



**Legislative Bulletin.....March 27, 2007**

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**H.R. 835 - Hawaiian Homeownership Opportunity Act of 2007**

**Summary of the Bills Under Consideration Today:**

**Total Number of New Government Programs: 0**

**Total Cost of Discretionary Authorizations: \$63 million over five years**

**Effect on Revenue: \$0**

**Total Change in Mandatory Spending: 0**

**Total New State & Local Government Mandates: 0**

**Total New Private Sector Mandates: 0**

**Number of Bills Without Committee Reports: 0**

**Number of Reported Bills that Don't Cite Specific Clauses of Constitutional Authority: 0**

**H.R. 835 - Hawaiian Homeownership Opportunity Act of 2007  
(Abercrombie, D-HI)**

**Order of Business:** The bill is scheduled for consideration on Tuesday, March 27, 2007, subject to a closed rule ([H.Res. 269](#))

**Note:** The House considered H.R. 835 on Wednesday, March 21, 2007, under a motion to suspend the rules and pass the bill. H.R. 835 failed by a vote of [262-162](#), because although a majority of Members voted in favor, the bill did not garner the 2/3 necessary to pass on the suspension calendar. As such, the Majority has brought the bill up for consideration under regular order, but subject to a closed rule. Such consideration requires a simply majority for passage.

**Summary:** H.R. 835 would reauthorize the Native Hawaiian Housing Block Grant (NHHBG) for “such sums as may be necessary” for the FY 2008 through FY 2012 period. In FY 2007, NHHBG will receive \$9 million in federal funding. In addition, the bill reauthorizes at such sums as necessary for the FY 2008 through FY 2012 period, a loan guarantee program to benefit Native Hawaiians.

Finally, the bill would make the Department of Hawaiian Home Lands (DHHL) of the state of Hawaii eligible for Title VI loan guarantees; and would reauthorize at such sums as necessary, for the FY 2008 to FY 2012 period, the credit subsidy that covers the costs of federal guarantees for financing for tribal housing activities. According to CBO, extending this program to include the DHHL would “allow Native American Block Grant recipients to leverage their funding by pledging future grants as security for the repayment of a loan.” CBO also points out that although “there have been few losses to date in the Title VI program, repayment of these loans have been funded by federal grants. As a result, the actual cost to the government is borne by the grant program. It is uncertain what the cost of these loans would be in the absence of the grant program but it likely would be higher, perhaps substantially.”

**Additional Information:** According to Committee Report [110-050](#), the Native American Housing Assistance and Self-Determination Act of 1996 “provides funds directly to tribes for housing services as determined by the tribes themselves. In 2000, NAHASDA was amended to include Title VIII so that Native Hawaiians could receive block grant funding as well through a separate grant—the Native Hawaiian Housing Block Grant (NHHBG).”

The Committee Report also outlines its intent that Native Hawaiians would now have their own credit subsidy, “The use of Title VI funding by American Indians and Alaska Natives has expanded greatly. By allowing Native Hawaiian’s access to Title VI loans, the Committee does not intend to create competition for funding resources. Therefore, the Committee expects, at the discretion of the Appropriations Committee, that a separate credit subsidy will be established and funded as necessary to provide funding for loans to Native Hawaiian’s under Title VI.”

During Committee consideration, Congressman Campbell (R-CA), offered an amendment that would have ensured that no future court could construe our reauthorizing federal funding for Native Hawaiian housing as Congress using its power under the Indian Commerce Clause to indirectly confer tribal status on the Native Hawaiian people. The amendment failed by a vote of 27 – 40. In his dissenting view, Congressman Campbell stated the following, which outlines many **possible conservative concerns** with this legislation:

“The underlying Native Hawaiian housing program that we are set to reauthorize is one of many benefits that currently flow from the federal government to Native Hawaiians--there are roughly 160 current statutes that confer such benefits. However, in 2000, the Supreme Court put many of these benefits in jeopardy with its decision in *Rice v. Cayetano*.

The Court's decision in *Rice* has led many to conclude that the current configuration of justices would likely strike down most federal benefits flowing to Native Hawaiians as a racial set-aside, if given a chance. As a result, the Hawaiian Congressional delegation has championed separate legislation to provide a process for the United States to recognize Native Hawaiians as a governing entity, i.e., a tribe that is political in nature. Instead of recognizing a currently-existing political entity that has authority over its members, the legislation (H.R. 505) would create one from scratch.

While the Financial Services Committee is not considering the sovereignty bill (H.R. 505), the Native Hawaiian housing bill (H.R. 835) should nonetheless give us pause before we reauthorize funding programs that are more than likely unconstitutional. This bill, H.R. 835, which reauthorizes federal funding for Native Hawaiian housing, should not be construed by any future court as Congress using its power under the Indian Commerce Clause to indirectly confer tribal status on the Native Hawaiian people.

America is a melting pot of cultures from around the world. Justice Kennedy noted as much in his opinion in *Rice v. Cayetano*. "As the State of Hawaii attempts to address these realities, it must, as always, seek the political consensus that begins with a shared purpose. One of the necessary beginning points is this principle: The Constitution of the United States, too, has become the heritage of all the citizens of Hawaii."

**Possible Conservative Concerns: In addition to those outlined above by Congressman Campbell, some conservatives may be concerned that Native Hawaiians are a racial group, not a tribe, and dispensing benefits to them would likely be subject to strict scrutiny in federal courts. Providing additional financial assistance to this group is not only duplicative of numerous current federal education programs, but may also be unconstitutional.**

**Committee Action:** H.R. 835 was introduced on February 7, 2007, and referred to the Committee on Financial Services, which considered it, and reported it to the full House by voice vote on March 15, 2007.

**Cost to Taxpayers:** According to CBO, enacting H.R. 835 would authorize \$12 million in FY 2008, and \$63 million over the FY 2008 to FY 2012 period.

**Does the Bill Expand the Size and Scope of the Federal Government?:** Yes. The bill would extend federal programs to provide an additional subsidy for Native Hawaiians.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?:** No.

**Constitutional Authority:** In Committee Report [110-050](#), the Financial Services Committee cites constitutional authority in Article 1, section 8, clause 1 (relating to the

general welfare of the United States) and clause 3 (relating to the power to regulate interstate commerce).

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