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## **Political Status of Puerto Rico: Background, Options, and Issues in the 109<sup>th</sup> Congress**

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# Political Status of Puerto Rico: Options and Issues in the 109<sup>th</sup> Congress

## Summary

The Commonwealth of Puerto Rico has a unique history as a part of the United States. United States suzerainty over Puerto Rico originated with the acquisition of the islands in 1898 after the conclusion of the Spanish-American War. For decades, the federal government administered government operations in Puerto Rico through military liaisons or civilian officials appointed by the President. Legislation enacted by Congress in 1950 (P.L. 81-600) and in 1952 (P.L. 82-447) granted Puerto Rico authority to establish a republican form of local government through a constitution approved by the citizens of Puerto Rico and the Congress in 1952.

Puerto Rico remains subject to congressional jurisdiction under the Territorial Clause of the U.S. Constitution. Under this authority, Congress has passed legislation that governs elements of Puerto Rico's relationship to the United States. For example, residents of Puerto Rico hold U.S. citizenship, serve in the military, are represented in the House of Representatives by a Resident Commissioner elected to a four-year term (who does not have privileges to vote on the floor of the House), are subject to federal laws and are beneficiaries of federal aid as approved by Congress, do not vote in national elections, and pay no federal income tax.

While these and other aspects of the relationship of Puerto Rico to the United States are matters of record, other elements of the relationship have been and continue to be matters of debate. Some contend that the Commonwealth has a special status outside the Territorial Clause that derives from the 1950 legislation "in the nature of a compact" agreed to by the people of Puerto Rico and Congress, as well as from declarations made to the United Nations in the 1950s. Also, certain federal court rulings and statements by past presidents buttress claims to special status. Such advocates contend that the current political status of the Commonwealth, perhaps with enhancements, remains a viable option for the future. Others argue that the commonwealth status is (or should be) only a temporary fix to a problem to be resolved in favor of other permanent non-colonial and non-territorial solutions — either statehood or independence as a foreign nation, the latter possibly negotiated with the federal government.

For many years, some Members of Congress, elected representatives of Puerto Rico, federal administration officials, and interested members of the public have discussed options for reconsidering the political status of Puerto Rico. Legislation recently passed by the Puerto Rican legislature may be one factor that initiates renewed congressional attention on the political status issue. A White House task force is expected to release a report in 2005 that may serve as another catalyst for change.

This report, which will be updated as events warrant, provides background information on the political status of the commonwealth and congressional actions taken over the past two decades, summarizes issues that might be a factor in congressional debate, and reviews possible options.

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# Political Status of Puerto Rico: Background, Options, and Issues in the 109<sup>th</sup> Congress

## Recent Developments

Two developments — one involving the government of Puerto Rico and the other reportedly underway in the White House — may renew congressional attention to the political status of the Commonwealth of Puerto Rico and its relationship with the United States.

First, in March and April of 2005, the legislature of Puerto Rico debated and approved legislation that included a “demand” that the President and the U.S. Congress “express their commitment to respond” to calls to resolve the issue of the political status of the commonwealth. The legislation would have authorized a referendum to be held on July 10, 2005, in Puerto Rico. However, the Governor vetoed the legislation on April 10, 2005. News reports indicate that the Governor and members of the legislature continue to debate other legislative options. Weeks after the veto the legislature approved a concurrent resolution that petitions Congress and the President to establish a method by which the citizens of Puerto Rico can select a relationship with the United States “from among fully democratic, non-territorial and non-colonial alternatives.”

Second, the President’s Task Force on Puerto Rico’s Status, established in the last years of the Clinton Administration and reconfigured by President Bush, reportedly will produce a report in 2005 on political status options for Puerto Rico. The executive order that established the Task Force requires that members of the Task Force “ensure official attention to and facilitate action on” status proposals and advise the President and Congress on such matters.

## Background on the Commonwealth

The Commonwealth of Puerto Rico, which lies approximately 1,000 miles southeast of Florida, comprises four larger islands (Culebra, Mona, Vieques, and Puerto Rico) and numerous smaller islands in the Greater Antilles. The total land area of the islands of Puerto Rico is roughly 3,500 square miles. The United States has exercised suzerainty over Puerto Rico since 1898.<sup>1</sup>

More than 50 years ago, Congress, President Truman, and the people of Puerto Rico established the Commonwealth of Puerto Rico in a multi-step process. First, in 1950, the 81<sup>st</sup> Congress enacted and President Truman approved legislation “adopted in the nature of a compact” that authorized the convening of a constitutional

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<sup>1</sup> Refer to Appendix A of this report for a chronology of the entities and authorities that governed Puerto Rico from 1898 to the present.

convention to develop the first constitution for the governance of Puerto Rico.<sup>2</sup> Second, voters approved the initiation of the process through a referendum. Third, voters elected delegates to the constitutional convention in 1951; the delegates worked on the document throughout the year. Fourth, the product of the convention, a constitution that established the structure and operation of a republican form of self-government, was approved by the voters in Puerto Rico and submitted to Congress and President Truman early in 1952. Fifth, the 82<sup>nd</sup> Congress modified the constitution and approved the amended version in July 1952.<sup>3</sup> Sixth, the Puerto Rican constitutional convention approved the modified document shortly thereafter and Governor Luis Muñoz Marin declared the constitution in effect on July 25, 1952.<sup>4</sup> That constitution remains in effect.

The constitution establishes a republican form of local government, contains a bill of rights, sets out provisions related to municipal government (including finance and revenue mechanisms), and outlines the following framework for local governance:

- The Legislative Assembly consists of a 27-member Senate and a 51-member House of Representatives.
- The executive branch is headed by a Governor elected to a four year term. The Governor makes executive appointments (with the advice and consent of the Senate),<sup>5</sup> serves as commander-in-chief of the militia, and exercises emergency powers.
- The authority for the judicial branch is vested in a Supreme Court (a Chief Justice and six Associate Justices), a U.S. district court, and other courts established by the Legislative Assembly. The Supreme Court adopts rules for other courts, and the Chief Justice directs the administration of the commonwealth courts.

While the approval of the commonwealth constitution marked a historic change in the civil government for the islands, neither it, nor the public laws approved by Congress in 1950 and 1952, revoked statutory provisions concerning the legal relationship of Puerto Rico to the United States. This relationship is based on the Territorial Clause of the U.S. Constitution.<sup>6</sup> The statutory provisions that set forth

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<sup>2</sup> P.L. 81-600, 64 Stat. 319, 48 U.S.C. 731b.

<sup>3</sup> P.L. 82-447, 66 Stat. 327, 48 U.S.C. 731d.

<sup>4</sup> According to one commission report the three changes required by Congress to the Commonwealth Constitution “were made by Puerto Rico and approved by the Puerto Rican Constitutional Convention and later by another referendum.” See United States-Puerto Rico Commission on the Status of Puerto Rico, *Status of Puerto Rico* (Washington: GPO, 1966), p. 36.

<sup>5</sup> The appointment of Secretary of State requires the advice and consent of the House of Representatives as well as the Senate.

<sup>6</sup> “The Congress shall have Power to dispose of and make all needful Rules and Regulations (continued...) ”

the conditions of the relationship with Puerto Rico are commonly referred to as the Federal Relations Act (FRA).<sup>7</sup> While specified subsections of the FRA were “adopted in the nature of a compact,” other provisions, by comparison, are excluded from the compact reference.<sup>8</sup> Matters still subject to congressional authority and established pursuant to legislation include the citizenship status of residents, tax provisions, civil rights, trade and commerce, public finance, the administration of public lands controlled by the federal government, the application of federal law over navigable waters, congressional representation, and the judicial process, among others. While the commonwealth constitution provides for self-government by Puerto Ricans, Congress continues to exercise authority over at least one internal governance matter; urban development and slum clearance authority remains subject to federal limitations set out in the FRA.<sup>9</sup>

International debate over the political status of Puerto Rico introduces another element into a consideration of the islands’ relationship to the United States. From 1946 through 1953, the United States submitted annual reports to the United Nations on its territories of Puerto Rico, the U.S. Virgin Islands, Guam, and American Samoa. The General Assembly of the United Nations agreed, in 1953, to terminate the requirement for annual reports after considering statements by Puerto Rican and federal officials on the establishment of the commonwealth.<sup>10</sup> This agreement, however, has not resolved the issue for all. As summarized by one analyst:

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<sup>6</sup> (...continued)

respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.” U.S. Const., Art. IV, Sec. 3, cl. 2.

<sup>7</sup> 48 U.S.C. 731 et seq. The FRA includes provisions originally contained in the Organic Act of 1917 (39 Stat. 951 et seq.) that established a civil government in Puerto Rico. The Act of 1917 is referred to as the Jones Act. This was the second organic act Congress approved for Puerto Rico. The first was the Foraker Act approved by Congress in 1900 (31 Stat. 77 et seq.).

<sup>8</sup> “Fully recognizing the principle of government by consent, sections 731b to 731e of this title are not adopted in the nature of a compact so that the people of Puerto Rico may organize a government pursuant to a constitution of their own adoption.” See 48 U.S.C. 731b.

<sup>9</sup> For example, provisions of the FRA authorize the government of Puerto Rico to establish authorities for slum clearance and urban redevelopment but prohibit such entities from imposing taxes, and authorize the legislature of Puerto Rico to empower such authorities to undertake urban renewal projects. This provision was amended by Congress in 1955, subsequent to establishment of the constitutional government. See 48 U.S.C. 910, 910a. Also, the FRA authorizes the Puerto Rican legislature to enable such authorities to issue financial instruments (bonds or other obligations) to accomplish slum clearance and urban redevelopment objectives. See 48 U.S.C. 914.

<sup>10</sup> United Nations General Assembly, “Cessation of the Transmission of Information Under Article 73e of the Charter in Respect of Puerto Rico,” in *Resolutions Adopted by the General Assembly at Its Eighth Session During the Period from 15 September to 9 December 1953* (New York: General Assembly Official Records, 1953), Supplement No. 17 (A/2630), pp. 25-26.

Few domestic issues have consistently generated as much international debate as that of Puerto Rico. It has been on the U.N. agenda since representatives of the Puerto Rican Nationalist party went to San Francisco for the signing of the U.N. Charter in June, 1945. Although the U.S. government may have convinced itself that it removed Puerto Rico from the international agenda in 1953, few others are convinced.<sup>11</sup>

Federal court decisions also direct and influence the debate over status. At the beginning of the 20<sup>th</sup> century, the Supreme Court issued a series of decisions generally referred to as the “Insular Cases.”<sup>12</sup> In these rulings, the Court declared that territories were not integral parts of the United States, but belonged to the nation, and that certain fundamental rights, but not all constitutional rights, extended to residents of the territories.<sup>13</sup> Many analysts appear to agree with this contention.<sup>14</sup> Some argue, however, that other Supreme Court rulings indicate that Puerto Rico holds a unique status in relation to the United States.<sup>15</sup> In these cases, justices have concluded that Puerto Rico may exercise certain authority in a fashion comparable to that of the states, as opposed to a territory.<sup>16</sup>

In summary, roughly five decades after imposing a government structure on Puerto Rico through unilateral measures (either military rule or through federal appointees and statutes), Congress approved a constitution for local self-government in 1952 that was largely written by the people of Puerto Rico. On the basis of legislation that authorized the establishment of a local government, federal and Puerto Rican officials sought and gained a United Nations resolution that Puerto Rico had gained a degree of autonomy and could be considered to be self-governing. The commonwealth constitution, however, did not materially change the relationship of Puerto Rico to the federal government, nor did it abrogate congressional authority under the Territorial Clause of the U.S. Constitution. Certain federal court rulings

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<sup>11</sup> Robert A. Pastor, “Puerto Rico as an International Issue,” in Richard J. Bloomfield, ed., *Puerto Rico: The Search for a National Policy* (Boulder: Westview Press, 1985), p. 114.

