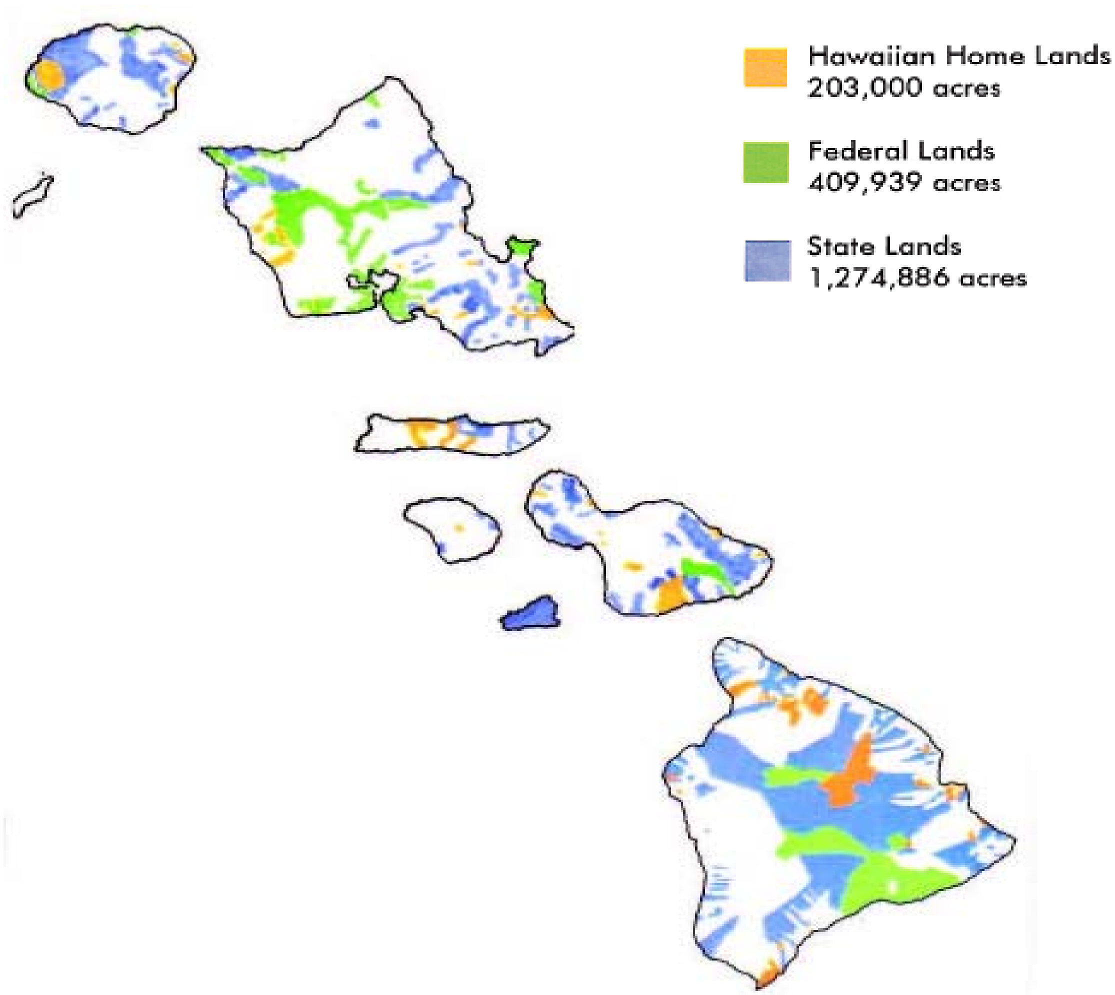
To work around the court's ruling, the Akaka Bill defines a "Native Hawaiian" tribe as a separate entity, similar to an American Indian tribe. This would eliminate the legal recourse of any non-Native Hawaiians seeking the right to participate in local elections or hold government offices within the new NHGE, even if that non-Native Hawaiian lived and worked on the NHGE land and was constantly under NHGE jurisdiction. After failing passage in fall 2000 in the 106th Congress, newer versions were introduced in 2001, 2003, 2005, and 2007 in the 107th through the 110th Congresses.

