

PROVIDING THAT THE UNINCORPORATED TERRITORIES OF GUAM
AND THE VIRGIN ISLANDS SHALL EACH BE REPRESENTED IN
CONGRESS BY A DELEGATE TO THE HOUSE OF REPRESENTATIVES

MARCH 23, 1972.—Ordered to be printed

Mr. BURDICK, from the Committee on Interior and Insular Affairs,
submitted the following

REPORT

[To accompany H.R. 8787]

The Committee on Interior and Insular Affairs, to which was referred the bill (H.R. 8787) to provide that the unincorporated territories of Guam and the Virgin Islands shall each be represented in Congress by a Delegate to the House of Representatives, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of H.R. 8787 is to provide that the organized, unincorporated territories of Guam and the Virgin Islands shall each be represented in Congress by a non-voting Delegate to the House of Representatives. The Committee also considered S. 1400, a companion measure introduced by Senators Jackson and Allott as the result of an Executive Communication submitted to the Congress by the Secretary of the Interior.

BACKGROUND

The territories of Guam and the Virgin Islands are organized, but unincorporated, territories of the United States. Guam was ceded to the United States by Spain in the Treaty of Paris in 1898, and the Virgin Islands were purchased from Denmark in 1917. Since their acquisition, the status and development of both territories parallel one another.

Congress through the passage of organic acts has provided for each territory a formal structure of government. Both territories are governed by a locally elected legislature. The Judiciary is separate from

the executive and legislative branches of government. Congress, in 1968, provided for the popular election of a Governor and Lieutenant Governor for each of the territories, and on November 3, 1970, the citizens of both territories elected their first chief executive.

In both territories the people and their elected legislatures have shown an increasingly mature grasp of their responsibilities. Politically, the people of both areas have developed meaningful party systems. The private economy in both territories is experiencing growth and prosperity, largely because of the increase in tourism, supporting services, and manufacturing enterprises. Both territorial governments have responded to the growing social needs in health, education, and welfare, and public improvements.

American history is replete with examples where areas under the American Flag were permitted nonvoting representation in Congress—and territorial size and population were not barriers to such representation.

A nonvoting delegate served in the Congress as early as 1794, from an area that is now the State of Tennessee. The Congress granted Hawaii a nonvoting delegate throughout her status as a territory; the same privilege was afforded Alaska. A nonvoting Resident Commissioner for Puerto Rico has been sitting in the House since 1904, and in 1971, the District of Columbia elected its own nonvoting delegate. And in the cases of Puerto Rico and the Philippines (another area which had nonvoting representation), Congressional representation was granted when the residents of these two territories were not U.S. citizens.

The territory of Alaska, when granted its delegate in 1906, had a population of less than 65,000. Other U.S. territories with earlier representation in Congress had even smaller populations.

According to the preliminary figures of the 1970 census, the Government of Guam must provide for the general welfare of 86,926 people, and the Government of the Virgin Islands must provide the public services for 63,200 inhabitants. While neither of the territories is entirely self-supporting financially, both are able to finance their affairs through revenues generated locally, either directly or indirectly, which are retained and expended pursuant to federal laws.

NEED

This legislation providing that the unincorporated territories of Guam and the Virgin Islands shall each be represented in Congress by a Delegate to the House of Representatives has been before every Congress since the 84th Congress. The need or justification for direct territorial representation for Guam and the Virgin Islands in the House of Representatives becomes apparent when viewed in the context of territorial growth, human aspirations, and the principles of American democracy.

The rapidly changing economic and social conditions in both the continental United States and in the territories of Guam and the Virgin Islands provide an urgent basis for direct representation of these territories in the House of Representatives. At the present time, the unincorporated territories of the United States are not affected by general legislation unless they are specifically mentioned in the legislation or the legislation is made applicable to the territories and possessions of the United States.

The fact is that the rapidly changing economic and social conditions in Guam and the Virgin Islands are no longer so limited in scope that the national interest and general welfare of the inhabitants of these territories can be so easily handled in one Committee of the Congress. For example, the legislative objectives of these territories range, *inter alia*, from education and welfare assistance, to housing, agricultural assistance, food stamps, unemployment compensation, prevailing wage rates, immigration amendments, airport construction assistance, federal highway and harbor assistance, air routes, water and electric power, oil and watch quotas, veterans benefits, and voting rights.