<sup>12</sup> *DeLima v. Bidwell*, 182 U.S. 1 (1901); *Dooley v. United States*, 182 U.S. 222 (1901); *Downes v. Bidwell*, 182 U.S. 224 (1901); *Dorr v. United States*, 195 U.S. 138 (1904); *Balzac v. Porto Rico*, 258 U.S. 298 (1922).

<sup>13</sup> See, in particular, *Balzac v. Porto Rico*, 258 U.S. 312-313 (1922). In 1975 the court reaffirmed that Congress and the Supreme Court could determine “the personal rights to be accorded to the inhabitants of Puerto Rico.” See *Examining Board v. Flores de Otero*, 426 U.S. 590. The Supreme Court ruled that Congress “may treat Puerto Rico differently from states so long as there is a rational basis for its actions.” See *Harris v. Rosario*, 446 U.S. 651 (1980).

<sup>14</sup> For a discussion on the authority of Congress to exercise jurisdiction over Puerto Rico see Arnold H. Leibowitz, *Defining Status: A Comprehensive Analysis of United States Territorial Relations* (Boston: Kluwer/Academic pub., 1989).

<sup>15</sup> Rep. Jamie Fuster, “Puerto Rico Self-Determination Act,” remarks in the House, *Congressional Record*, vol. 136, Oct. 10, 1990, pp. 28335-36.

<sup>16</sup> See *Fornaris v. Ridge Tool Co.*, 400 U.S. 41 (1970). *Rodriguez v. Popular Democratic Party*, 457 U.S. 1 (1982), followed by a federal Court of Appeals decision in *United States v. Manuel Quinones*, 758 F.2d 40 (1985). Also, *Examining Board v. Flores de Otero*, 426 U.S. 596; *Córdova & Simonpietri Ins. Co. v. Chase Manhattan Bank*, 649 F.2d 36 (1981).

have resulted in arguably conflicting decisions indicating that Puerto Rico has a unique relationship to the United States that may be considered non-colonial. Other decisions arguably stand in contradiction. The latter cases are seen as buttressing contentions that Congress may legislate (and has legislated) on matters involving governance in Puerto Rico and its relationship to the United States. Congressional actions taken (and not taken) in recent years, however, indicate that political status changes are most likely to occur through bilateral agreements between the people of Puerto Rico and Congress.

## Summary of Federal Activity Since 1998

**In Congress.** Relatively little attention has been given to the issue of the political status of Puerto Rico in recent years. One may contend that the most significant recent action taken by Congress occurred in 1998 when the House (105<sup>th</sup> Congress) approved H.R. 856, which would have authorized a referendum through which the people of Puerto Rico would have selected a “permanent political status” among three options — commonwealth, separate sovereignty, or statehood. The Senate did not act on the measure. Despite the lack of Senate action on the 1998 legislation, the people of Puerto Rico participated in a referendum that same year in which no status option received support from a majority of voters.

In a further effort to move toward consensus on the status issue, Congress appropriated \$2.5 million in FY2001 for “objective, non-partisan citizens’ education for a choice by voters on the islands’ future status.”<sup>17</sup> The appropriation could not be allocated, however, until the Elections Commission of Puerto Rico submitted an expenditure plan developed by the three major political parties in Puerto Rico to the U.S. House and Senate Appropriations Committees. The statute also required that views not in agreement with the plan would have to be communicated to Congress as well. Those funds were not expended.<sup>18</sup>

The most recent formal congressional action on the status issue occurred in October 2000, when the House Committee on Resources held a hearing on H.R. 4751 (106<sup>th</sup> Congress). H.R. 4751 would have recognized Puerto Rico “as a nation legally and constitutionally,” but was not acted upon. Legislation on the status issue has not been introduced since this hearing was held. Appendix B of this report provides information on H.R. 856 and other significant legislation considered by Congress on the status issue since 1952.

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<sup>17</sup> P.L. 106-346, Department of Transportation and Related Agencies Appropriations Act, FY2001, 114 Stat. 1356A-47.

<sup>18</sup> The \$2.5 million was not the first appropriation approved by Congress for the purpose of furthering status discussions. In 1989, \$1.5 million was appropriated for grants to the three main political parties in Puerto Rico for the costs associated with participating “in the legislative process involving the future political status of Puerto Rico.” See P.L. 101-45, Supplemental Appropriations Act for the Department of Veterans Affairs, 103 Stat. 125.



**In the Executive Branch.** President Clinton issued an executive order in 2000 that established the President's Task Force on Puerto Rico's Status.<sup>19</sup> The task force originally was directed to report on its actions by May 1, 2001. The deadline provision of the executive order has been amended twice. The first amendment extended the deadline to August 1, 2001.<sup>20</sup> The second amendment established a more flexible time frame, as follows.

The Task Force shall report on its actions to the President as needed, but no less frequently than once every two years, on progress made in the determination of Puerto Rico's ultimate status.<sup>21</sup>

Members of the Task Force presently include the director of the Office of Intergovernmental Affairs in the White House (Mr. Rubén Barrales) and officials from various federal departments including Agriculture, Commerce, Homeland Security, and Interior.<sup>22</sup> According to one news report, a White House spokesperson has stated that the task force "is preparing to present its report before December of this year."<sup>23</sup>

## Overview of Pertinent Activity in the Commonwealth

**Legislative Authorization for a 2005 Referendum.** The government of Puerto Rico is divided between those who advocate continuation of the commonwealth status and advocates of statehood. In a narrow and contested election held in November 2004, the voters of Puerto Rico elected Anibal Acevedo Vilá as Governor. During the four year period immediately preceding his election the Governor served as Resident Commissioner of Puerto Rico to Congress.<sup>24</sup> The Governor is an advocate of commonwealth status and head of the Popular Democratic Party (PDP).

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<sup>19</sup> U.S. President (Clinton), "Establishment of the President's Task Force on Puerto Rico's Status," Executive Order 13183, *Federal Register*, vol. 65, Dec. 29, 2000, p. 82889.

<sup>20</sup> U.S. President (Bush), "Amendment to Executive Order 13183, Establishment of the President's Task Force on Puerto Rico's Status," Executive Order 13209, *Federal Register*, vol. 66, Apr. 30, 2001, p. 22105.

<sup>21</sup> U.S. President (Bush), "Executive Order Amendment to Executive Order 13183, Establishment of the President's Task Force on Puerto Rico's Status," Executive Order 13319, *Federal Register*, vol. 68, Dec. 3, 2003, p. 68233.

<sup>22</sup> The list of members is available on the White House website at [<http://www.whitehouse.gov/news/releases/2003/12/20031205-6.html>], visited Apr. 1, 2005.

<sup>23</sup> "White House Task Force on Status May Conduct More Interviews in P.R.," *The San Juan Star*, Apr. 4, 2005, p. 15.

<sup>24</sup> The Resident Commissioner, like delegates from the District of Columbia, Guam, American Samoa, and the U.S. Virgin Islands, represents his (or her) constituency in Congress. For background on such offices, see CRS Report RL32340, *Territorial Delegates to the U.S. Congress: Current Issues and Historical Background*, by Betsy Palmer and Paul Rundquist and CRS Report RL31856, *Resident Commissioner from Puerto Rico*, by R. Eric Petersen.

The legislature, also elected in November 2004, is dominated by elected officials seeking statehood. In addition to approving a majority of New Progressive Party (NPP) representatives in both chambers of the legislature, voters in Puerto Rico elected Luis Fortuño to represent Puerto Rico in Congress as Resident Commissioner. Mr. Fortuño ran for office as a member of the NPP.

Through the early months of 2005, these individuals, as well as others, reportedly worked on compromise legislation to achieve, as one analyst summarized, “convergence” of the disparate status opinions.<sup>25</sup> In early April 2005, the legislature of Puerto Rico enacted legislation authorizing a referendum to be held on July 10, 2005. The “Act to Petition and for the Self-Determination of the People of Puerto Rico” provides that voters cast ballots in response to the following proposition.

We, the People of Puerto Rico, in the exercise of our right to self-determination, demand that the President and the Congress of the United States of America, before December 31, 2006, express their commitment to respond to the claim of the People of Puerto Rico to solve our problem of political status from among fully democratic options of a non-colonial and non-territorial nature.

The bill would have provided that the majority of valid votes cast (over 50%) on July 10, 2005, would have determined the acceptance or rejection of the proposition that called for federal action. According to news reports, the legislation embodied a proposal developed by the Puerto Rico Independence Party, or PIP, which holds a small minority of seats in the legislature.<sup>26</sup>

On April 10, 2005, Governor Acevedo Vilá vetoed the legislation. In letters to the assembly leadership, the governor noted that statements made by NPP legislators following enactment of the bill “fly in the face” of a commitment to use a constituent assembly to address the political status issue if Congress and the White House did not respond.<sup>27</sup> In the closing days of April 2005, the NPP-dominated legislature approved a concurrent resolution that did not require the governor’s signature. The resolution petitions Congress and the President:

to respond to the democratic aspirations of the United States citizens of Puerto Rico, in order to ensure that with all deliberate speed, they provide us with an electoral method through which we, ourselves, may choose which shall be our political relationship with the United States of America, if any, from among fully democratic, non-territorial and non-colonial alternatives.<sup>28</sup>

This resolution did not receive support from PDP legislators. According to one news report, officials associated with the PDP insist that the definitions of the status

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<sup>25</sup> Juan M. García Passalacqua, “The Days of Convergence on Status Are Here,” *The San Juan Star*, Mar. 20, 2005, p. 70.

<sup>26</sup> Rosario Fajardo, “Berríos Moves to Break Status Impasse,” *The San Juan Star*, Feb. 18, 2005, p. 5.

<sup>27</sup> “Governor Vetoes Status Bill,” Press Release, Office of the Governor of Puerto Rico, Apr. 10, 2005.

<sup>28</sup> English text available from the author.

options should be developed by an assembly — “We should not turn it over to Congress to define the options. Mainly, that’s our problem....If we leave it to Congress nothing will get approved in the way of status...”<sup>29</sup>

**Past Referenda and Plebiscite.** Voters in Puerto Rico twice exercised direct involvement in the formation of the commonwealth government. First, pursuant to congressional directive, voters indicated support (by roughly 387,000 yeas to 119,000 nays) in 1951 for P.L. 81-600, the enabling legislation for the development of the commonwealth constitution.<sup>30</sup> Second, a majority of voters expressed support in 1952 for the resultant constitution and the establishment of the commonwealth government by an even larger margin (roughly 375,000 yeas to 83,000 nays).

Four popular votes have been held over the past five decades on the status issue. Since establishment of the commonwealth in 1952, residents of Puerto Rico have participated in three plebiscites and one referendum on status options.<sup>31</sup> This section provides summary information on the plebiscites and referendum in reverse chronological order.

**1998 Plebiscite.** The most recent popular vote in Puerto Rico on status occurred on December 13, 1998, when voters took part in a plebiscite. Five options were listed on the ballot — “limited self-government,” “free association,” “statehood,” “sovereignty,” and “none of the above.” A slim majority of voters in that plebiscite selected “none of the above” (50.3%) from among the five options. Advocates for the commonwealth option reportedly urged a vote for “none of the above” because the commonwealth definition on the ballot “failed to recognize both the constitutional protections afforded to our U.S. citizenship and the fact that the relationship is based upon the mutual consent of Puerto Rico and the United States.”<sup>32</sup> Following an examination of the plebiscite, a congressional committee report concluded there was a need to “continue the process of enabling the people of Puerto Rico to implement a structured process of self-determination based on constitutionally valid options Congress is willing to consider.”<sup>33</sup>

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<sup>29</sup> Remarks of José Hernández Mayoral in Robert Friedman, “P.R. Lawmakers Push for Non-colonial Options,” *The San Juan Star*, Apr. 17, 2005, p. 5.