The bill seeks to allow the new Native Hawaiian tribe to claim land that they believe is rightfully theirs. The process of federal recognition allows for negotiations over the land between the NHGE and state and federal governments. After negotiations are completed, land would be transferred to the "tribal" government, which would be recognized as a separate sovereign entity. Any negotiated settlement would only need to be approved by the board of the NHGE and the very compliant state legislature and congress; it would not need to be ratified by any vote by "tribal" members or by the citizens of Hawaii.

The public land eligible for transfer makes up 38%, or approximately 1.5 million acres, of Hawaii's total land mass, with the state holding 1.3 million acres.[7] Of that, 14,106 acres are classified as "urban," representing 7% of the total urban land in the state.[8] The remaining land, held by the federal and county governments, is predominantly made up of national parks, military installations, airports, harbors, roads, etc. Figure 1 illustrates the unique land distribution in Hawaii, highlighting the fact that state owned lands are significant and scattered throughout the islands.[9]

Figure 1: Lands that are on the Table for Transfer to the New Government

(Source: The Grassroot Institute of Hawaii)



The Akaka Bill fails to explicitly define who would qualify as a member of the new Native Hawaiian tribe, thereby making them eligible for benefits. The bill incompletely defines eligibility by asserting that a Native Hawaiian must be "lineal descendants of the aboriginal, indigenous, Native people of the United States," while at the same time failing to define who it considers "Native people of the United States."[10] In addition to the ambiguous definition of a "Native Hawaiian," the bill outlines the establishment of a nine member commission that would decide which citizens would be "on the roll," meaning that the commission would have the power to determine who would be eligible for benefits. The vagueness of the definition and the clause that allows for a commission to define a "Native Hawaiian" after the bill's passage leaves the bill open to vast and opportunistic interpretation.

Coupled with the uncertainties that surround it, the Akaka Bill obscures the impacts on Hawaii. Nonetheless, in the following section we analyze the economic, fiscal and other effects the Akaka Bill would have on the Hawaiian economy.

Impacts

If the Akaka Bill was to become law, it would produce far-reaching economic and fiscal consequences to the economy of the entire state of Hawaii. These arise predominantly from the transfer of public land from one government to another and result in a loss of revenue to the Hawaiian state government and a gain to the new NHGE. These changes cause the state of Hawaii to experience:

(1) a loss in lease fees from the transfer of public land;

(2) a subsequent loss in tax revenue from businesses located on that transferred land;

(3) changes in consumer preferences as a response to an potential tax avoidance; and

(4) an increase in competition from businesses located on the new Native Hawaiian "tribal" land, exempt from federal and state regulations.

Although the NHGE would be able to collect revenue, the bill does not outline any services that it would provide to the Native Hawaiians. Moreover, the bill does not relieve the state government from its current obligation to provide services to the Native Hawaiian population. The state government would likely continue to provide funding for locally provided services, such as fire and police protection, trash removal and health and welfare, at the current level. In an effort to continue to provide these services to Native and non-Native Hawaiian citizens along with a decline in revenues, the Hawaiian state government would be forced to increase taxes.

The text of the Akaka Bill is extremely vague, resulting in several impacts that could be avoided, such as the development of casinos and heightened litigation, had the authors adequately explained the purpose and goals of the bill. These impacts are likely to occur but are difficult to quantify, especially since the bill is incomparable to any recently enacted laws.

Although the Akaka Bill is unparalleled in history, we use the example of American Indian off-reservation casinos and the tax and regulation structure on American Indian reservations to supply insight into the impacts the bill would most likely have on the Hawaiian economy.

Economic Impacts

A guaranteed outcome of the transfer of public land is that a portion of the lease revenue generated from this land would be lost to the state and gained by the new "tribal" governing entity. State-owned land leases generated approximately $117 million in annual revenue for the Hawaiian government in 2007. The amount of revenue lost to the state directly depends on the quantity of leased land that will be transferred to the new entity through the negotiation process. The new "tribal" government may increase land lease payments, which we consider likely, and these payments would flow to the NHGE and not the state. Land transferred to the NHGE might house structures including government buildings such as the University of Hawaii and government offices. If this were the case, the state would not only lose revenue but incur additional expenditures to move, build or lease government offices. For example, until recently the state paid $500,000 per year in lease fees to the Department of Hawaiian Homelands to utilize a parcel of its land for a tax supported public school. A few years ago the state built a new school across the street, on state owned land so it would no longer be required to rent.