The various and complex Federal programs which affect the needs of these territories are now so numerous and so varied that the territories require direct representation to meet conditions in each territory. The enactment of the bill will place the responsibility for the furtherance of the legislative objectives of these territories upon the popularly elected Delegates.

The people of these territories have long been in support of having direct representation in the Congress. In 1959, hearings in both Guam and the Virgin Islands on similar legislation, disclosed unanimous endorsement of the people for a Delegate to the House of Representatives. In furtherance of these aspirations the people of Guam and the Virgin Islands, through the elected legislatures, have provided for the popular election of a Washington Representative.

The Washington Representatives for Guam and the Virgin Islands are representative of the people in each territory but have no official status in the Congress. These representatives, while effective in their present status, must still present the territorial views and legislative objectives to the various officials of the Executive Branch, the elected Members of Congress and the appropriate Committees of the Congress. H.R. 8787 provides for the election of a Delegate from each of the territories to the House of Representatives who can more effectively represent and interpret the needs, welfare and interest of the inhabitants of each territory. He will carry the responsibility of maintaining the contacts and liaison with the Committees of the Congress and the officials of the Executive Branch of Government to meet territorial concerns. In doing so, the elected Delegate will relieve other Members of Congress of the necessity of dealing with individual problems in these territories in addition to meeting the usual calls upon them from their own constituencies.

This bill is in keeping with the modern trend of democratic governments to encourage fuller representation of people. Congress by a series of enactments over the years has continually provided greater self-government and responsibility for its territories. The enactment of this legislation providing for a non-voting Delegate for the territories of Guam and the Virgin Islands in the House of Representatives should put to rest any lingering impressions of "American colonialism".

Currently, the expenses of the two offices of elected representatives from Guam and the Virgin Islands are payable out of local funds. Under H.R. 8787, each Delegate will be entitled to receive the same compensation and allowances that are received by a Member of the House of Representatives, unless the Rules of the House are amended to provide otherwise. The Federal cost that would be incurred by enactment of this legislation would be the cost of compensation and allowances for the two delegates beginning with the 93rd Congress,

and the two territories would be relieved of the expenses involved in supporting their two representatives.

SECTIONAL ANALYSIS

Section 1.—Provides that Guam and the Virgin Islands shall each be represented in the House of Representatives by a non-voting Delegate.

Section 2.—The delegate shall be chosen at the general election for a term of two years, the first term to commence January 3, 1973. Should no candidate receive a majority, a runoff will be held two weeks later. Vacancies shall be filled by interim election.

Section 3.—When elected, a delegate must be 25 years old, a citizen for seven years, and an inhabitant of the territory. He cannot be a candidate for another office at the same time.

Section 4.—The legislature of the territory may establish other election procedures.

Section 5.—A delegate will receive the compensation, allowances, and benefits of a Member of the House of Representatives, and he will receive the same privileges and immunities that are granted to the Resident Commissioner for Puerto Rico, except a vote in committee. Both of these provisions, however, are subject to change by amendment of the Rules of the House of Representatives. Clerk hire allowance of each delegate is 60 percent of that allowed a Member, and transportation expenses are limited to four round trips per year.

DEPARTMENTAL REPORTS

The Executive Communication of March 23, 1971, and the reports of the Department of the Interior and the Office of Management and Budget on H.R. 8787, dated March 14, 1972, are set forth below:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., March 23, 1971.

HON. SPIRO T. AGNEW,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: There is enclosed a draft bill to provide that the unincorporated territories of Guam and the Virgin Islands shall each be represented in Congress by a Delegate to the House of Representatives.

We recommend that the enclosed draft bill be referred to the appropriate committee for consideration and that it be enacted.

This proposal is identical to H.R. 19413, a bill which was favorably reported out by the Committee on Interior and Insular Affairs of the House of Representatives during the 91st Congress. This is a proposal that is acknowledged to be peculiarly within the province of the Congress since it concerns the membership in the House of Representatives.

We have included both territories in the same bill since apart from their acquisition, Guam having been acquired from Spain in 1898 and the Virgin Islands having been purchased from Denmark in 1917, their status and development parallel one another. Both Guam and the Virgin Islands are organized, but unincorporated, territories of the United States; i.e., the Congress has provided for each of them a

formal structure of government through passage of an organic act. The residents of both territories are American citizens.

The territories are governed by locally elected legislatures, and recently inaugurated their first elected Governors on January 4, 1971. In each area, the judiciary is separate from the executive and legislative branches of government. Federal District Courts have been established in Guam and the Virgin Islands.

