



To: House Committee on Natural Resources Republican Members
From: Republican Committee Staff; Ken Degenfelder
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Date: April 12, 2021
Subject: Legislative Hearing on H.R. 1522, "Puerto Rico Statehood Admission Act," and H.R. 2070, "Puerto Rico Self-Determination Act of 2021"

The Committee on Natural Resources will hold a Legislative Hearing on H.R. 1522 (Rep. Soto), "Puerto Rico Statehood Admission Act," and H.R. 2070 (Rep. Velázquez), the "Puerto Rico Self-Determination Act of 2021," **on Wednesday, April 14, 2021, at 1:00pm** online via Cisco WebEx.

Member offices are requested to notify Rob MacGregor by 4:30pm on Monday, April 12, 2021, if their Member intends to participate in person in the hearing room or remotely from his/her laptop from another location. Submissions for the hearing record must be submitted through the Committee's electronic depository at HNRCDocs@mail.house.gov. Please contact David DeMarco (DavidDeMarco@mail.house.gov) or Everett Winnick (Everitt.Winnick@mail.house.gov) should any technical difficulties arise.

I. KEY MESSAGES

- In 1917, Congress passed legislation providing U.S citizenship to residents of Puerto Rico. However, the Island's territorial status does not allow them to vote for President of the United States or have voting representation in Congress.
- On November 3, 2020, 53 percent of Puerto Rico's voters supported statehood in a yes-or-no referendum, following Alaska and Hawaii precedent.
- H.R. 2070 ignores the November 2020 plebiscite, vesting power in Status Convention "delegates" to determine what status options are available.
- The creation of the Status Convention raises constitutional concerns because convention delegates have the authority to "define" status options outside of Congress' authority to do so under the territory clause of the U.S. Constitution.¹
- The Democrat Majority insists on pairing Puerto Rican and D.C. statehood for political purposes, ignoring distinct challenges that exist for both measures. Further, the question

¹ U.S. Const., Article IV, Section 3, Clause 2.

of Statehood versus a Status Convention for Puerto Rico splits the Democrat Majority.

II. WITNESSES

- The Honorable Pedro Pierluisi, Governor of Puerto Rico, San Juan, PR [PNP]
- Mr. José Fuentes, Chair, Puerto Rico Statehood Council, Washington, DC [PNP]
- Ms. Johanne Vélez-Garcia, Vice President, Puerto Rico Democratic Party, San Juan, PR [PNP]
- Dr. Christina Ponsa-Kraus, Professor of Law, Columbia Law School, New York, NY [*Republican witness*]
- The Honorable Aníbal Acevedo Vilá, Former Governor of Puerto Rico, San Juan, PR [PPD]
- The Honorable Manuel Natal, Former PR House Representative, San Juan, PR [PPD]
- The Honorable Rafael Hernández, Speaker, Puerto Rico House of Representatives, San Juan, PR [PPD]
- The Honorable María de Lourdes Santiago, Vice President, Puerto Rico Independence Party, San Juan, PR [PIP]

III. BACKGROUND

History and Background

Following U.S. victory in the Spanish-American War in 1898, the United States acquired Puerto Rico, Guam, and the Philippines from Spain.² Puerto Rico is a U.S. territory subject to Congressional authority derived from the Territory Clause of the U.S. Constitution.³ The Territory Clause grants Congress “Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States.”⁴

Shortly after acquiring Puerto Rico in 1898, Congress established a civilian government on the island in 1900 via the Foraker Act, which created an executive council consisting of a presidentially appointed civilian governor and various department heads. The Foraker Act also created a House of Delegates, a U.S. style judiciary system and a Resident Commissioner to represent Puerto Rican interests in Washington, D.C.⁵ In 1917, the Jones Act extended U.S. citizenship to Puerto Ricans, established a Bill of Rights for the Island, and created a three-branch government similar to that of the U.S.⁶ Congress recognized the Islands’ authority over internal governance in 1950 through the Puerto Rico Federal Relations Act (FRA) and approved the island’s Constitution in 1952.⁷ After approval of the Puerto Rico Constitution, the island formally became known as the “Commonwealth of Puerto Rico.” This has created ambiguity as some believe this provides Puerto Rico a status

² <https://www.loc.gov/rr/hispanic/1898/chronpr.html>

³ U.S. Const., Article IV, Section 3, Clause 2.

⁴ Id.

⁵ 31 Stat. 77 & 86.

⁶ 39 Stat. 951 & 958.