"The amount of revenue lost to the state directly depends of the quantity of leased land that will be transferred through negotiations."

Hawaiians can expect to see revenue losses from two secondary effects. First, as more land is transferred out of the State of Hawaii's jurisdiction, state excise and income tax collections would decline. The revenue loss would derive from the likelihood that businesses located on transferred land would be free from collecting state excise taxes, similar to the tax provisions that apply to Native American Tribes: "Tribal governments and corporations generally are exempt from state taxation within their reservations, and remain so unless Congress clearly manifests its consent to such taxation."[11] State income tax collections would also suffer because the Native Hawaiian tribe members living and working on "tribal" land would be removed from the state tax rolls.

Second, businesses located on the Native Hawaiian "tribal" land would likely be freed from complying with state and federal regulations, such as those applying to health and safety. We assume that the Native Hawaiian tribe will be afforded the same exemptions as Native American Indian tribes under laws such as Title VII of the Civil Rights Act of 1964 and the Americans with Disabilities Act of 1990, which both specifically exempt Native American Indian tribes from the U.S law's requirements.[12]

The exemption of businesses located on transferred land from state and local taxes and regulations would produce a significant competitive advantage over other Hawaiian firms. Businesses that would still be required to pay taxes and comply with all state and federal regulations would not be able to compete on the same playing field with "tribal-owned" businesses that would escape such costs and would sell products tax-free. Consumers and firms would choose to make their purchases at businesses located outside of Hawaii's territory to take advantage of their lower prices. As a result, the state tax base would be further eroded as economic activity shifts to land allocated to the NHGE.

"In addition to a loss in revenue, the state of Hawaii can expect a decrease in business confidence and investment. "

Any erosion of the tax base would result in lower revenue collections and would necessitate an increase in the tax rate or a reduction in government spending. However, because the NHGE would not be required to provide services to its members, the state could still be responsible for maintaining the current level of services for all Hawaiians to the members. In an effort to recoup the revenue lost from the decrease in excise and income taxes, the state government would be forced to increase tax rates.

Any increase in excise and income taxes would produce a vicious cycle of adverse economic effects. The initial price competitive advantage of the Native Hawaiian tribe would attract business activity and thus shrink the state tax bases, necessitating the state to raise taxes, which exacerbates the initial price competitive advantage, attracting more economic activity, which further shrinks the state tax bases, leading to another round of tax increases. The impact of this downward economic spiral is profound, causing incremental increases in business closures in the private sector. That means job losses as well.

In addition to a loss in revenue, the state of Hawaii can expect a decrease in business confidence and investment due to the uncertainty of the outcomes of the Akaka Bill as well as the volatile environment that is likely to exist. As a result, Hawaii can expect its bond ratings to fall and interest rates to increase.

While the state of Hawaii would be experiencing a loss in revenue, the NHGE would be experiencing a relative surge in revenue. Since the NHGE would not be collecting taxes from its citizens, we can expect them to extract rent by increasing lease fees. The increase in lease fees would not deter businesses from operating within Native Hawaiian "tribal" territory because of all the advantages they would gain, such as tax and regulation exemptions.

Impacts Resulting from the Use of Ambiguous Language

As we establish above, many aspects of the Akaka Bill are vague and left open to interpretation resulting in impacts that are outside the normal range of economic and fiscal consideration. The ambiguous text of the Akaka Bill fails to define the usage of the newly acquired land which could result in a wide range of possibilities, including the development of casinos and a surge in litigation.

Proponents of the bill claim that the bill prohibits gambling on the Native Hawaiian tribe's land. However, the bill does not forbid gambling, it simply states that it does not specifically authorize it; "nothing in this Act shall be construed to authorize the NHGE to conduct gaming activities under the authority of the Indian Gaming Regulatory Act."[13] This wording leaves open the possibility of a future authorization of gaming. Also, the bill is currently in the context of the United States' law, and it is unknown if the law would remain legally binding in a new "Native Hawaiian governing entity."