<sup>30</sup> “This Act shall be submitted to the qualified voters of Puerto Rico for acceptance or rejection through an island-wide referendum to be held in accordance with the laws of Puerto Rico. Upon the approval of this Act, by a majority of the voters participating in such referendum, the Legislature of Puerto Rico is authorized to call a constitutional convention to draft a constitution for the said island of Puerto Rico.” P.L. [81]-600, Sec. 2, 64 Stat. 319.

<sup>31</sup> Plebiscites and referenda are similar in that they provide fora for voters to express their position on policy issues. A plebiscite is a vote on matters of governance that have not previously been considered by a legislative body. A referendum is a vote on an issue that has previously been approved by the legislature.

<sup>32</sup> U.S. Congress, House Committee on Resources, *The Results of the 1998 Puerto Rico Plebiscite*, Serial No. 106-A, 106<sup>th</sup> Cong., 1<sup>st</sup> sess. (Washington: GPO, 1999), p. 20.

<sup>33</sup> *Ibid*, p. 7.

The lack of consensus in the 1998 plebiscite led some in Congress to suspend consideration of the status issue.<sup>34</sup> In response to the inconclusive results of the plebiscite, four Members of Congress who chair committees and a subcommittee with jurisdiction over Puerto Rico summarized the impact of the vote as follows.

However, after almost fifty years of local constitutional government in Puerto Rico by U.S. citizens, now the lack of majority consent to the current form of internal self-government by those who are disenfranchised nationally, calls into question the continued acceptability of the status quo. This problem cannot be unilaterally resolved by the U.S. citizens of Puerto Rico acting under the local constitution, but rather, by working with the federal government which has the sole power, as well as a duty, to change Puerto Rico's political status into one of full enfranchisement.<sup>35</sup>

**1993 Plebiscite.** In the 1992 election campaign, the NPP candidate for Governor urged, and the legislature agreed, that a plebiscite on status be held "after the U.S. Congress failed to approve" status legislation (H.R. 3024).<sup>36</sup> Since definitions on the ballot were formulated by the political parties themselves, neither Congress nor executive branch officials intervened to ensure that the alternatives presented to the voters would pass constitutional muster. As summarized in the House report accompanying H.R. 3024:

The 1993 definition of "Commonwealth" failed to present the voters with status options consistent with full self-government, and it was misleading to propose to the voters an option which was unconstitutional and unacceptable to the Congress in almost every respect.<sup>37</sup>

No option on the ballot in 1993 received a majority of votes. Some contend that statehood may have suffered the greatest loss, considering the Governor and the legislature were members of the NPP and the plebiscite itself was a major campaign promise for the Governor.<sup>38</sup>

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<sup>34</sup> "House Narrowly Supports Puerto Rico Plebiscite; Senate Takes No Action," *Congressional Quarterly 1998 Almanac* (Washington: Congressional Quarterly, Inc., 1998), pp. 13-6 and 7. See also "Puerto Rico Political Status," *Congressional Digest*, vol. 77, May 1998 (Washington: Congressional Digest Corp., 1998), pp. 142-160.

<sup>35</sup> Reps. Don Young, Benjamin Gilman, Dan Burton, and Elton Gallegly, letter to Hon. Charlie Rodriguez, President, Senate of Puerto Rico and Honorable Edison Mislal-Aldarondo, Speaker, Puerto Rico House of Representatives, Apr. 5, 2000.

<sup>36</sup> U.S. Congress, House Committee on Resources, *United States-Puerto Rico Political Status Act*, report to accompany H.R. 3024, 104<sup>th</sup> Cong., 2<sup>nd</sup> sess., H.Rept. 107-713 Part 1, (Washington: GPO, 1996), p. 18.

<sup>37</sup> U.S. Congress, House Committee on Resources, *United States-Puerto Rico Political Status Act*, report to accompany H.R. 3024, H.Rept. 104-713, Part 1, 104<sup>th</sup> Cong., 2<sup>nd</sup> sess. (Washington: GPO, 1996), p. 19.

<sup>38</sup> For a discussion of the 1993 plebiscite and lessons learned see the following articles: Juan M. Garcia Passalacqua, "The 1993 Plebiscite in Puerto Rico: A First Step to Decolonization?," *Current History*, vol. 93, Mar. 1994, pp. 103-107; José O. Díaz, "Puerto Rico, the United States, and the 1993 Referendum on Political Status," *Latin American* (continued...)

**1991 Referendum.** In September 1991, the Puerto Rican legislature approved legislation that required a referendum be held on December 8, 1991. The voters in the referendum were asked to vote on self-determination or rights that would be incorporated into the commonwealth constitution, if the majority of voters approved.

The specific proposals included in the referendum included rights to determine the status of Puerto Rico without being subject to the plenary powers of Congress, guarantees of the continuance of Puerto Rico's culture (including official use of the Spanish language and retention of a separate Olympic team), and a guarantee of U.S. citizenship based on constitutional, not statutory, authority. Both the PDP and the PIP urged a "yes" vote.

A majority of voters (53%) cast ballots against the proposal. Some contended that the vote was an indirect step to block statehood. Others perceived the rejection to reflect dissatisfaction with the Governor. Another explanation offered for the vote is that some cast their ballots out of fear that a "yes" vote would result in a further degradation of federal benefits and the loss of U.S. citizenship.

**1967 Plebiscite.** Following the recommendation of the Commission on the Status of Puerto Rico (established pursuant to P.L. 88-271), the government of Puerto Rico organized a popular vote on the status options in July 1967. The commonwealth option received a majority of the votes. Members of the independence and statehood party reportedly boycotted the plebiscite.<sup>39</sup> One political analyst contended that the 1967 plebiscite "was tainted by blatant interference by United States intelligence agencies documented and denounced as 'hanky-panky'" in a White House memorandum issued during the Carter presidency.<sup>40</sup> Another author commented, as follows, that all parties claimed victory.

Each status group celebrated the results of the plebiscite: the independentists because their boycott had been so effective; commonwealth, because of their clear majority; and statehood because of their gains.<sup>41</sup>

**Table 1**, below, summarizes the results of those votes in the balloting procedures held since 1952 in Puerto Rico.

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<sup>38</sup> (...continued)

*Research Review*, vol. 30, 1995, pp. 203-211.

<sup>39</sup> Opposition to the plebiscite is discussed in Henry Wells, *The Modernization of Puerto Rico: A Political Study of Changing Values and Institutions* (Cambridge, Harvard University Press, 1969), p. 262. C. Arthur Borg, "The Problem of Puerto Rico's Political Status," *Revista del Colegio de Abogados de Puerto Rico*, vol. 37, Aug. 1976, p. 493.

<sup>40</sup> Juan M. Garcia Passalacqua, "The 1993 Plebiscite in Puerto Rico: A First Step to Decolonization?," *Current History*, vol. 93, Mar. 1994, p. 106.

<sup>41</sup> Roberta Ann Johnson, *Puerto Rico: Commonwealth or Colony?* (New York: Praeger Special Studies, 1980), p. 138.

**Table 1. Puerto Rico Status Votes in Plebiscites and Referendum, 1967 - 1998**

<b>Date/ballot options</b>	<b>Number of votes/voters<sup>a</sup></b>	<b>Results by percent<sup>b</sup></b>
<b>Dec. 13, 1998<sup>c</sup></b>		
None of the above [option five]	787,900	50.3%
Statehood [option three]	728,157	46.5%
Sovereignty [option four]	39,838	2.5%
Free association [option two]	4,536	0.1%
Limited self-government [option one]	993	0.1%
Registered voters	2,197,824	
Total votes	1,561,424	
Percent turnout		71%
<b>Nov. 14, 1993<sup>d</sup></b>		
Commonwealth	826,326	48.6%
Statehood	788,296	46.3%
Independence	75,620	4.4%
Registered voters	2,100,000	
Total votes	1,700,000	
Percent turnout		73%
<b>Dec. 8, 1991<sup>e</sup></b>		
+Against the reclamation of democratic rights (No)	660,267	53.61%
In favor of the reclamation of democratic rights (Yes)	559,163	45.4%
Registered voters	2,052,537	
Total votes	1,231,522	
Percent turnout		60%

Date/ballot options	Number of votes/voters <sup>a</sup>	Results by percent <sup>b</sup>
<b>July 23, 1967<sup>f</sup></b>		
Commonwealth	425,079	60.5%
Statehood	273,315	38.9%
Independence		0.6%
Registered voters	1,067,000	
Total votes	702,512	
Percent turnout		66%

a. Table excludes blank or null and void ballots.

b. Number of registered voters, total votes, and percent turnout derived from sources of results (noted below), except for registered voters in 1991 calculated by CRS.

c. Results taken from U.S. Congress, House Committee on Resources, *The Results of the 1998 Puerto Rico Plebiscite*, committee print, 106<sup>th</sup> Cong., 1<sup>st</sup> sess. (Washington: GPO, 1999), p. 10.

d. Results taken from Ivonne Garcia, "Final Status Plebiscite Results Released," *The San Juan Star*, Dec. 10, 1993, p. 12.

e. Results taken from Representative Robert J. Lagomarsino, "Certification of Puerto Rico Referendum Results," remarks in the House, *Congressional Record*, vol. 138, Feb. 7, 1992, p. 2141. A "yes" vote, generally urged by commonwealth and independence supporters, expressed support for legislation that would have amended the Constitution to support the right of Puerto Ricans to determine a political status not subordinated to Congress and respective of the unique culture and identity of Puerto Rico. A "no" vote, generally urged by statehood supporters, rejected the proposed constitutional amendment.

f. Arturo Morales Carrion, *Puerto Rico: A Political and Cultural History*, (New York: W.W. Norton & Co., Inc., 1983), p. 306. [Total number of registered voters was 1,067,000, according to Surendra Bhana, *The United States and the Development of the Puerto Rican Status Question, 1936-1968*, (Lawrence, KS: The University Press of Kansas, 1975), p. 185.

## Issues of Debate on Political Status

The establishment of the commonwealth government in 1952 did not resolve all questions on the political status of Puerto Rico. Some contend that Puerto Rico under commonwealth status remains a territory of the United States, subject to congressional authority under the Territorial Clause of the U.S. Constitution. Others view the Commonwealth to be a part of the United States that enjoys a unique relationship to the federal government, with some aspects or indications of separate sovereignty.<sup>42</sup> Commonwealth status, it is argued, is a temporary political status that

<sup>42</sup> Indications that Puerto Rico is envisioned to have sovereignty separate from the United States include the presence of a Puerto Rican National Olympic Committee distinct from the United States (see [[http://www.olympic.org/uk/organisation/noc/index\\_uk.asp?id\\_assoc=9](http://www.olympic.org/uk/organisation/noc/index_uk.asp?id_assoc=9)], visited Apr. 1, 2005), and the tax treatment of corporations and individuals in Puerto Rico. For information on tax policies see CRS Report RL32708, *Federal Taxes and the U.S. Territories: An Overview*, by David L. Brumbaugh. Also, some officials, including Governor Anibal Acevedo Vilá, reportedly refer to Puerto Rico as a "country." See, for example, Rosario Fajardo, "AAV, Fortuño Agree on Need to Move Status Issue," *The San Juan Star*, Feb. 15, 2005, p. 4. "I believe the moment has come for the country to have the (continued...)"

falls short of two permanent status options — statehood or independence as a sovereign nation. Continuation or even enhancement of commonwealth status, for some, means that Puerto Rico remains subject to the Territorial Clause. Others disagree, noting that commonwealth can be a permanent status option that requires adjustments (“enhancements”) over time.<sup>43</sup>

If Members of the 109<sup>th</sup> Congress elect to consider legislation on the political status of Puerto Rico, a number of policy issues, including the following, might be raised.