⁷ Public Law 81-600

in between territory and state while others believe that the term “commonwealth” does not hold legal or political significance.⁸

Individuals born in Puerto Rico are U.S. citizens, but lack full voting representation in Congress and do not vote in the Presidential general election. In addition, only those who earn income outside the Island pay federal income taxes. Puerto Ricans do not have the same eligibility for some federal programs as those in the states.⁹

In Puerto Rico, politics revolve around three primary status perspectives represented by the three most established political parties:

- New Progressive Party (*Partido Nuevo Progresista*, or PNP, in Spanish) – Pro-statehood
- Popular Democratic Party (*Partido Popular Democrático*, or PPD, in Spanish) – Pro-territory status, with some elements favoring free association
- Puerto Rican Independence Party (*Partido Independentista Puertorriqueño*, or PIP, in Spanish) – Pro-Independence.¹⁰

2020 Plebiscite

On June 3, 2020, the Puerto Rico State Elections Commission submitted a request to the Department of Justice (DOJ) for a release of funds by June 30, 2020, pursuant to the Consolidated Appropriations Act of 2014.¹¹ The 2014 appropriations act provided \$2.5 million to the DOJ for “objective, nonpartisan voter education about plebiscite options that would resolve Puerto Rico’s future political status”.¹² On July 29, 2020, the U.S. Deputy Attorney General, Jeffrey Rosen, responded to the Puerto Rico Elections Commission notifying the Election Commission that the DOJ would not be able to obligate the appropriated funds.¹³

The Rosen letter cites a handful of concerns which include not having enough time to review, certify, and disburse funding to meet the June 30, 2020 deadline. It goes on by saying that there are a lack of voter-education materials, and an alleged bias against non-statehood status options.¹⁴ On September 16, 2020, then Governor Wanda Vázquez Garced responded to the Rosen letter expressing her disappointment and requesting that DOJ reconsider obligating the funds. In her letter she argues that Congress mandated that territorial status should not be included as an option in future plebiscites and that DOJ was

⁸ Congressional Research Service, Political Status of Puerto Rico: Brief Background and Recent Development for Congress, p. 3, R. Sam Garrett, June 12, 2017. <https://fas.org/sgp/crs/row/R44721.pdf>.

⁹ Id.

¹⁰ Id. at 6.

¹¹ Public Law 113-76.

¹² <https://www.congress.gov/bill/113th-congress/house-bill/3547/text>, Office of Justice Programs, State and Local Law Enforcement Assistance, Subsection 1.

¹³ <https://www.puertoricoreport.com/wp-content/uploads/2020/09/DoJ-rejects-2020-plebiscite-as-is-.pdf>.

¹⁴ Id.

responsible for providing acceptable versions of voter education materials and ballot formats.¹⁵

Despite never receiving the obligation from DOJ, Puerto Rico went forward with its sixth¹⁶ plebiscite in November 2020, asking voters “Should Puerto Rico be immediately admitted into the Union as a U.S. State?” and voters only had the options of answering “Yes” or “No”. The results of the plebiscite were 655,505 (52.52%) voting in favor of statehood and 592,671 (47.48%) voting against it.¹⁷ According to the Puerto Rico State Elections Commission website, turnout was approximately 54.72%.¹⁸

Regarding arguments that the vote was not valid because it was not sanctioned by DOJ, it is important to note that this has never been a requirement to hold local referenda or plebiscites in Puerto Rico or across the rest of the nation, nor is this a prerequisite for Congress to act.

Moreover, both Alaska (in 1946)¹⁹ and Hawaii (in 1940)²⁰ held locally sponsored, “non-binding” yes-or-no votes on statehood. It was not until after Congress passed their respective admission acts in the late 1950s that a federally sponsored referendum took place in the two territories, in which voters had the opportunity to ratify their desire for statehood.^{21 22}

Path to Statehood

If Congress chose to alter Puerto Rico’s political status, it could do so through statute regardless of whether a plebiscite was held or what sentiment such a vote revealed. There are six paths to territorial statehood based on historical practice. These include:

- The union of the first 13 colonies;
- Presentation to Congress of a territory that is already organized like a state (commonly known as the Tennessee Plan);
- Annexation of an independent Republic;
- Creation of a new state from existing states;
- Development of a state constitution without first obtaining explicit congressional support; and

¹⁵ https://www.puertoricoreport.com/wp-content/uploads/2020/09/Letter_Gov_Vazquez_Garced_to_DOJ_re_2020_Plebiscite_9_16_2020.pdf, Governor of Puerto Rico, Wanda Vazquez Garced, 9/16/20.

¹⁶ Previous Status referendums have been held in Puerto Rico in 1967, 1993, 1998, 2012, and 2017.