"The off-reservation casino examples... enable us to offer some insights into the possible economic consequences of the Akaka Bill on Hawaii."

Equally unknown is whether a newly formed NHGE would require and implement its own "tribal" law enforcement entity, or issue its own "tribal" vehicle license plates as is the case on many of the mainland Indian reservations. The potential for conflict, confusion and costs to county and state law enforcement is significant. The net outcome on many "reservations" has resulted in decreased public safety, or inadequately trained tribal law enforcement overreaching its authority.

Another potential outcome of the Akaka Bill is heightened litigation, which the U.S. Department of Justice has pointed out in previous versions of the bill. The U.S. Department of Justice reviewed the Akaka Bill in 2005 and raised the issue that the bill does not include language preventing "potential claims for equitable, monetary or Administrative Procedures Act-based relief" which "could invite a flood of litigation and could create the prospect of enormous unanticipated liability for the United States and the State of Hawaii."[14] This could include suits from residents left out of the newly formed Native Hawaiian tribe demanding benefits, or owners of privately-owned structures that could be appropriated by the NHGE through the power of eminent domain.[15] A number of cases of this nature would only serve to burden and reduce the effectiveness of the state's court system.

In order to put the bill in context, BHI returned to what we believe to be the closest example in American History, American Indian off-reservation casinos and the tax and legal environment on American Indian reservations.

Experiences on Native American Indian Reservations

The uniqueness of the Akaka Bill makes it difficult to predict its effects on the state and its economy. However, the past experiences of American Indian reservations can serve as a guide. Although American Indian tribes and their reservations have also been granted tribal sovereignty, they are typically located in rural areas and are not immersed within developed communities, unlike the Native Hawaiian "tribal" land, which would be scattered throughout the state in both urban and rural areas. Where tribal reservations in urban areas do exist, such as the Western side of Washington State; next to Green Bay, Wisconsin; suburbs of Minneapolis, Minnesota and urbanized areas of Upstate New York, the intergovernmental and land jurisdictional conflicts are magnified. Since similarities do still exist, comparisons can be made between the impact of the Native Hawaiian "tribal" lands and that of "off-reservation casinos" developed by American Indian tribes. In addition, American Indian reservations' history of tax avoidance and legal immunity provide further insight into the effect of the Akaka Bill.

Off-reservation casinos are developed when "casino-less or casino-poor tribes attempt to jump reservation and sometimes state boundaries to claim turf near populous areas."[16] By drawing in business, jobs and other economic activity, these casinos can severely damage neighboring municipalities. Milwaukee, Wisconsin's experience with "off-reservation" casinos provides an illustration.

One casino built by the Potawatomi tribe took in $328 million in fiscal year 2005 alone. Hoping to follow in its footsteps, the Menominee Tribe proposed to build a 116,100 square-foot gaming facility with a 400 room upscale hotel and a 5,000 seat entertainment facility in Kenosha, Wisconsin, just south of Milwaukee.[17] A study requested by the Common Council's Community and Economic Development Committee of Milwaukee estimates the damage a second casino would have on Milwaukee's economy: "Milwaukee will lose more then 2,000 existing jobs" and "the potential to create 10,000 more."[18] The study also concluded that "businesses located in the Milwaukee area would lose approximately $8 million in out-of-state tourist spending" as a result of the off-reservation casino in Kenosha.[19]

Along with diverting economic activity from nearby communities, American Indian reservations often erode the tax base. Exempt from paying state and local taxes, businesses located on reservation land enjoy a competitive advantage. Therefore, businesses located on American Indian reservations are able to offer highly-taxed products, such as gasoline and tobacco, at a significantly lower price — undercutting off-reservation businesses that must collect and pay the taxes.