- What process will be used to consider the political status options?
- What are definitions of the status options?
- What impact would statehood have on the structure and operations of the U.S. Congress?
- What associated policy matters might be raised if Congress debates status?

These issues are discussed below.

**Process Options.** Past congressional debate and discussions on the political status of Puerto Rico have focused not only on the end result (“Will the status change, and if so, what will it be?”), but also on the process by which the debate proceeds. The process used to identify, discuss, and vote on status options would likely be established before debate begins on the “final” status options. As discussed above, the veto of the legislation recently approved by the Puerto Rican legislature and the history of popular votes on status proposals indicates that obstacles on process have always been a part of the status debate.

Bills considered by the Puerto Rican legislature in 2005 focused on the first steps of the process, a call from the people of Puerto Rico for a federal response to the status issue. The parties in Puerto Rico could not reach consensus on that first step. Such agreement arguably is necessary because the next steps (definition of terms, the order in which the people and officials of Puerto Rico, Congress, and the White House act on proposals) will be even more complex. Neither the U.S. Constitution nor precedents establish firm boundaries for the resolution of controversies concerning the political status of a territory of the United States. Throughout the history of the United States, different processes have been used to determine whether a territory affiliated with the United States changes its status to statehood, to independence with legal ties of free association (or a sovereign nation) or remains a territory.

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<sup>42</sup> (...continued)  
opportunity of choosing between different alternatives,’ Acevedo Vilá said.”

<sup>43</sup> The report by the President’s Task Force, expected in 2005, may be an important element in the resolution of the debate over the definitions of the status options and assessments of the extent to which the options are non-territorial, non-colonial, and constitutional.



A review of relevant history indicates that broad outlines of expected actions may be discerned. The process of debate involves assessments of the viewpoints of the affected population, development of a means by which the preferences of the population are presented to Congress, and the consideration of legislative mechanisms through which Congress and the President act on the status options. Although the process for resolving the political status question varies, one element remains common throughout the nation's history — Congress exercises an essential role in the process and resolves (or decides not to resolve) the question.

Brief summaries of some of the processes used in the past to resolve political status issues follow. These summaries do not begin to exhaust or explore the full range of issues aired during the debate on political status, but are offered as examples to provide basic information on historical precedents.

*Paths to Statehood.* History indicates that the transition of a territory to statehood may involve several processes.<sup>44</sup> The debate on some statehood proposals took many years and involved great strife and loss of life. The processes for other states was more straightforward. One team of researchers specifically tasked to look at the issue from the perspective of the status debate on Puerto Rico summarized the history through an exploration of six “paths.”<sup>45</sup> The report issued by this team categorized the following paths taken by the former colonies, territories, or the republic:

- (1) the coalescence of the first 13 colonies that wrote their own constitutions;<sup>46</sup>
- (2) unilateral action in territories to present an organized “state” to Congress (including electing representatives to Congress) for consideration to be admitted to the Union, also known as the “Tennessee plan;”<sup>47</sup>
- (3) annexation of an independent republic;<sup>48</sup>

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<sup>44</sup> The U.S. Constitution provides for the admission of new states “by the Congress into this Union,” but does not specify a process to be followed; the pertinent constitutional provision proscribes certain actions from being taken, i.e., no state formed within another, by the conjoining of two or more or parts without consent of legislatures and Congress. See U.S. Constitution, Art. IV, Sec. 3, cl. 1.

<sup>45</sup> Editorial de la Universidad de Puerto Rico, *Breakthrough from Colonialism: An Interdisciplinary Study of Statehood* (Editora Corripio, C. Por A., Dominican Republic: 1984), pp. 1207-1226.

<sup>46</sup> Connecticut, Delaware, Georgia, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, and Virginia.

<sup>47</sup> Tennessee, Michigan, Iowa, California (some contend that California entered as an independent republic operating under military government rule), Oregon, Kansas, and Alaska.

<sup>48</sup> Texas.

- (4) creation of new states from existing states;<sup>49</sup>
- (5) development of a state constitution without congressional support;<sup>50</sup> and
- (6) congressional enactment of enabling legislation.<sup>51</sup>

It might be argued that other “paths” to statehood could be identified, or other configurations of the above might be developed. For example, options (2) and (5) might be considered in concert since they both include states admitted to the union primarily through initiatives undertaken by residents of the future states with little or no congressional action. Other perspectives are presented in a report compiled by contractors for a commission on Alaska’s statehood. This report identified two basic paths — one stemming from congressional initiatives and the other from territorial forces. The report summarizes these paths as follows:

Initially, as provided in the Northwest Ordinance, Congress would authorize a territory to initiate the steps toward statehood. Once the territory drafted a constitution and set up a government, the Congress would pass a second statute admitting the territory as a state. On the other hand, the respective territory would present itself to the Congress as ready for statehood, thus leaving out the step in which the Congress passed the enabling act or gave the territory the go-ahead to start meeting the requirements of statehood.<sup>52</sup>

*Development of a Sovereign Identity.* Some territories affiliated with the United States eventually became sovereign nations after considerable congressional debate and years of action (or inaction). For example, the Philippine Islands gained independence in 1946 after decades of negotiations between Filipino officials and Congress, and years after Congress passed legislation in 1934 “To provide for the complete independence of the Philippine Islands, to provide for the adoption of a constitution and a form of government for the Philippine Islands, and for other purposes.”<sup>53</sup> In essence, for roughly 50 years, the federal government exercised unilateral authority in developing and modifying the political status of the Philippines, largely through legislation that established trade policies, provided financial assistance, placed restrictions on immigration, established a commonwealth

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<sup>49</sup> Vermont, Kentucky, Maine, and West Virginia.

<sup>50</sup> Arkansas, Florida, Wyoming, Idaho, and Hawaii.

<sup>51</sup> Ohio, Louisiana, Indiana, Mississippi, Illinois, Alabama, Missouri, Wisconsin, Minnesota, Nevada, Nebraska, Colorado, South Dakota, North Dakota, Montana, Washington, Utah, Oklahoma, Arizona, and New Mexico.

<sup>52</sup> Birch, Horton, Bittner, and Monroe, PC, *The Concept of Statehood within the American Federal System* (Attorneys at Law, Anchorage: Prepared under contract for the Alaska Statehood Commission, 1981), p. 70.

<sup>53</sup> P.L. 73-127, 48 Stat. 456 et seq. See U.S. President (Roosevelt), Proclamation No. 2695, 11 F.R. 7517, 60 Stat. 1352.

government with limited powers, and established governance policies on the islands.<sup>54</sup> As summarized by one author:

Although the Independence Act had provided that the provisions of the act would not take effect “until accepted by concurrent resolution of the Philippine Legislature or by a convention called for the purpose of passing upon that question,” which suggested a bilateral agreement, these changes were made unilaterally.<sup>55</sup>

***Freely Associated State Negotiations.*** The Strategic Trust Territory of the Pacific Islands, associated with the United States, was established through the United Nations in 1947 at the close of World War II. The federal government exercised administrative control over the islands for decades through the Department of the Navy, and subsequently through the Department of the Interior. The Future Political Status Commission established by the Congress of Micronesia (established by the U.S. Congress in 1964) considered political status options in the 1960s and recommended that negotiations commence on compacts of free association. Such compacts recognize that independent nations do not fall under the suzerainty of the United States but are closely allied in terms specified in the compacts. In order to negotiate such compacts, the residents of the islands organized into three separate entities — the Federated States of Micronesia (FSM), the Republic of Palau, and the Republic of the Marshall Islands (RMI). Through constitutional conventions, the elected officials developed and ratified separate constitutions and established republican governments headed by elected officials. After assuming full responsibility for the islands’ internal governance, U.S. and island officials spent years negotiating the terms of the compacts of free association. Two of those compacts, for FSM and the RMI, were recently renegotiated. The compact with Palau is scheduled to be renegotiated in 2007.<sup>56</sup>

***Current Debate over the Process in Puerto Rico.*** Much of the debate among Puerto Rico’s officials currently centers around alternative mechanisms for discussing and resolving the status options. One, advocated by the governor and the PDP, is a constituent assembly. The members of the assembly would be elected by the people of Puerto Rico and would be charged with developing the status options

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<sup>54</sup> The Independence Act of 1934 retained selected federal control over the Philippines. For example, the statute directed the President to withdraw all right of possession and sovereignty “(except such naval reservations and fueling stations as are reserved under section 5)” and maintained the force of federal law “Except as in this Act otherwise provided...until altered” by the commonwealth government of the islands or by Congress.

<sup>55</sup> Arnold H. Leibowitz, *Colonial Emancipation in the Pacific and the Caribbean: A Legal and Political Analysis* (New York: Praeger, 1976), p. 25.

<sup>56</sup> Background information obtained from FSM Representative Office, *The Federated States of Micronesia* (Washington: 1983), available from the author. For information on the renegotiated Compacts of Free Association see CRS Report RL31737, *The Marshall Islands and Micronesia: Amendments to the Compact of Free Association with the United States*, by Thomas Lum. The compacts texts are found in 48 U.S.C. 1901.

to be offered to the people of Puerto Rico and to Congress.<sup>57</sup> Members of the assembly, pursuant to the legislation that had been introduced by the Governor, would “establish a dialogue” with the President’s Task Force on Puerto Rico’s Status and submit a report to the President and to Congress on the proposals for the political relationship of Puerto Rico to the United States.<sup>58</sup> The report of the assembly, according to the proposal, “must represent alternatives to overcome all vestiges of colonialism” and “establish clearly the non-territorial nature of the future status of Puerto Rico.”<sup>59</sup> Negotiations between representatives of Puerto Rico and Congress arguably would address issues of the constitutionality of the status options developed by the assembly.

Another option, reportedly supported by the majority of the legislature and the current Resident Commissioner, called for a referendum to be held in 2005 in Puerto Rico. If, under the proposal, a majority of the voters had approved the convening of a referendum, the process of establishing federally defined status options would have begun. Those options developed by federal officials would then have been presented to the people of Puerto Rico for their consideration. A plebiscite would then have been held before July 1, 2007, on those options.<sup>60</sup>

A third option, described previously in this report, developed through legislation based upon a PIP proposal. The legislation was approved by the NPP-led Puerto Rican legislature with a PDP-supported amendment but was vetoed by the governor. According to the bill, if Congress had not reacted within 90 days of the deadline (December 31, 2006), the Puerto Rican legislature would have been “committed to legislate” to enable the people of Puerto Rico to choose the procedural mechanism to be used to further the status discussions. The mechanisms mentioned in the legislation included, but were not limited to, “a Constitutional Convention on Status, or a petition for a plebiscite with federal approval.”<sup>61</sup>

The decision by the Governor to veto the legislation and, at least temporarily, halt formal discussion of the process, means that many questions remain unanswered.

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<sup>57</sup> Governor Acevedo Vilá wrote to President Bush that the legislation he introduced would provide for a referendum on July 10, 2005, that would present two options to the voters: first, “a formal request to the United States Congress to authorize a federally mandated plebiscite” that would enable voters to choose among the commonwealth, statehood, and independence alternatives “as defined by Congress;” or second, to approve the convening of a Constitutional Assembly on Status. Governor Acevedo Vilá, letter to President George W. Bush, Feb. 11, 2005.

<sup>58</sup> Art. 7.1 of legislation “To implement a Referendum to determine the procedural mechanism through which to determine future changes regarding the political status of Puerto Rico and the relationship between the people of Puerto Rico and the United States,” available from the author.