¹⁷ [https://ballotpedia.org/Puerto_Rico_Statehood_Referendum_\(2020\)#cite_note-report17-36](https://ballotpedia.org/Puerto_Rico_Statehood_Referendum_(2020)#cite_note-report17-36).

¹⁸ http://elecciones2020.ceepur.org/Escrutinio_General_93/index.html#en/default/PLEBISCITO_Resumen.xml

¹⁹ Fred A. Seaton, Alaska’s Struggle for Statehood, 39 Neb. L. Rev. 253 (1960).

<https://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=2848&context=nlr>

²⁰ Last Among Equals, Hawaiian Statehood and American Politics. Pg. 32.

<https://scholarspace.manoa.hawaii.edu/bitstream/10125/62888/9780824879044.pdf>

²¹ Alaska Admission Act. <https://www.govinfo.gov/content/pkg/STATUTE-72/pdf/STATUTE-72-Pg339.pdf>

²² Hawaiian Admission Act. <https://www.govinfo.gov/content/pkg/STATUTE-73/pdf/STATUTE-73-Pg4.pdf>

- Congressional enactment of legislation to enable statehood.²³

Puerto Rico statehood advocates have publicly endorsed using the Tennessee Plan method, which involves drafting a state Constitution, electing state officials, organizing a state-like government, sending an elected delegate to Washington, D.C. to lobby for statehood, and Congress passing legislation admitting the territory as a state.²⁴ This process allows the territory to begin the statehood process without invitation from Congress. Ultimately, however, any change in status requires a statutory change from Congress.²⁵ Puerto Rico has a constitution that is republican in form and equivalent to a State constitution, having been ratified by voters on the Island on November 4, 1952, and subsequently approved by Congress through Public Law 82-447.

H.R. 1522, Puerto Rico Statehood Admission Act, (Rep. Soto D-FL)

In general, H.R. 1522 would not immediately provide statehood to Puerto Rico. Upon enactment, the President of the United States is required to notify the Governor of Puerto Rico of passage, who would then call for an election to ratify Puerto Rico's admission into the Union as a State. The ratification would be conducted through a Yes or No vote, and if it is accepted by a majority of voters, the Governor would notify the President and the President would set the date for Puerto Rico to be admitted into the Union. If the ratification is rejected by a majority of voters, the underlying Act would have no force or effect.

Section 2 of the bill is a findings section that outlines Puerto Rico's history as a territory as well as the contributions made by Puerto Rican military servicemembers (235,000 have served). It also highlights the results of the November 3, 2020 plebiscite. Section 3 states that subject to the provisions of the act and the proclamations required by Section 7, Puerto Rico will obtain statehood and be "on an equal footing with the other States in all respects." Section 4 would clarify that Puerto Rico's physical boundaries will not change and Section 5 confirms that the current constitution of Puerto Rico shall be the constitution if it becomes a state.

Section 6 outlines the certification process which starts once the bill is enacted with the President notifying the Governor of Puerto Rico and the Governor must then issue a proclamation for the election of Senators and Representatives in Congress.

Section 7 sets up a ratification vote, which the Governor can execute with the elections of the Congressional delegation, or as apart of a territorial general election or special election. The question in the ratification vote will be "Shall Puerto Rico immediately be admitted into the Union as a State, in accordance with terms prescribed in the Act of Congress approved (date of approval of this Act)?: Yes ___ No ___ ." If the ratification vote is adopted by a majority of voters, the President of the State Elections Commission of Puerto

²³ <https://crsreports.congress.gov/product/pdf/IF/IF11792>, Congressional Research Service, *Statehood Process and Political Status of U.S. Territories: Brief Policy Background*, p.2, R. Sam Garrett, March 19, 2021.

²⁴ Id. at 2.

²⁵ Id. at 1.

Rico will transmit the results to the Governor, and the Governor has 10 days to submit the results to the President, the President pro tempore of the Senate, and the Speaker of the House. The President then must issue a proclamation certifying the results of the vote and declaring the date Puerto Rico will be admitted as a state (must be within 1 year from when the results were certified). If the ratification vote is denied by a majority of voters, the underlying Act will cease to be effective.

