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Rewrite of Native Hawaiian Bill Contains Potential Gaming Loophole *State of Hawaii could be powerless to stop Native Hawaiian casino*

With the final rewritten text ([Abercrombie substitute](#)) of H.R. 2314, the Native Hawaiian Government Reorganization Act of 2009, being provided to members of the U.S. House of Representatives with less than 24 hours before a formal vote may be called, analysis of its provisions are ongoing. A review of two sections of the bill reveal that it may contain a loophole that could allow the newly established Native Hawaiian governing entity to establish a gaming operation that the State of Hawaii could be powerless to block or shutdown.

Section 10(a) of the rewritten bill is clearly intended to provide that the Native Hawaiian governing entity created under the bill is not recognized to establish a casino or gaming operation under the federal law that governs Indian gaming (the Indian Gaming Regulatory Act, 25 USC 2701 et seq.)

However, Section 9(c)(3)(H) specifically provides that the Native Hawaiian governing entity is immune from lawsuit by the State of Hawaii in either state or federal court. In addition, Section 9(c)(3)(I) provides that “governmental” activities undertaken by the entity “shall not be subject to the regulatory or taxation authority of the State of Hawaii...”.

Should the Native Hawaiian governing entity unlawfully establish a casino despite Section 10(a) of the rewritten bill, then Section 9(c)(3)(H) of the rewritten bill could prevent the State of Hawaii from going to court to shut-down the illegal gaming operation.

While there are [proposals](#) currently being considered in the Hawaii State Legislature to allow gaming on Native Hawaiian lands, there is nothing to indicate that there are any plans or intentions for the Native Hawaiian governing entity to start a casino or gaming operation in violation of existing law, yet in this rewritten bill text, should such a scenario ever arise in the future, the State of Hawaii could be powerless to stop it.

This potential loophole is not an invented fantasy. Over the years, there have been Indian casinos operating without state-approved compacts and in violation of state law. If Congress passes the rewritten bill with this loophole, then the only authority that the State of Hawaii and its citizens could have to rely on to stop the illegal operation would be the federal government, which has been lax in acting on such matters.

While the authors of the bill may not have intended to create this potential loophole, this is precisely what happens when bills are written out of public view and rushed for a vote without appropriate time for careful review.

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