<sup>59</sup> *Ibid.*

<sup>60</sup> Rosario Fajardo, “AAV, Fortuño Agree on Need to Move Status Issue,” *The San Juan Star*, Feb. 15, 2005, p. 4.

<sup>61</sup> “Act to Petition and for the Self-Determination of the People of Puerto Rico,” Sec. 2.

Some questions that might be raised on the process to be used in resolving the political status issue should Congress take up the status debate, include the following:

- Would the legislation be self-executing? That is, would Congress enact legislation that requires no further congressional action once the people of Puerto Rico reach consensus on a status option?
- If the Puerto Rican legislature and Governor Acevedo Vilá remain unable to reach agreement on legislation to initiate the process, would Congress respond to a concurrent resolution adopted solely by the legislature?<sup>62</sup>
- Would a plurality or a majority of voters be required to indicate support for a final status option? Would legislation considered by the 109<sup>th</sup> Congress require that a specified threshold of support be evident among voters?
- Would Puerto Ricans who reside on the mainland or in other parts of the United States besides Puerto Rico be eligible to vote on the status proposal?
- At what stage (or stages) in the decisionmaking process would the people of Puerto Rico participate? In the election of officials specifically tasked with resolving the issue? In establishing the status definitions? In voting on the definitions established by others, including federal officials? In a referendum on legislation approved by the Puerto Rican legislature or by Congress?

**Definitions of Status Options.** Definitions, or more specifically, the lack of definitions of the political status options for Puerto Rico compound the complexity of the debate. Standard definitions of the terms do not exist. Some argue that Congress should define the terms. Others, however, advocate direct involvement by the people of Puerto Rico, or their elected leaders, in setting the definitions. The history of debate, particularly the 1998 plebiscite, indicates that in the absence of constitutionally valid status options, the debate over status yields few or no conclusive results.<sup>63</sup>

Brief summaries of aspects of each status option follow in order to provide basic information on the options. The information below does not represent official

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<sup>62</sup> On January 23, 1997, the legislature enacted Concurrent Resolution 2, “requesting Congress to sponsor a vote based on definitions it would be willing to consider if approved by voters.” See U.S. Congress, Senate Committee on Energy and Natural Resources, *Puerto Rico Status*, workshop, Apr. 2, 1998, 105<sup>th</sup> Cong., 2<sup>nd</sup> sess. (Washington: GPO, 1998), p. 3.

<sup>63</sup> Constitutional implications of three status options (“new commonwealth,” statehood, and independence) were reviewed by the Department of Justice in response to a congressional request. See Robert Raben, Assistant Attorney General, U.S. Dept. of Justice, letter to The Honorable Frank H. Murkowski, Chairman, Senate Committee on Energy and Natural Resources, Jan. 18, 2001. Hereafter cited as *Raben Letter*.

descriptions of status options, but is provided only to give general background information. The options are presented in alphabetic order.

**Commonwealth.** The commonwealth option represents a continuation of the current status of Puerto Rico. The territorial clause of the United States Constitution empowers Congress with the authority to regulate territories.<sup>64</sup> Commonwealth status for Puerto Rico is based on statutory provisions<sup>65</sup> and the Constitution of Puerto Rico that established a republican form of self-government. Under current federal law, residents of Puerto Rico maintain U.S. citizenship, but many contend that the Puerto Rican identity reflects some degree of autonomy that enables the island to retain a cultural spirit separate from but still part of the United States.<sup>66</sup> Some support an enhanced or “new” commonwealth option and seek changes in the current relationship to increase the autonomy of Puerto Rico. Aspects of enhanced commonwealth considered but rejected by Congress in 1991 and 2001 included providing the government of Puerto Rico authority to certify that certain federal laws would not be applicable to the commonwealth, mandating that the President consult with the Governor on appointments to federal offices in Puerto Rico that require Senate approval, recognizing a permanent relationship between Puerto Rico and the United States that cannot be unilaterally changed, and establishing economic relationships with other nations.<sup>67</sup> Concepts associated with enhanced or new commonwealth have not been published in 2005.

**Free Association.** This option would establish Puerto Rico as a sovereign nation separate from the United States.<sup>68</sup> Free association would have to be preceded

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<sup>64</sup> U.S. Constitution, Art. IV, Sec. 3.

<sup>65</sup> Puerto Rico Federal Relations Act, P.L. 81-600, 64 Stat. 319.

<sup>66</sup> In 1992, President George H.W. Bush noted the unique nature of the relationship of the commonwealth to the United States as follows: “Because Puerto Rico’s degree of constitutional self-government, population, and size set it apart from other areas also subject to federal jurisdiction under Article IV, section 3, clause 2 of the Constitution, I hereby direct all federal departments, agencies, and officials, to the extent consistent with the Constitution and the laws of the United States, hence-forward to treat Puerto Rico administratively as if it were a state, except insofar as doing so with respect to an existing federal program or activity would increase or decrease federal receipts or expenditures, or would seriously disrupt the operation of such program or activity.” U.S. President (Bush), “Memorandum for the Heads of Executive Departments and Agencies,” *Federal Register*, vol. 57, Dec. 2, 1992, p. 57093.

<sup>67</sup> Title IV, S. 244, in U.S. Congress, Senate Committee on Energy and Natural Resources, *Political Status of Puerto Rico*, hearing on S. 244, 102<sup>nd</sup> Cong., 1<sup>st</sup> sess., Jan. 30 and Feb. 7, 1991 (Washington: GPO, 1991), pp. 73-101. See also H.R. 4751, 106<sup>th</sup> Congress. The Department of Justice (*Raben Letter*) found that certain aspects of a “New Commonwealth” proposal described in PDP platform documents could be, or are: “constitutionally unenforceable” or flawed (mutual consent provisions, p. 8-10 and delegation of powers, p. 14); of uncertain legality (statutory citizenship, p. 11 and international agreements, p. 13); and possibly subject to constitutional limits (Resident Commissioner authority, p. 12).

<sup>68</sup> For a discussion of the free association status of former territories of the United States located in the Pacific Ocean, see CRS Report RL31737, *The Marshall Islands and* (continued...)

by recognition that Puerto Rico is a self-governing sovereign nation not part of the United States, because compacts of free association are legal documents between sovereign nations. Free association could be accompanied by a transition period in which the United States would continue to administer certain services and provide assistance to the island for a period of time specified in the compact. Free association could be annulled at any time by either nation. Negotiations over free association would likely decide issues of trade, defense, currency, and economic aid.

**Independence.** Some advocates of independence contend that the cultural identity of Puerto Ricans, and other factors, justify independence. As residents of a sovereign independent nation, Puerto Ricans could develop closer ties to Caribbean nations, but would likely be forced to choose between citizenship in the United States or in Puerto Rico.<sup>69</sup> The current unrestricted travel between the United States and the island might end, as would federal benefits (unless specified in the enabling legislation). Puerto Rico would, as a sovereign nation, develop its own economy, form of government, and complete national identity.

**Statehood.** Advocates of statehood contend that the full rights and responsibilities of citizenship should be granted residents of Puerto Rico. Political stability, particularly as an economic development tool, is seen by some to be one significant advantage of statehood. As residents of a state, Puerto Ricans would be entitled to full representation in Congress, would be subject to income taxes, and would be eligible to receive federal assistance like that provided to all of the states.<sup>70</sup> Opponents argue that statehood would result in a loss of national identity.

**Effect on the U.S. Congress.** If Puerto Rico were to be granted statehood, one of the most significant issues would be the impact of the 51<sup>st</sup> state on the organization and operation of Congress. Two new senators, and possibly six representatives (based on the 2000 census), could be added to the chambers, respectively. Based on past precedent, congressional leaders might select among three options — (1) temporarily increasing the size of the House until the next census, (2) permanently increasing the size of the House, or (3) subtracting congressional seats from other states and assigning those seats to Puerto Rico.<sup>71</sup>

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<sup>68</sup> (...continued)

*Micronesia: Amendments to the Compact of Free Association with the United States*, by Thomas Lum.

<sup>69</sup> According to the Department of Justice case law is not determinative as to whether citizenship would be retained if Puerto Rico gained independence. See *Raben Letter*, p. 4.

<sup>70</sup> The Department of Justice noted that, once granted statehood, Puerto Rico could not maintain differential tax treatment, its representation in Congress would affect that of the other states, and its laws and constitution might be preempted by federal statutes. See *Raben Letter*, p. 2-3.

<sup>71</sup> Information taken from CRS Report RS21151, *Puerto Rican Statehood: Effects on House Apportionment*, by David C. Huckabee.

**Other Issues.** If political status legislation were debated in Congress, the following issues, previously raised in discussions, might be subject to congressional scrutiny again.

**Language Requirement.** The Federal Relations Act provision that establishes the qualification requirements for the Resident Commissioner specifies that eligible candidates must “read and write the English language.”<sup>72</sup> During the 1998 House debate on H.R. 856 an amendment was adopted that would have established an English language requirement if Puerto Rico were admitted as a state.<sup>73</sup> See **Table B-4** on page 33 of this report for the reference to the 1998 amendment on the English language requirement. There is precedent for a language requirement to be attached to a statehood proposal. The admission of three states — Oklahoma, New Mexico, and Arizona — was contingent upon such a requirement.<sup>74</sup>

**Citizenship.** In 1917 Congress extended citizenship to “citizens” of Puerto Rico who were not citizens of foreign countries.<sup>75</sup> Persons born in Puerto Rico after 1941 are citizens of the United States at birth, again through federal statute.<sup>76</sup> Such “statutory” citizenship differs from “constitutional” citizenship that automatically confers upon persons born in the United States (as opposed to the areas subject to the territories clause).<sup>77</sup> If the political status of Puerto Rico changes to one of independent sovereignty, Congress might elect to modify the citizenship status of descendants of the people of Puerto Rico by changing the statute, but only if such legislation meets a “rational basis” test consistent with the due process clause of the U.S. Constitution.<sup>78</sup> See **Table B-4** on page 33 of this report for the reference to the 1998 amendment on citizenship. Some contend that dual citizenship is an option. Former Attorney General Richard Thornburgh has spoken in opposition to this option

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<sup>72</sup> 48 U.S.C. 892.

<sup>73</sup> Rep. Gerald Solomon, remarks in the House, *Congressional Record*, daily edition, vol. 144, Mar. 4, 1998, pp. H802-H812. An amendment designating Spanish as the official language of Puerto Rico was rejected during the same debate.

<sup>74</sup> Joseph E. Fallon, “Federal Policy and U.S. Territories: The Political Restructuring of the United States of America,” *Pacific Affairs*, vol. 64, spring 1991, p. 34.

<sup>75</sup> P.L. 64-368, 39 Stat. 953.

<sup>76</sup> “All persons born in Puerto Rico on or after April 11, 1899, and prior to January 13, 1941, subject to the jurisdiction of the United States, residing on January 13, 1941, in Puerto Rico or other territory over which the United States exercises rights of sovereignty and not citizens of the United States under any other Act, are declared to be citizens of the United States as of January 13, 1941. All persons born in Puerto Rico on or after January 13, 1941, and subject to the jurisdiction of the United States, are citizens of the United States at birth.” 8 U.S.C. 1402.

<sup>77</sup> “All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside.” U.S. Const., Amendment XIV, Sec. 1.

<sup>78</sup> See *Harris v. Rosario*, 446 U.S. 651 (1980).



if Puerto Rico becomes a sovereign nation.<sup>79</sup> Extensive debate on the citizenship issue has been published.<sup>80</sup>

**Transition Period.** If the political status of Puerto Rico changes from its current commonwealth status, Congress might elect to establish a transition period during which certain elements are phased into place. Policy matters previously included in such transition periods include, for statehood: gradual modification of tax liability, language requirements, impact of representation on Congress, and others. If Puerto Rico gains independence Congress might elect to consider a period of time in which federal financial assistance is provided, strategic defense agreements are reached, among others.