Section 8 establishes guidelines for the election of Puerto Rico's new Congressional delegation. Puerto Rico would receive two Senators and be "entitled to the same number of Representatives as the State whose most recent Census population was closest to, but less than, that of Puerto Rico." According to the Census Bureau's population numbers from the 2010 Census, this State would be Connecticut, so Puerto Rico would receive five representatives in the House of Representatives. However, the Census Bureau plans to send population counts from the 2020 Census to the President by April 30, 2021, meaning Puerto Rico's allocation will likely change as its population has dropped in recent years.²⁶

Section 9 attempts to ensure continuity by stating that all laws not in conflict with the Act shall remain unchanged. All individuals holding public offices in Puerto Rico shall remain in place, all titles to property will remain unchanged, and all contracts, debts, obligations, liabilities, and claims shall continue in full force for the State of Puerto Rico. Section 10 repeals all territorial laws, rules, and regulations that are incompatible with the political and legal status of statehood under the Constitution (i.e. the FRA). Finally, Section 11 is a savings clause to ensure that if any part of the law is determined to be invalid, the remainder of the law shall not be affected.

H.R. 2070, Puerto Rico Self-Determination Act of 2021 (Rep. Velázquez D-NY)

H.R. 2070 would require the Puerto Rico Legislature to establish a Status Convention, which would include Puerto Rican elected "delegates". This body would then define status options for Puerto Rico. Whatever direction the Convention puts forward would then be voted on through a referendum. The bill would also require Congress to approve a joint resolution to ratify whatever option was chosen.

The bill does not define any of the possible status options to be voted on or say how many options could be presented to voters, leaving it up to the Convention. Beyond the known and understood options of statehood and independence, the bill's sponsors also specifically express that they leave open the possibility of considering "any option other than the current territorial arrangement," even though decades of federal executive and legislative branch findings show there are no other constitutionally valid alternatives to the territory status beyond statehood or nationhood.

Section 2 of the bill provides historical findings and promotes the status convention methodology which the bill sets forth.

²⁶ <https://2020census.gov/en/important-dates.html#:~:text=Census%20Day%202020,as%20of%20April%201%2C%202020.>

Section 3 begins with the assertion that Puerto Rico has the inherent authority to call a status convention through an Act or Concurrent Resolution. It follows this by requiring that a status convention called by the Puerto Rico legislature must be a semipermanent body that only dissolves when the self-determination option is ratified by the U.S. and consists of delegates elected by the voters of Puerto Rico. The bill attempts to ensure fair elections by creating a “Puerto Rico Status Convention Public Matching Fund” administered by the Puerto Rico State Commission on Elections and the Federal Election Commission (FEC) and authorizes \$5.5 million for the fund. The funds in the account would be distributed such that \$4 would be provided to each candidate for every \$1 the candidate receives as a campaign donation that is less than \$100 and is made by a resident of Puerto Rico. Additionally, candidates must limit campaign spending to less than \$25,000 and receive 50 donations from 50 individuals of not more than \$50. The elected delegates would then debate and draft definitions on self-determination options outside of the Territorial Clause of the Constitution, draft one transition plan for each self-determination option, and select and present the options to be presented to the people in the referendum.

Section 4 creates a Congressional Bilateral Negotiating Commission which would be comprised of the Chairman and Ranking Member of the House Natural Resources Committee and the Senate Committee of Energy and Natural Resources. In addition, the majority and minority leaders in the House and Senate, the Resident Commissioner of Puerto Rico, and a representative from the Department of Justice and the Department of the Interior will each select one member to the Commission (each must be approved by the Speaker of the House and majority leader in the Senate). The Commission will meet with the delegates from Puerto Rico upon request and only with a delegate from each self-determination group. The bill grants members of the Commission broad authorities to make findings and develop recommendations regarding culture, language, judicial and education systems, taxes, and citizenship. The Commission must also issue quarterly public reports on status, findings, and any studies done.

Section 5 would authorize \$2.5 million to carryout the referendum vote and states that the vote may be conducted in a ranked-choice voting format and may include more than one choice for the same self-determination definition. This section also authorizes \$5 million for the Puerto Rico State Commission on Elections to carryout an education campaign, which the FEC must ensure are divided equally among the options.

Section 6 stipulates Congress to consider a joint resolution to ratify the preferred self-determination option voted on in the referendum.

Section 7 stipulates that the resolution must be introduced within 10 days of the certification of the referendum. The Section also forces a discharge of the resolution out of the Committee of jurisdiction and that it be placed on the calendar of the body involved, waiving all opportunities for debate, amendment, or points of order. The resolution would be voted on by both the Senate and the House.

IV. COST

Puerto Rico Statehood Admission Act, H.R. 1522

A Congressional Budget Office (CBO) score for the legislation in the 117th Congress has not been completed.

Puerto Rico Self-Determination Act of 2021, H.R. 2070

A CBO score for the legislation in the 117th Congress has not been completed.

V. ADMINISTRATION POSITIONS

Unknown.