

Hawaii Reporter

Inouye, Akaka Push Federal Indian Tribe Recognition for Native Hawaiians in New Interior Bill

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The Native Hawaiian Recognition Act, or Akaka Bill as it is nicknamed in honor of U.S. Senator Daniel Akaka, D-HI, has been floundering in Congress for more than a decade.

The proposed legislation, which would set up a framework for a separate native Hawaiian nation within the United States, has been extremely controversial in the islands and in Congress. Native Hawaiians on both sides have been fighting over the language and intent.

The legislation passed the U.S. House three times, even with strong opposition by conservatives both in and out of the U.S. House.

However, the legislation, which has taken on many forms, has never passed the U.S. Senate.

This despite the power that U.S. Senator Daniel Inouye, D-HI, has as appropriations chair and as *President pro tempore* of the U.S. Senate.

But the intrepid Senator hasn't given up.

On October 14, 2011, the Senate Appropriations Committee released a proposed draft of its Interior, Environment, and Related Agencies Appropriations bill, which includes legislation to recognize Native Hawaiians as a federal Indian Tribe.

Peter Boylan, spokesperson for Sen. Inouye, said: "The Hawaii Congressional delegation is committed to federally recognizing Native Hawaiians in the 112th Congress, with the strong support of the Governor and Hawaii State Legislature. We will continue to pursue a variety of options to effectuate passage."

Historically, Native Hawaiians have never been in a tribe, so the proposal, which has been floated in the past, has angered opponents of the legislation who found it insulting. Other native Hawaiians support the concept, which allows the Secretary of Interior to recognize Native Hawaiians as a federal Indian tribe (Full text is [here](#)).

The bill reads: HAWAIIAN RECOGNITION: SEC. 420. *Now and hereafter, in exercise of the authority delegated under sections 441, 442, 463 and 465 of the Revised Statutes (43 U.S.C. 1457, 25 U.S.C. 2 and 9), the community recognized by and enrolled pursuant to Act 195 (26th Haw. Leg. Sess. (2011)) may be recognized and listed under*

section 104 of Public Law 103-454 but not entitled to programs and services available to entities thereunder unless a statute governing such a program or service expressly provides otherwise."

Specifically,

- The legislation gives power of the Secretary of the Interior to recognize tribes.
- [Section 104 of P.L. 103-454](#) is the requirement that the Secretary of the Interior create and maintain a list of federally-recognized Indian tribes.
- Hawaii legislators earlier this year passed Hawaii's "Act 195", or the state version of the "Akaka Bill", which authorizes the creation of a roll of members, but does not include federal recognition. This bill would work with the local legislation, but no specifics were offered today by Boylan.

Steven Duffield, former chief counsel to Sen. Jon Kyl, R-AZ, said: "For many years, the Akaka Bill advocates insisted that the law would just allow a process for those of 'Native Hawaiian' blood to decide a path forward. That was always a farce, and this new provision proves it. The appropriations language would lead to only one result: Native Hawaiians becoming an Indian tribe, with all the public expense and jurisdictional nightmares that go with that status."

Opponents argue that the purported limitation ("not entitled to programs and services...unless a statute...expressly provides") is a weak limitation because so many of the programs and statutes already list Native Hawaiians.

They also note that this is arguably "more" radical version of the original Akaka Bill, because the new Appropriations language has no public involvement at the state or congressional level after this bill, it contains none of the limitations that have been negotiated in the past by then-Gov. Lingle, and it simply "turns the switch and invents a tribe."

Duffield said that "it's worth remembering that every professional poll has shown that Hawaiian citizens are highly skeptical of this race-based scheme."

"Commonsense Members of Congress will take all of that into account when deciding whether to allow this language to remain in the bill," Duffield said.

Leon Siu, a native Hawaiian activist and popular Hawaiian entertainer, has opposed the Akaka Bill legislation in Congress and has even traveled to Washington DC to meet with House and Senate members about his concerns.

Siu said in an earlier letter to *Hawaii Reporter* that Senator Akaka made a key tactical error last December when he amended the bill to create a "tribe" and take away state oversight, because that set off a chain of events that led to the bill's failure.

That included leading then Republican Gov. Linda Lingle's withdraw state's support for the measure. In addition, Gov. Neil Abercrombie, who was in Congress at the time, failed to embrace the amendments Akaka proposed, Siu said, leaving two different versions of the bill.

Then Akaka changed his bill back to the pre-December 2009 version, Siu said, getting the governor back on board with the Senate bill, but not the still unacceptable Abercrombie version in the House.

In addition to native Hawaiian sovereignty activists who don't want federal authority over them, conservative organizations, such as the Heritage Foundation and the Cato Institute, and several Republican Congress members, have opposed the bill.

Supporting the legislation are native Hawaiian organizations such as the Office of Hawaiian Affairs and the Department of Hawaiian Homelands, both state agencies that provide services and housing to native Hawaiians.