## Conclusion

Enactment of political status legislation by the legislature of Puerto Rico constitutes one of the more significant steps to be taken in recent years to resolve the status dilemma. When the President's Task Force on Puerto Rico's Status issues its report, expected to be released in 2005, momentum may build for congressional consideration of proposals to reconsider the existing commonwealth status. Congressional action might also be initiated if the legislature and Governor of Puerto Rico reach a consensus on the initiation of the status process. Agreement on the process to be used in considering the status proposals has been as elusive as agreement on the end result. Should the process be resolved, Congress would have a determinative role in the decision. The four options that appear to be most frequently discussed include continuation of the commonwealth, enhancement (modification) of the current commonwealth agreement, statehood, or independence. If independence were selected, Puerto Rican officials might elect to negotiate a compact of free association with the United States.

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<sup>79</sup> U.S. Congress, Senate Committee on Energy and Natural Resources, *Political Status of Puerto Rico*, hearings on S. 244, 102<sup>nd</sup> Cong., 1<sup>st</sup> sess., Feb. 7, 1991 (Washington: GPO, 1991), pp. 206-207. See also U.S. Congress, Senate Committee on Energy and Natural Resources, *Separate Sovereignty or Independence for Puerto Rico*, hearing, 105<sup>th</sup> Cong., 2<sup>nd</sup> sess., June 23, 1998 (Washington: GPO, 1998), pp. 10-15, 21-30.

<sup>80</sup> See, for example, John L.A. de Passalacqua, "The Involuntary Loss of United States Citizenship of Puerto Ricans Upon Accession to Independence by Puerto Rico," *Denver Journal of International Law and Policy*, vol. 19, fall 1990, pp. 139-161; Rep. Ron de Lugo, "Puerto Rico Self-Determination Act," remarks in the House, *Congressional Record*, vol. 136, Oct. 10, 1990, pp. 28331-8332, 28336; José Julián Álvarez González, "The Empire Strikes Out: Congressional Ruminations on the Citizenship Status of Puerto Ricans," *Harvard Journal on Legislation*, vol. 27, summer 1990, pp. 309-365.

## Appendix A: Brief Chronology of Status Events

**Table A-1. Significant Political Status Events for the Commonwealth of Puerto Rico, 1898-1998**

Year	Brief summary of events
1898-1900	Spain cedes the islands of Puerto Rico to the United States at the conclusion of the Spanish-American War; U.S. military commanders govern Puerto Rico
1900	Enactment of the first Organic Act (the Foraker Act) established a civil government headed by presidential appointees <sup>81</sup>
1917	Enactment of the Jones Act of 1917 that established a bill of rights for citizens, provided for a popularly elected Senate, authorized election of Resident Commissioner, and extended U.S. citizenship to residents of Puerto Rico <sup>82</sup>
1947	Enactment of the Elective Governor Act <sup>83</sup>
1950	Enabling and implementing legislation enacted for the establishment of a constitutional government <sup>84</sup>
1952	The 82 <sup>nd</sup> Congress and President Truman approve the constitution of the Commonwealth of Puerto Rico, with amendments <sup>85</sup>
1953	United States delegate reports to the United Nations that the relationship between Puerto Rico and the United States is based upon a bilateral compact. The United Nations resolves that Puerto Rico is “an autonomous political entity” and is to be no longer included on the list of “Non-Self-Governing Territories.” <sup>86</sup>
1964-1966	United States-Puerto Rico Commission on the Status of Puerto Rico convenes, issues reports, and recommends that a status plebiscite be held. <sup>87</sup>
1967	Plebiscite on status held, majority vote in favor of commonwealth

<sup>81</sup> P.L. 56-191, 31 Stat. 77.

<sup>82</sup> P.L. 64-368, 39 Stat. 951.

<sup>83</sup> P.L. 80-362, 61 Stat. 770.

<sup>84</sup> P.L. 81-600, 64 Stat. 319.

<sup>85</sup> P.L. 82-447, 66 Stat. 327.

<sup>86</sup> United Nations Resolution 748 (VIII), *Yearbook of the United Nations 1953* (New York: Columbia University Press, 1954), p. 539.

<sup>87</sup> P.L. 88-271, 78 Stat. 17.

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<b>Year</b>	<b>Brief summary of events</b>
1975-1977	Commission report on Compact of Permanent Union between the United States and Puerto Rico issued. Legislation introduced pursuant to report recommendations, but not acted upon. <sup>88</sup>
1989-1990	101 <sup>st</sup> Congress debates status legislation, House passes (H.R. 4072) and Senate committees report (S. 712) different bills
1996	House committees in the 104 <sup>th</sup> Congress report status legislation (H.R. 3025)
1998	House (105 <sup>th</sup> Congress) passes status legislation (H.R. 856) referred to as the Young bill; Senate does not act on comparable legislation

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<sup>88</sup> 94<sup>th</sup> Cong., H.R. 11200, S.J. Res. 215. Instead, President Ford submitted statehood legislation (H.R. 2201) that received no action.

## Appendix B: Congressional Activity on Puerto Rico's Political Status, 1989 - 1998

During the four decades following approval of the commonwealth constitution in 1952, Congress did not act upon most legislation introduced to alter Puerto Rico's political status. The only exception occurred in 1964, when the 88<sup>th</sup> Congress and the legislature of Puerto Rico approved legislation that established a commission on the status issue.<sup>89</sup> From 1952 through 1988, various bills to reconsider or modify the political status of Puerto Rico were introduced, but did not receive action.<sup>90</sup> In 1975, for example, the 94<sup>th</sup> Congress considered H.R. 11200 to establish a Compact of Permanent Union, as recommended by the Ad Hoc Advisory Group for Puerto Rico, but the bill was not reported out of either the House or Senate committees of jurisdiction. In 1976, President Ford proposed statehood for Puerto Rico. For that purpose, H.R. 2201 was introduced in the 95<sup>th</sup> Congress, but received no action.

In the 101<sup>st</sup> Congress the issue gained prominence and congressional attention, to some degree due to unified pressure from Puerto Rican elected officials.<sup>91</sup> This began a 10-year period from 1989 through 1998 (101<sup>st</sup> through the 105<sup>th</sup> Congresses) when 19 bills were introduced on the status issue. Four of the 19 bills were reported out of committee; two of those were approved by the full House. During that 10-year period, no political status bills were approved by the full Senate. No action was taken by the 106<sup>th</sup>, 107<sup>th</sup>, or 108<sup>th</sup> Congresses on the status issue.

This appendix summarizes the provisions of the four bills that received congressional action from 1989 to 1998. It begins with five tables that facilitate comparisons of the bills. **Table B-1** provides basic information on the four bills that received action since 1989. **Tables B-2 through B-4** provide summary information on the contents of the bills. The information in these tables reflects the contents of the bills as finally acted upon.

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<sup>89</sup> P.L. 88-271, 78 Stat. 18.

<sup>90</sup> Also, both the House and the Senate considered concurrent resolutions limited to an expression of the sense of either or both chambers on matters related to status. This report does not consider such resolutions.

<sup>91</sup> The delivery of petitions with more than 350,000 signatures in support of statehood to Congress in the 100<sup>th</sup> Congress reportedly stimulated action.

**Table B-1. Status Legislation, 1989-1998: Summary Information**

<b>101<sup>st</sup> Congress</b>		<b>104<sup>th</sup> Congress</b>	<b>105<sup>th</sup> Congress</b>
<b>H.R. 4765</b>	<b>S.712</b>	<b>H.R. 3024</b>	<b>H.R. 856</b>
<b>Last action date</b>			
October 10, 1990	September 30, 1990	September 18, 1996	March 4, 1998
<b>Bill title</b>			
Puerto Rico Self-Determination Act	Puerto Rico Status Referendum Act	United States-Puerto Rico Political Status Act	United States-Puerto Rico Political Status Act
<b>Final action taken</b>			
Passed House	Reported from Committees on Energy and Finance	Reported from Committees on Rules and Resources	Passed House
<b>Final vote</b>			
Voice vote, not recorded	Energy Committee - 11 yeas, 8 nays; Finance Committee - voice vote	Rules Committee - voice vote; Resources Committee - 10 yeas, 0 nays	209 yeas 208 nays
<b>Report number</b>			
H.Rept. 101-790, Part I	S.Rept. 101-120; S.Rept. 101-481	H.Rept. 104-713, Parts 1&2	H.Rept. 105-131, Part 1

**Table B-2. Status Legislation, 1989-1998: Procedures**

101 <sup>st</sup> Congress		104 <sup>th</sup> Congress	105 <sup>th</sup> Congress
H.R. 4765	S. 712	H.R. 3024	H.R. 856
<b>Required congressional actions</b>			
Chairs of committees of jurisdiction must introduce implementing legislation by March 6, 1992; expedited process for consideration of the legislation set out. §5	No provision	Similar to provisions in H.R. 4765, with recognition that provisions would be considered part of House and Senate rules, with allowance for rule changes. §6	Required that House and Senate majority leaders introduce legislation and that committees report bill (or automatic discharge be implemented), and established expedited procedures. §6
<b>Status options specified</b>			
Independence, statehood, “a new commonwealth relationship,” and, none of the above. §2(a)	Statehood, Independence, Commonwealth	Continue present commonwealth, separate sovereignty or U.S. sovereignty through (a) independence or free association or (b) statehood. §4(a)	Retain commonwealth, separate sovereignty through (a) independence or (b) free association, or statehood. §4(a)
<b>Requirements for referendum</b>			
Initial referendum would be held on September 16, 1991, or later date as agreed by specified committee. Second referendum (ratification vote) would be held on implementing legislation. §2(a), §6(a)	Initial referendum would be held on June 4, 1991, or later date during summer of 1991 as mutually agreed by the 3 political parties. §101(b)	Referendum would be held no later than Dec. 31, 1998. §4(a)	Same as H.R. 3024

101 <sup>st</sup> Congress		104 <sup>th</sup> Congress	105 <sup>th</sup> Congress
H.R. 4765	S. 712	H.R. 3024	H.R. 856
<b>Participation of mainland residents in vote</b>			
Government of Puerto Rico authorized to enable nonresident Puerto Ricans to register and vote in the referendum. §2(b)	No provision, but provided that general election laws would apply. §101(d)	No provision, but provided that general election laws would apply, including voting eligibility. §4(a), 5(a)	Same as H.R. 3024. §4(a), 5(a)
<b>Resolution of inconclusive vote by Puerto Rican residents</b>			
If a majority of voters did not approve one of the 3 status options or the implementing legislation not effectuated, members of committees of jurisdiction would have to make recommendations. §7	If a majority of voters did not approve one of the 3 status options, a runoff referendum would be held on 2 options receiving the most votes, including “none of the above.” §101(c)	The President and others would have had to recommend action within 180 days; existing commonwealth structure would have remained, with subsequent referenda held every four years. §5(c)	Same as H.R. 3024. §5(c)
<b>Provision for transition period</b>			
No provision in legislation, but “Independence” definition in report provided for a transition period of at least 10 years for economic stability and demilitarization. Also, statehood option included transition provision. <i>H.Rept. 101-790, Part 1, p. 21-2.</i>	Under statehood, Medicare, food stamp, and tax policies continued as specified. §213. Under independence, a Joint Transition Committee would have been established. §305, §313-318	If a majority of voters approved the “self-government” option, the President would have had to develop a transition plan of at least 10 years to lead to full self-government, and local legislature would have been authorized to call a constitutional convention. §4(b)	Similar to H.R. 3024, but transition plan would have had to include English language provisions, with transition plan of no more than 10 years. §4(b)