The legal environment on tribal land can create benefits as well as disadvantages for the tribe inhabiting the reservation. United States businesses currently rely on the U.S. judicial system to regulate and enforce contracts. However, this enforcement falls short when dealing with tribal governments, tribal agencies, or businesses operating on reservation land because of sovereign immunity. Unless a tribe relinquishes its immunity in a given contract, or if Congress has approved the lawsuit, the tribal government or company cannot be subject to a lawsuit.[20]

This immunity can have two conflicting consequences. First, business and consumer rights as well as contractual obligations can become a matter of question when dealing with American Indian tribes. "Businesses must constantly worry that their investments will be lost and that they will have no recourse to the courts due to tribal sovereignty. The result here is that there are few on-reservation investments."[21] Being exempt from state regulations means non-Native businesses may be unable to enforce contracts with on-reservation companies or unable to seek judicial redress in the case of a dispute. Also, businesses located outside the jurisdiction of the United States do not have to comply with as many lawsuits regarding contracts, class action lawsuits, or even product liability suits. This freedom from legal redress can raise managers' blood pressure along with their operating costs.

The off-reservation casino examples noted above, together with tax avoidance issues and legal uncertainties associated with reservations, enable us to offer some insights into the possible economic consequences of the Akaka Bill on Hawaii. Using this framework drawn from experience with reservations and their relationship to American government, BHI created a model to quantify the effects of tax policy changes on the area's economy.

Methodology

In order to predict the economic effects of the Akaka Bill, assumptions regarding the land transfers must be made. For the purpose of our analysis, we assume that all land eligible for negotiation will be state-owned and no federal or county lands will be included in the negotiations. These county and federal lands amount to fewer than 300,000 acres and are mainly military bases and national parks, which the federal government is unlikely to cede to the NHGE. Should these lands be included, the effects we report would likely increase.

Because it is unknown what and how much land the new NHGE would acquire, we construct three different land transfer scenarios; High, Medium and Low. Each case assumes a different quantity of land, which currently generates revenue for the state through lease payments, is transferred to the NHGE. The High Case assumes that 75% of current revenue collected from lease payments is lost by the state while the Medium and Low cases assume 50% and 25% respectively.

To estimate the economic impact the Akaka Bill would have on Hawaii, we first calculate the amount of revenue the state government would need to recoup through increased taxes. The potential loss in state revenue, without any planned decrease in government responsibility, i.e. spending, would necessitate an increase in taxes, which we model using the state income and excise taxes.

To calculate the approximate fall in excise tax revenue, we estimate the percentage of the current tax base that would be eroded for each scenario. We assume that Native Hawaiians' consumption will transfer proportionally to the percentage of land transferred to the "tribal" government, with "Native Hawaiian and Other Pacific Islanders" making up 23.5% of the state's population, according to the 2006 U.S. Census. We also take into account that households in this group only make 86.18% of the median household income in Hawaii; therefore they will have less of an effect on the erosion of the tax base than the general Hawaiian population.[22] In addition, we conservatively estimate that another 10% of sales will also be transferred from surrounding areas to the new entity.

So, in the High land transfer case, the following calculation is completed to estimate the percentage loss in excise tax revenue:

Formula 1.

75% (*HighCase*)* **23.48%** (*Nativepopulation*%) * **86.18%**(*householdincome*%)

+ **10%** (*bordersales*) = **25.17%**

To estimate the loss of income tax revenue, we determine the amount of Native Hawaiian tribe members that would be living and working on the "tribal" land, thus are exempt from state income taxes, for each scenario. We base our calculation on:

- 31.5% of the land in Hawaii is owned by the state,
- 23.5% of the population is eligible to be in the Native Hawaiian tribe, and

Native Hawaiian households, eligible to be in the new tribe, earn 86.18% of what the median household in Hawaii earns.

Multiplying these percentages together, along with the case specific land transfer enables us to estimate the income tax base loss. Thus, in the High transfer case, the following calculation is completed to estimate the percentage loss in income tax revenue:

Formula 2.

75% (*case*)* **31.5%** (*stateland*%) * **23.48%**(*population*%)*86.18% (*householdincome*%)= **4.78%**

Lastly, we assumed that lease fees would be increased on the land transferred to the NHGE. The new governing entity would be able to increase rents without driving businesses out of the territory because of the other competitive advantages available on the land. In the Low Case, we include no additional fees associated with the leases, while in the Medium and High Case we assume a reasonable increase of 5% and 10%, respectively, of the annual lease payment.