In the Virgin Islands, the elected legislature has shown an increasingly mature grasp of its responsibilities, and, politically, the people have developed a meaningful party system. The territorial government has greatly expanded the scope of its services, and the private economy has likewise prospered, largely because of the increase of tourism and of manufacturing enterprises of various sizes.

Similar political maturity has been evidenced by the legislature and the people of Guam. Guam is an area of full employment and is actively engaged in diversifying its economy in order to be less dependent upon the defense establishments located there.

Normally, neither territory approaches the Congress for direct appropriations to support its governmental activities. The present exception is Guam's requests for loans and grants authorized in connection with the rehabilitation program authorized by Public Law 88-170, as amended by Public Law 90-511. This is not to say that either territory is entirely self-supporting, but only that each of the two territories is able to finance its affairs through revenues generated locally, either directly or indirectly, and retained and expended pursuant to Congressional authorization.

We believe each of the territories of Guam and the Virgin Islands should have representation in the House of Representatives in the form of a non-voting delegate. Each Congress considers and acts upon a variety of proposals which, if enacted, affect the territories and their people in varying degrees, sometimes only remotely, but often in a direct and substantial way. We submit the citizen residents of these territories are as entitled as the citizens of the several States to express their views respecting the actions of the Congress through a duly accredited and accepted member of the House of Representatives, albeit one with limited powers.

The enclosed draft bill, if enacted, would provide for the representation we suggest. It provides for the popular election of a non-voting delegate to the House of Representatives from each of the named territories, whose term would be two years, and who would receive the same compensation, allowances and benefits as a Member of Congress, and such privileges as might be afforded him by the Rules of the House of Representatives. The draft bill sets forth certain criteria and procedures for candidates and the manner of election, but leaves the majority of the details of election in the hands of the local legislatures.

The Office of Management and Budget has advised us that there is no objection to the presentation of this draft bill from the standpoint of the Administration's program.

Sincerely yours,

HOLLIS M. DOLE,
Assistant Secretary of the Interior.

A BILL To provide that the unincorporated territories of Guam and the Virgin Islands shall each be represented in Congress by a Delegate to the House of Representatives.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the territory of Guam and the territory of the Virgin Islands each shall be represented in the United States Congress by a nonvoting Delegate to the House of Representatives, elected as hereinafter provided.

SEC. 2(a). The Delegate shall be elected by the people qualified to vote for the members of the legislature of the territory he is to represent at the general election of 1972, and thereafter at such general election every second year thereafter. The Delegates shall be elected at large, by separate ballot and by a majority of the votes cast for the office of Delegate. If no candidate receives such majority, on the tenth day following such election a run-off election shall be held between the candidates receiving the highest and second-highest number of votes cast for the office of Delegate.

(b) A candidate for Delegate who is the nominee of a political party shall be so designated and a candidate who is not the nominee of a political party shall be designated an "Independent." No political party shall nominate more than one candidate for the office of Delegate. An "Independent" candidate shall have been nominated by petition of at least two hundred registered voters, such petition to be filed not less than thirty days before the date of the election.

(c) The term of the Delegate shall commence on the third day of January following the date of the election.

SEC. 3. No person shall be eligible for the office of Delegate who, on the date of the election, is a candidate for any other office or is not:

(a) At least twenty-five years of age; and

(b) A qualified voter and otherwise eligible for election as a member of the legislature of the territory he is to represent.

SEC. 4. The legislature of each territory may determine the order of names on the ballot for election of Delegate, the method by which a vacancy in the office of Delegate shall be filled, the method by which ties between candidates for the office of Delegate shall be resolved, and all other matters of local application pertaining to the election and the office of Delegate not otherwise expressly provided for herein.

SEC. 5. The Delegate from Guam and from the Virgin Islands shall have such privileges in the House of Representatives as may be afforded him under the Rules of the House of Representatives. The Delegate from each territory shall receive the same compensation, allowances and benefits as a Member of the House of Representatives, and shall be entitled to whatever privileges and immunities are, or hereinafter may be granted to the Resident Commissioner for Puerto Rico.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., March 14, 1972.

HON. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs, United States Senate, Washington, D.C.

DEAR MR. CHAIRMAN: At your request, we are supplementing our report on H.R. 8787, a bill to provide that the unincorporated territories of Guam and the Virgin Islands shall each be represented in

Congress by a Delegate to the House of Representatives, in the Senate of the United States.