101 <sup>st</sup> Congress		104 <sup>th</sup> Congress	105 <sup>th</sup> Congress
H.R. 4765	S. 712	H.R. 3024	H.R. 856
<b>Funding for referendum</b>			
Authorized \$13.5 million for the referendum. §2(b)	No provision	Grants for the costs of the referenda and for voter education provided from excise tax collections on imported rum. §7	Same as H.R. 3024. §7
<b>Judicial review</b>			
No provision	Local laws and procedures dictated adjudication, with specified provisions for challenging vote irregularities. §101(e)	No provision	No provision
<b>Required threshold for referendum vote</b>			
Majority for one of the 3 options. §4	Majority for one of the 3 options. §101(c)	Majority of “valid votes cast.” §4(a)	Same as H.R. 3024. §4(a)
<b>Requirement for presidential action</b>			
President would have had to consult with members of committees with jurisdiction and others on implementing legislation. §4, 7	Under independence, the President must surrender rights of possession and control, provide notice to foreign governments. §307, 310.	See transition period and inconclusive vote comments, above. Also, President would have had to submit legislation for self-government transition. §4c	Same as H.R. 3024. §4c



**Table B-3. Status Legislation, 1989-1998: Options**

101 <sup>st</sup> Congress		104 <sup>th</sup> Congress	105 <sup>th</sup> Congress
H.R. 4765	S. 712	H.R. 3024	H.R. 856
<b>Statehood</b>			
Admitted on footing equal to all states, with citizenship and national voting rights guaranteed. §2 <sup>a</sup>	Admitted on footing equal to all states: territorial boundaries and land claims addressed; provision for national representation; effectiveness of existing laws provided for, as well as continuation of pending suits. See transition period, above. <i>Title II</i>	Provision for: guaranteed constitutional rights, permanent union, reserved powers, responsibility for payment of taxes, national representation and voting rights, and application of language requirement similar to that applied in other states. §4(a)	Similar provision to H.R. 3024, with official English language requirement specified. §4(a)
<b>Commonwealth</b>			
No provision	No provision, see “Enhanced commonwealth”	Continuation of present commonwealth structure, with relationship dissoluble only by mutual consent, citizenship secured by U.S. Constitution, federal benefits equal to states contingent on tax payments. §4(a)	Continuation of present commonwealth structure. Congress would have retained authority to set policy and decide ultimate status through process that would have required periodic referenda. §4(a)

101 <sup>st</sup> Congress		104 <sup>th</sup> Congress	105 <sup>th</sup> Congress
H.R. 4765	S. 712	H.R. 3024	H.R. 856
<b>Enhanced Commonwealth</b>			
Permanent relationship with U.S., but not incorporated. Federal benefits equal to states contingent on contributions, and possible autonomy in international relations. §2 <sup>a</sup>	Authorized governor and legislature to identify federal laws and regulations not applicable to Puerto Rico and provided for congressional or executive review. Revised other areas of policy such as trade, air transportation agreements. <i>Title IV</i>	No provision	No provision
<b>Free association</b>			
No provision	No provision	See “Independence,” below.	See “Independence,” below.
<b>Independence</b>			
Establishment of republican form of government through a constitution. §2 <sup>a</sup>	Establishment of constitution for a republican form of government. Effect of independence on existing laws provided for, along with defense, land holdings and other areas. See transition period, above. <i>Title III</i>	Separate sovereignty through independence or free association characterized by: full authority for internal and external affairs, treaty or bilateral pact terminable by either nation, adoption of a constitution for a republican form of government, diplomatic recognition, trade based on treaty, and other provisions. §4(a)	Similar provision to H.R. 3024. §4(a)

101 <sup>st</sup> Congress		104 <sup>th</sup> Congress	105 <sup>th</sup> Congress
H.R. 4765	S. 712	H.R. 3024	H.R. 856
<b>None of the above</b>			
Identified as a valid option on the referendum ballot. §2 <sup>a</sup>	No provision, but if a runoff referendum would have had been required, this option would have to have been on the ballot. §101(c)	No provision	No provision

a. The bill did not include definitions for these terms. Instead, the report accompanying the legislation (H.Rept. 101-790, Part 1, pages 21-22) set out definitions of each of the three options. Section 4(a) of the bill would have required that these definitions be considered by committees charged with drafting the implementing legislation.

**Table B-4. Status Legislation, 1989-1998: Substantive Issues**

	101 <sup>st</sup> Congress		104 <sup>th</sup> Congress	105 <sup>th</sup> Congress
	H.R. 4765	S. 712	H.R. 3024	H.R. 856
<b>Citizenship</b>				
No provision		Under statehood, would not confer, terminate, or restore U.S. nationality. §212 Under independence, citizenship regulated by new constitution, existing federal statutes on citizenship repealed, and existing citizens' status protected, among other provisions. §311	Under separate sovereignty, U.S. nationality and citizenship would have been terminated, but those with citizenship before separation would have retained it for life, as specified. §4(a) Under statehood, citizenship would have been guaranteed. §4(a)	Similar provision to H.R. 3024.
<b>Language requirements</b>				
No provision		No provision	Under statehood, would have followed the language requirements "as in the several states." §4(a)	Stated as policy that students in schools should achieve English proficiency by age 10. §3(c) Under statehood, official English language requirements would have applied in Puerto Rico as in all states. §4(a) Transition plan to statehood would have had to include promotion of English. §4(b)

101 <sup>st</sup> Congress		104 <sup>th</sup> Congress	105 <sup>th</sup> Congress
H.R. 4765	S. 712	H.R. 3024	H.R. 856
<b>Referendum funding</b>			
Authorized \$13.5 million to be appropriated — \$7.5 million for the referendum, \$6 million for voter education. §2(a,b)	No provision	Collections from rum import tax to be transferred, in amounts specified by the President, half for referenda costs and half for voter education. §7	Similar provision to H.R. 3024. §7
<b>Land use and transfer</b>			
No provision	Under statehood, would have retained U.S. title over held lands and required review of such holdings. §204, 205, 211 Under independence, property rights would have been safeguarded (§302(c)) and land use by the military would have been negotiated. §312 Under commonwealth, would have required review of 8 specific parcels and commission oversight of San Juan National Historic Site. §412-413	No provision	No provision

101 <sup>st</sup> Congress		104 <sup>th</sup> Congress	105 <sup>th</sup> Congress
H.R. 4765	S. 712	H.R. 3024	H.R. 856
<b>Congressional representation</b>			
No provision	Under statehood, would have required election of 2 senators as well as the number of representatives to be allocated to the new state under the 1990 Census, with an increase in the size of the House. §206, 207 Under commonwealth, would have established the Office of Senate Liaison. §409	Under statehood, would have assured representation by 2 Senators and Representatives “proportionate to the population.” §4(a)	Similar provision to H.R. 3024. §4a
<b>Litigation and judicial review</b>			
No provision	Legal challenges associated with the referendum would have been adjudicated by a 3-judge court as specified. §101(e) Under statehood, pending litigation would have continued, as would appeal rights. §209, 210 Under independence, pending proceedings would have been transferred, except for those on appeal. §309	Under independence or free association, employment and property rights would have continued to be honored, §4(a)	Would have maintained previously vested rights to benefits. §4(a)

101 <sup>st</sup> Congress		104 <sup>th</sup> Congress	105 <sup>th</sup> Congress
H.R. 4765	S. 712	H.R. 3024	H.R. 856
<b>Trade</b>			
No provision	Under independence, the transition commission would have had to establish a task force to develop policy. §316 Under commonwealth, would have authorized Puerto Rico to impose tariff duties on imports, among other provisions. §406	No provision	No provision

## Summary of Legislative Debates and Actions

**101<sup>st</sup> Congress.** During the 101<sup>st</sup> Congress, the House and the Senate considered status bills but could not reconcile the differences. The House passed legislation (H.R. 4765) that would have mandated that a referendum be held in 1991. Upon selection of a status option by the voters, Congress would have been required to consider implementing legislation in accordance with a specified timetable. By comparison, the Senate Committees on Energy and Natural Resources and on Finance reported out a bill (S. 712) that would have been self-executing; i.e., the status of Puerto Rico would have been resolved after a referendum, with no further congressional action required. The full Senate did not vote on S. 712.<sup>92</sup>

Several reasons have been cited for the lack of support for S. 712 in the Senate and the inability of the 101<sup>st</sup> Congress to reconcile the differences between the two bills. The chairman of the Senate Energy and Natural Resources Committee questioned the utility of the definitions in the report that accompanied H.R. 4765 and noted that the debate could not be concluded with the short time that remained in the 101<sup>st</sup> Congress.<sup>93</sup> S. 712 was perceived by some to be biased toward statehood in that it would have provided for an immediate transition to statehood and would have applied federal benefits immediately to Puerto Rico, but would have delayed tax payment responsibilities. Also, the bill included few of the enhancements to commonwealth sought by the Popular Democratic Party (PDP). Perhaps most significantly, sponsors of the bills could not reconcile the gap between the self-executing provisions of S. 712 and the provision for congressional consideration of implementing legislation in H.R. 4765.<sup>94</sup>

**S. 712.** Several catalysts stimulated congressional action on the status issue in the 101<sup>st</sup> Congress. The submission of petitions with over 350,000 signatures to Congress from 1985 through 1987 brought greater prominence to the issue. Also, in his 1989 inaugural address, Puerto Rico's Governor Rafael Hernández Colón proposed that a referendum be held on status options, including enhanced commonwealth. Shortly thereafter, the presidents of the other two political parties agreed to the referendum proposal. As noted in a House committee report, "The agreement was viewed as historic because the three parties had long disagreed on the proper approach to resolving the status issue."<sup>95</sup> The leaders of the three principal

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<sup>92</sup> Many of the documents considered during debate on S. 712 and H.R. 4765 have been collected in Puerto Rico Federal Affairs Administration, *Political Status Referendum, 1989-1991* (Washington: 1992). For a chronology of events associated with the debate, see vol. 1, pp. xxiv-xxxii.

<sup>93</sup> Sen. Bennett Johnston, "Puerto Rican Statehood," remarks in the Senate, *Congressional Record*, vol. 136, Oct. 10, 1990, p. 28173.

<sup>94</sup> Rep. Robert Ron de Lugo, "Puerto Rico Self-Determination Act," remarks in the House, *Congressional Record*, vol. 136, Oct. 10, 1990, p. 28313. See also: "Puerto Rico's Status Remains Unresolved," *Congressional Quarterly Almanac*, 101<sup>st</sup> Cong., 2<sup>nd</sup> sess., (Washington: Congressional Quarterly, Inc., 1990), pp. 424-427.

<sup>95</sup> U.S. Congress, House Committee on Interior and Insular Affairs, *Puerto Rico Self-*  
(continued...)



political parties in Puerto Rico wrote to the chairman of the Senate Energy and Natural Resources Committee requesting congressional action on status. An excerpt from the letter follows:

the People of Puerto Rico wish to be consulted as to their preference with regards to their ultimate political status and the consultation should have the guarantee that the will of the People once expressed shall be implemented through an act of Congress which would establish the appropriate mechanisms and procedures to that effect.<sup>96</sup>

One month later, President George H.W. Bush raised the topic before Congress in his first State of the Union message :

There's another issue that I've decided to mention here tonight. I've long believed that the people of Puerto Rico should have the right to determine their own political future. Personally, I strongly favor statehood. But I urge the Congress to take the necessary steps to allow the people to decide in a referendum.<sup>97</sup>

On April 5, 1989, the chairman of the Senate Energy and Natural Resources Committee (Senator J. Bennett Johnston) and the ranking member (Senator Frank McClure) introduced three bills, each of which provided for a referendum on the political status issue. S. 712, the more detailed of the three bills, was reported from two of the three committees to which it was referred.<sup>98</sup> No action was taken on the other two bills.<sup>99</sup>

As reported, S. 712 contained the text for each option that was to be placed on the referendum ballot, along with details on the potential effect of each option on matters such as intergovernmental relationships, disposition of federal property, federal financial assistance, economics and trade, citizenship, and immigration. The bill provided for a runoff referendum if no single option received a majority of votes.