To model this assumption, we did not reflect any changes in government fees or lease payments unless it was included in one of our three scenarios. For example in the High Case, we assumed that 75% of the value would be transferred, $87.75 million in state lease revenue, and that the NHGE would increase leases by 10%, or $ 8.775 million.

Tax increases for each scenario, imposed by the Hawaii government to compensate for the loss in revenue, were modeled in the Hawaii-STAMP© to simulate the economic effects on the state. STAMP is a Computable General Equilibrium (CGE) tax model; a computerized method of accounting for the economic effects of tax policy changes. A CGE model is specified in terms of supply and demand for each economic variable included in the model, where the quantity supplied or demanded of each variable depends on the price of each variable. This model allows BHI to calculate the dynamic effects that changes in tax policy will have on the overall economy. After simulating these three cases, BHI was able to compare changes in different important economic indicators based on our assumptions.

BHI was able to model the dynamic effects the Akaka Bill would have on the islands and analyze the results using these three assumptions:

(1) an increase in lease fees,

Table 2: Lost State Revenues

Line	Case	High	Medium	Low
A	% of Land Transferred	75	50	25
B	% of Excise Tax Revenue Lost	25.17	21.2	15.06
C	Excise Tax Revenue Lost	536.13	451.72	320.89
D	% of Income Tax Revenue Lost	4.78	3.19	1.59
E	Income Tax Revenue Lost	65.75	43.83	21.91
F	Lease Fees Lost	87.8	58.5	-
G	Total Revenue to be Recovered	689.7	554.1	342.8

(2) an increase in the state excise tax to keep revenue constant, and

(3) an increase in the state income tax to keep revenue constant.

Results

In our first scenario, the High Case, the state of Hawaii loses 75% of the current state land lease revenue, excise tax revenue plunges 25.17%, forcing the state to increase the average excise tax rate 37% to recoup the lost revenue.[23] Income tax revenue declines by 4.78% prompting the state to boost income tax rates of 8.66% across all income brackets. Furthermore the NHGE will increase lease fees by 10%.

In the Medium Case, the state loses 50% of its land lease revenue, leading to a 21.2% loss in excise tax receipts and a 3.19% loss in the income tax receipts, along with a 5% increase in annual lease fees.

In the Low Case, we assume that Hawaii loses 25% of lease fees, which leads to a 15.06% loss of excise tax revenue and a 1.59% loss in income tax revenue, and no increase in the annual cost of leases. Table 2 breaks down the decreases in revenue as well as increases in lease fees by scenario.

The revenue lost due to erosion of the excise and income tax bases would be replaced by increases in their respected tax rates. The effect of the tax increases, to remain revenue neutral, in each scenario, is shown in Table 3. In the High Case where the state is expected to increase the excise tax rate by 37% and the income tax rate by 8.66% (across all income brackets), there will be a loss of 20,793 jobs in the private sector (4.05%), $417.2 million in investment (2.80%) and approximately $1,500 in disposable income per capita (4.17%) annually.

The economic effect in the Medium land transfer scenario is due to a 29% increase in the excise

Table 3: Economic Indicators

Economic Indicator	High	Medium	Low
Private Employment	-20,793	-15,796	-9,838
% Change	-4.05	-3.08	-1.92
Investment ($ millions)	-417.2	-321.2	-203.4
% Change	-2.8	-2.16	-1.37
Disposable Income per	-1,461	-1,119	-705
% Change	-4.17	-3.2	-2.01

tax rate and a 5.6% increase in the income tax rate. As a result the state would experience a 3.08% loss in jobs (15,796), 2.16% decrease in investment ($321.2 million) and 3.20% in disposable income per capita ($1,119).

In the Low land transfer scenario the state government would increase the excise tax rate by 18% and the income tax rate by 2.7% in order to recoup lost revenue. This will cause a 1.92% decline in jobs, a loss of 9,838, a 1.37% decrease in annual investment, a loss of $203 million and a drop in disposable income per capita of $705 (2.01%).

Conclusion

Since the end of the monarchy, land ownership in Hawaii has been hotly debated. With the introduction of the Akaka Bill in 2000, land rights have moved to the forefront of policy discussion in Hawaii. The bill attempts to solve land issues through a separate sovereign entity, but will create more problems than it solves.