Although our report of April 16, 1971, on H.R. 3237, which was subsequently incorporated into H.R. 8787, recommended that the Department's proposed bill be enacted in lieu of H.R. 3237, in its present form, H.R. 8787 differs from that proposal only in minor details. Accordingly, we recommend that H.R. 8787 be enacted.

H.R. 8787 provides representation for Guam and the Virgin Islands in the U.S. House of Representatives in the form of a non-voting delegate for each territory. The Delegate shall be elected by the people of the respective territories at the general election of 1972, and every two years thereafter. In case of a permanent vacancy in the Office of Delegate by reason of death, resignation, or permanent disability, the Office of Delegate shall remain vacant until a successor is elected and qualified. To be qualified as a delegate, a candidate must be at least 25 years old on the day of election, have been a U.S. citizen for 7 years, be an inhabitant of the territory electing him, and not be a candidate for any other office. The legislature of each territory may determine such local matters as the method by which a special election to fill a vacancy in the Office of Delegate shall be conducted. Both delegates will have such privileges in the House of Representatives as that body may afford under its rules.

Our attention, however, has been directed to certain possible constitutional problems with section 4 of the bill. This section provides that the legislature of each territory "may" determine several matters of local application pertaining to the election of a Delegate—*i.e.*, the order of names on the ballot, the method by which a special election to fill a vacancy in the Office of Delegate shall be conducted, the method by which ties between candidates shall be resolved, and "all other matters of local application . . . not otherwise expressly provided for herein".

Article I, section 2 of the United States Constitution provides in pertinent part:

"When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such vacancies."

The questions that have arisen pertain to the use in H.R. 8787 of the permissive "may" rather than the obligatory "shall" and leaving the determination of election matters up to the legislature.

We believe that the term "Representation" as used in this clause of the Constitution refers to full members of the House of Representatives, not delegates from the Territories. Moreover, the term "State" as used in this clause is a technical term that does not encompass Territories. The distinction between the two terms is made in Article IV, Section 3, of the Constitution, which addresses itself both to admission of "New States" and to Congressional authority with respect to "the Territory or other Property belonging to the United States".

The Congress has in the past considered Representatives from States and Delegates from Territories to be different officials. For example, 2 U.S.C. 8 as it was worded in the 1958 edition of the Code, while Hawaii and Alaska were still territories with Delegates to the Congress, provided:

§ 8. Vacancies. The time for holding elections in any state, District, or Territory for any Representative or Delegate to fill a vacancy,

whether such vacancy is caused by a failure to elect at the time prescribed by law, or by the death, resignation, or incapacity of a person elected, may be prescribed by the laws of the several States and Territories respectively." [Emphasis added.]

Accordingly, we do not believe that the "vacancies" clause of the Constitution, quoted above, applies to the Delegates created by H.R. 8787.

It should also be noted that the present version of 2 U.S.C. 8, like the superseded version quoted above, is permissive with respect to the holding of special elections to fill vacancies—the time "may" be prescribed by the local legislature.

Finally, we believe that an analogy can be drawn between the District of Columbia Delegate Act (P.L. 91-405) and H.R. 8787. For this purpose, the District of Columbia Election Board corresponds closely to a State or Territorial Legislature. The method of conducting a special election is a permissive matter for the Election Board to resolve (Paragraph (5) of Subsection (a) of Section 10 of the D.C. Delegate Act, as stated in P.L. 91-405). Thus, there is ample precedent for maintaining the permissive language in H.R. 8787 as it now stands. Indeed, we are confident that the respective territorial legislatures will take all necessary steps for the proper implementation of the bill if it is enacted.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely yours,

HARRISON LOESCH,
Assistant Secretary of the Interior.

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, D.C., March 14, 1972.

Hon. HENRY M. JACKSON,
*Chairman, Committee on Interior and Insular Affairs,
U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in response to your request of January 24, 1972 for the views of the Office of Management and Budget on H.R. 8787, a bill "To provide that the unincorporated territories of Guam and the Virgin Islands shall each be represented in Congress by a Delegate to the House of Representatives."

The Office of Management and Budget concurs in the views of the Department of the Interior in its report on H.R. 8787, and accordingly recommends enactment of the bill.

Sincerely,

WILFRED H. ROMMEL,
*Assistant Director for
Legislative Reference.*

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