

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 (iii) 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—

8 (i) shall not be subject to the regu-
9 latory or taxation authority of the State of
10 Hawaii; but

11 (ii) shall be subject to the authority of
12 the State to regulate activities for the pro-
13 tection of the public health or safety until
14 such time as the Native Hawaiian gov-
15 erning entity and the State of Hawaii come
16 to an interim agreement approved by the
17 Secretary governing the extent of such reg-
18 ulation based on a determination by the
19 Secretary that the interim agreement is
20 consistent with applicable Federal law.

21 (J) Commercial or business activities un-
22 dertaken by the Native Hawaiian governing en-
23 tity, or by a corporation or other association or
24 entity owned, operated, or sponsored by the Na-
25 tive Hawaiian governing entity, shall be subject

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

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

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

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

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

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

10 (O) Nothing in this paragraph diminishes
11 any right or immunity (including any immunity
12 from State or local taxation) granted to Native
13 Hawaiians or their property by the Hawaiian
14 Homes Commission Act, 1920 (42 Stat. 108,
15 chapter 42), the Act entitled “An Act to pro-
16 vide for the admission of the State of Hawaii
17 into the Union”, approved March 18, 1959
18 (Public Law 86–3; 73 Stat. 4), or sections
19 10001 through 10004 of the Department of
20 Defense Appropriations Act, 1994 (sections
21 10001 through 1004 of Public Law 103–139;
22 107 Stat. 1418, 1480 (1993)).

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

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

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

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