The uncertainty surrounding the outcome of the negotiations between the state and the new Hawaiian entity and a possible surge in litigation filings would hurt business confidence and investment.

The new entity would be free from state and local taxes, regulations and legal restrictions that would create a competitive advantage that would shift economic activity away from the businesses left under the jurisdiction of Hawaii. As a result, Hawaii would suffer declines in state revenue collections and require tax increases to fill the gap. As a result, citizens of Hawaii would suffer lower living standards.

Appendix

History

Since the beginning of Western influence in the Kingdom of Hawaii, land rights have consistently been a prominent and often controversial issue. In the context of the Akaka Bill, this debate has reached new heights. A review of the history, briefly summarized here, would serve all parties seeking to make the most informed decisions.

Prior to the mid 1800s all land in Hawaii was held by the king by the right of conquest. Until King Kauikeaouli Kamehameha III voluntarily gave up most of his land, retaining the lands referred go as crown lands and officially recognized that chiefs, commoners, and people of all races share fundamental rights. The Declaration of the Rights of Man was proclaimed by Kamehameha III in 1839, and became the preamble of the first Constitution which he proclaimed in 1840. The first sentence says: "God hath made of one blood all races of people to dwell on this Earth in unity and blessedness." [24]

In return for saving the crown lands from foreclosure on a mortgage by issuing government bonds, the king gave the government ownership of the crown lands in 1865 with the stipulation that revenues would be issued to support the royal office. Following the revolution of 1893 and overthrow of the monarchy, the government of the Republic of Hawaii took control of all the land owned by the government, which by then included the crown lands. The public lands of the Republic of Hawaii were ceded to the U.S. at annexation in 1898, on the condition that they were to be held in trust with revenues to be used solely for the benefit of the people of Hawaii "for educational and other public purposes."[25] In the Statehood Act of 1959 the public land trust (also known as the ceded lands) was returned to the new state of Hawaii, except for military bases and national parks kept by the federal government.

In the meantime, land was not the only thing that was changing rapidly in Hawaii. In the late 19th century both Americans and Europeans gained more control in Hawaii, by dominating the political economy and land ownership. By imposing property and income requirements for the right to vote, the proportion of voters who were Caucasian increased while the proportion of voters who had Native blood decreased and the powers of the King were greatly reduced, in favor of the Legislature. Caucasians sometimes comprised ¼ to 1/3 of the members of the legislature; most cabinet ministers (appointed by the monarch) were Caucasian; and nearly all department heads and judges were Caucasian.

When Hawaii was admitted into the United States of America in 1959, the United States government kept almost 400,000 acres of this land for federal uses and put the remainder, about 1.4 million acres, into a Public Trust which was turned over to the new Hawaiian State Government. These 1.4 million acres make up "about 40 percent of the total land in Hawaii and about 95 percent of state-controlled land."[26] The state was mandated through section 5(f) of the Statehood Admission Act of 1959 to use revenue from these lands for any one or more of five purposes: for the support of public schools and other public educational institutions; for the betterment of the conditions of Native Hawaiians as defined in the Hawaiian Homes Commission Act, i.e., fifty percent or more blood quantum; for the development of farm and home ownership; for the making of public improvements; and for the provision of lands for public use. [27]

In 1978, the Constitutional Convention created the Office of Hawaiian Affairs (OHA) specifically to manage any ceded land revenues which the legislature might set aside for the particular purpose of bettering the conditions of Native Hawaiians with 50% Native blood quantum as defined in the Hawaiian Homes Commission Act of 1921. This was passed into law in 1980 when the state legislature approved Act 273, which allocated 20% of revenue from the leasing of state land to OHA.[28] Much of the current contention around this issue is drawn from the fact that the term "funds" were never clearly defined, and the OHA never conducted the inventory of all ceded lands as they were legally required to complete. Litigation has been brought by OHA against the state over this matter, claiming the OHA had been receiving only a fraction of the 20% required. However, other litigation has been brought by private citizens against OHA and the State of Hawaii, claiming among other things that 20% of gross revenue exceeds 100% of net income after capital improvements and operating expenses, thereby denying any benefits to non-Native citizens of the state of Hawaii.[29]

In 1990, an agreement was reached that ultimately required the state to pay OHA approximately $1.2 billion in arrears as well as a yearly percentage of revenue totaling between $12-15 million. However, in 2001 the State Supreme Court reversed this ruling, stating that the contested claims must be clarified through the legislature before OHA could sue. This ruling resulted in a deal being brokered where OHA received $187 million in properties on O'ahu and the Big Island as well as $12.3 million in cash.[30] Furthermore, OHA would receive $15.1 million a year as its share of the land revenue. During debate over the agreement in the state legislature, the $15.1 million annual sum was removed and replaced with a methodology through which to reassess the total worth of the ceded lands each year and giving OHA a percentage of the annual rent.[31]

There is also the question of a *Res Judicata* provision which, although currently removed from the House version of the Akaka Bill, could possibly be reinstated. It would prevent OHA or other parties from suing the state for any trust income or additional payments in the future, unless the state failed to pay its annual percentage agreed upon in the bill.[32] This has contributed to the debate over OHA's motives and goals. Many Native Hawaiian and Native Hawaiian sovereignty groups believe OHA has selfish intentions. Skeptics maintain that this provision, and the fact that this agreement was brokered behind closed doors without a serious attempt to utilize any input from the Native Hawaiian population, displays OHA's willingness to sell future generations of Hawaiians short for OHA's own financial gain and power aspirations. There are also widespread claims from independence groups that neither the state nor OHA have any right to determine the future of these ceded lands.[33] These independence groups assert that without any formal transfer document from the Kingdom to the government, and based on the statements made by the "Apology Resolution," this land was taken without legality, consent or compensation. The Apology Resolution, issued in 1993 on the 100th anniversary of the overthrow, characterizes the Kingdom of Hawaii as belonging solely to the Native Hawaiians and, despite its inaccuracy, remains a cornerstone of the arguments made by both independence groups and Akaka Bill supporters. [34]

There are those who claim this legal battle between the state and OHA is merely giving legitimacy to a farce. Further drawing OHA's intentions into question is the fact that OHA trustees have stated that funds received through these settlements will go towards "Kau Inoa," a Native Hawaiian registration drive which promises to identify those who will be part of "the nation to come" and therefore eligible for benefits and participation in the creation of this new government.[35] Placing a state agency into the role of creating a new government in competition with the existing government seems of dubious benefit and questionable legality.

Recently OHA won a 5-0 decision from the Hawaii Supreme Court that cites the Apology Resolution as the basis for prohibiting the State of Hawaii from selling any ceded lands (which comprise 95% of the state's land) until such time as the claims of Native Hawaiians have been resolved.

In spite of the reliance of the Akaka Bill on the Apology Resolution, and the support of the Lingle administration for the Akaka Bill, in response to the Hawaii Supreme Court's ruling, Attorney General Mark J. Bennett has appealed to the U.S. Supreme Court, challenging the usage of "the symbolic resolution passed by Congress in 1993" to strip the State of Hawaii of its sovereign authority.[36]

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About the Authors

Paul Bachman. Mr. Bachman is Director of Research at the Beacon Hill Institute for Public Policy Research at Suffolk University and a Senior Lecturer in Economics Suffolk University. He holds a Master of Science in International Economics from Suffolk University.

Michael Head, MSEP. Mr. Head is a Research Economist at the Beacon Hill Institute for Public Policy Research at Suffolk University. He holds a Master of Science in Economic Policy from Suffolk University.

Sarah Glassman, MSEP. Ms. Glassman is Research Operations Manager at the Beacon Hill Institute. She holds a Master of Science in Economic Policy from Suffolk University.

David G. Tuerck, PhD. Dr. Tuerck is Executive Director of the Beacon Hill Institute for Public Policy Research at Suffolk University and Chairman of the Economics Department at Suffolk University. He holds a Doctorate in Economics from the University of Virginia. His dissertation director was James M. Buchanan, Nobel Laureate in Economics.

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The Beacon Hill Institute for Public Policy Research
Suffolk University
8 Ashburton Place
Boston, MA 02108
Phone: 617-573-8750 Fax: 617-994-4279
bhi@beaconhill.org
http://www.beaconhill.org