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<sup>95</sup> (...continued)

*Determination Act*, report to accompany H.R. 4765, H.Rept. 101-790, Part 1, 101<sup>st</sup> Cong., 2<sup>nd</sup> sess. (Washington: GPO, 1990), p. 13.

<sup>96</sup> Sen. J. Bennett Johnston, remarks in the Senate, *Congressional Record*, daily edition, vol. 135, Mar. 16, 1989, p. 4526.

<sup>97</sup> U.S. President (Bush), "Address on Administration Goals before a Joint Session of Congress," *Public Papers of the Presidents of the United States*, Book I, (Washington: GPO, 1989), p. 78.

<sup>98</sup> The Senate Agriculture Committee did not report out the bill.

<sup>99</sup> S. 710 and S. 711 were each considerably shorter than S. 712, which totaled 58 pages. S. 710, three pages total, described the three status options in very brief terminology (e.g., "Independence with full economic guarantees") and called for negotiations among the political parties of Puerto Rico to develop implementing legislation. S. 711, 24 pages total, contained more detailed "Initial Definitions" of the status options, a self-executing clause for the statehood option (if selected by voters), descriptions of the relationship of the U.S. to Puerto Rico under the commonwealth and independence options, and future enhancements to the commonwealth status (if selected by voters).

The statehood provision of S. 712 (Title II) included: a self-executing provision, recognized the constitution adopted in 1952 as the constitution (future) of the state, retained existing federal land holdings (with future conveyances allowed), recognized both Spanish and English as official languages (with government proceedings conducted in English), and provided for the election of presidential electors and congressional representatives, as well as the establishment of a commission to identify U.S. laws not applicable to Puerto Rico, among other provisions.

The independence option described in Title III called for a constitutional convention and set out basic requirements for such a constitution. The bill would have provided for the transition of authority from the United States to the Republic of Puerto Rico through a Joint Transition Commission and would have required the President, once specified steps had been taken, to recognize the independence of Puerto Rico. The bill would not have affected the citizenship of any person born prior to certification of the referendum results, but would have prohibited the extension of citizenship to those born to parents who were U.S. citizens solely because they were born in Puerto Rico. In addition, the bill called for the negotiation of national security matters, continuation of federal financial assistance (in amended form) for nine years, the permanent continuation of pension and civil service, and negotiations on continuation of Social Security and Medicare benefits.

Title IV, which set forth the commonwealth option, recognized Puerto Rico as a “self-governing body politic joined in political relationship with the United States and under the sovereignty of the United States.” The bill also provided for enhanced commonwealth status to stimulate economic development. This provision would have allowed elected officials in Puerto Rico, through joint resolutions, to exempt the commonwealth from the applicability of certain federal laws, pursuant to specified procedures. International agreements consistent with the laws and obligations of the United States could have been entered into by the Governor of Puerto Rico. Also, the Governor could have been authorized to notify federal agencies of the inconsistency of proposed rules with commonwealth policy, with resultant actions specified. The bill also would have authorized the commonwealth to impose tariff duties on foreign imports, encouraged consultation with the Governor of the commonwealth concerning tariff changes, and required consultation with local officials in filling specified federal offices in Puerto Rico. In addition, the bill would have established a liaison office in the Senate and established a passport office in Puerto Rico, exempted certain television broadcast agreements from federal antitrust laws, and facilitated the review of federal property exchange.

*Issues of Debate on S. 712.* The debate on S. 712 resulted in the discussion of many facets of the status debate. Hearings were held by three committees to obtain public comments, the viewpoints of administration officials, and statements from political leaders in Puerto Rico.

The Senate Committee on Energy and Natural Resources, the primary committee of jurisdiction, held eight days of hearings on S. 712.<sup>100</sup> During these hearings, senators and witnesses discussed a range of issues raised by the status debate, including: the referendum process (including campaign financing, voting rights of mainland Puerto Ricans, and ballot components), continuation of citizenship rights, language requirements, constitutional provisions, international relations, trade, transition requirements (including modifying standing tax benefits and continued federal aid), transfer of historic and other property, financial and economic development matters, judiciary concerns (including official language for court proceedings, appointment of judges, and jurisdiction), fisheries and mineral rights, national defense and security, and other matters.

In addition, the Senate Committee on Agriculture held a hearing on nutrition and food purchase assistance.<sup>101</sup> Discussion ensued in the hearing on the Nutrition Assistance Program (NAP), instituted in 1982. The NAP replaced the food stamp benefits previously provided to Puerto Rico with a block grant administered by the government of Puerto Rico. The legislation authorized Puerto Rico to exercise greater flexibility in designing a program to provide assistance to low-income families. Witnesses at the hearing spoke to how a change in status would affect recipients of such assistance.

The Senate Committee on Finance held three days of hearings on S. 712 to discuss perceptions of the status alternatives and projected cost implications of a status change.<sup>102</sup> Federal benefits, economic indicators, and interpretations of the bill received attention in the hearings. In particular, discussion occurred on the future of the Section 936 tax benefit, notably whether it would be constitutional, under the Uniformity Clause of the U.S. Constitution,<sup>103</sup> for a new State of Puerto Rico to enjoy a tax benefit not extended to other states. In addition to information presented in the hearing documents, the Senate Committee on Finance prepared a committee print that summarized tax provisions related to Puerto Rico and the relevant provisions of S. 712. The report also set out tax implications of the legislation for each of the three status options.<sup>104</sup>

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<sup>100</sup> U.S. Congress, Senate Committee on Energy and Natural Resources, *Political Status of Puerto Rico*, hearings on S. 710, S. 711, and S. 712, 101<sup>st</sup> Cong., 1<sup>st</sup> sess., June 1 and 2 (Part 1), June 16-18 (Part 2), July 11, 13-14 (Part 3), 1989 (Washington: GPO, 1989).

<sup>101</sup> U.S. Congress, Senate Committee on Agriculture, Nutrition, and Forestry, *Puerto Rico Status Referendum Act — S. 712*, hearing on S. 712, 101<sup>st</sup> Cong., 1<sup>st</sup> sess., Nov. 9, 1989 (Washington: GPO, 1991), p. 272.

<sup>102</sup> U.S. Congress, Senate Committee on Finance, *Puerto Rico's Political Status*, hearing on S. 712, 101<sup>st</sup> Cong., 1<sup>st</sup> sess., Nov. 14-15, 1989 (Part 1), Apr. 26, 1990 (Part 2) (Washington: GPO, 1990).

<sup>103</sup> Art. I, Sec. 8, cl. 1 reads: “the Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises ... but all Duties, Imposts and Excises shall be uniform throughout the United States;”

<sup>104</sup> U.S. Congress, Senate Committee on Finance, prepared by staff of the Joint Committee on Taxation, *Tax Rules Relating to Puerto Rico Under Present Law and Under Statehood*, (continued...)

According to one summary of the debate in Congress, tax treatment of Puerto Rico and the cost implications of independence and statehood complicated Senate consideration of S. 712.<sup>105</sup> Some Senators questioned the quality of Treasury Department statistics that projected net revenue gains to the U.S. from statehood or independence. In addition, the issue of representation in Congress arose. Debate centered on whether to increase the size of the House or to reapportion the 435 seats, in addition to the bill's provision for a "shadow," or non-voting Senator. Commonwealth supporters reportedly perceived the bill to be biased toward statehood, particularly the provision that would have provided financial benefits from statehood in the early years, with increased tax burdens reserved for later years. Finally, the impact of the legislation on proposals to grant statehood to the District of Columbia, including the appointment of a shadow Senator, affected debate.

The Energy and Natural Resources Committee reported S. 712 on August 2, 1989, by a vote of 11 ayes to 8 nays, with a recommendation that the bill be approved. The Finance Committee also reported S. 712, but did not include a recommendation on whether the bill should be approved.<sup>106</sup> No further action occurred.

**H.R. 4765.** Dissatisfaction with the Senate's approach led to preparation of alternative legislation in the House.<sup>107</sup> H.R. 4765, introduced by Representative de Lugo on May 9, 1990, resembled S. 711, one of the Senate bills not acted upon by the Senate committees.

As passed by the House on October 10, 1990, H.R. 4765 would have authorized \$13.5 million for a referendum to be held on September 16, 1991. The bill included four voting options to be presented in the referendum — "independence," "statehood," "a new commonwealth relationship," and "none of the above." If a majority of voters in the referendum had selected one of the three status options, the committees of jurisdiction, in consultation with principal parties of Puerto Rico and others, would have been required to draft implementing legislation within time

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<sup>104</sup> (...continued)

*Independence, and Enhanced Commonwealth Status (S. 712, Puerto Rico Status Referendum Act)*, joint committee print (Washington: GPO, 1989), p. 51.

<sup>105</sup> For a summary see "Puerto Rico Statehood Considered in Senate," in *Congressional Quarterly Almanac, 101<sup>st</sup> Congress, 1<sup>st</sup> Session, Vol. XLV* (Washington: Congressional Quarterly, Inc., 1989), pp. 356-361.

<sup>106</sup> U.S. Congress, Senate Committee on Energy and Natural Resources, *Puerto Rico Status Referendum Act*, report to accompany S. 712, 101<sup>st</sup> Cong., 1<sup>st</sup> sess., S.Rept. 101-120 (Washington: GPO, 1989), p. 70. U.S. Congress, Senate Committee on Finance, *Puerto Rico Status Referendum Act*, report to accompany S. 712, 101<sup>st</sup> Cong., 2<sup>nd</sup> sess., S.Rept. 101-481 (Washington: GPO, 1989), p. 55.

<sup>107</sup> See comments of the sponsor of the H.R. 2765, Rep. Ron de Lugo, remarks in the House, *Congressional Record*, daily edition, vol. 136, Oct. 10, 1990, p. 28314. See also U.S. Congress, House Committee on Interior and Insular Affairs, *Puerto Rico Self-Determination Act*, report to accompany H.R. 4765, 101<sup>st</sup> Cong., 2<sup>nd</sup> sess., H.Rept. 101-790, Part I (Washington: GPO, 1990), pp. 13-14.

frames specified in the legislation.<sup>108</sup> Once drafted, both chambers would have been required to meet a series of deadlines for expedited action to debate the legislation in each chamber.

While the bill did not include definitions and characteristics of the three status options, the report accompanying the legislation did.<sup>109</sup> The basic elements of the options, as presented in the House report, are summarized below.

(1) The report accompanying the legislation required that, if independence received the majority of votes, a constitution establishing a republican form of government be drafted, with a transition period of at least 10 years to provide for financial assistance and commerce incentives. Citizens of the United States born before the date of independence would have retained their citizenship; demilitarization would have been considered, and the President would have been authorized to negotiate agreements with the new republic.

(2) The statehood option would have provided for the admission of Puerto Rico as a state, with all rights and obligations of the other states extended to Puerto Rico. The citizenship of persons born in Puerto Rico would have been “constitutionally guaranteed,” and voting rights in presidential elections, representation in Congress, and benefits and obligations would have been extended to residents of the new state. Also, Congress would have provided for a “reasonable and fair” transition of the economy under statehood.

(3) The new commonwealth relationship would have been permanent and only alterable through mutual consent. The new commonwealth would have been “an autonomous body politic with its own character and culture” exercising sovereignty over matters governed by the Puerto Rican constitution, consistent with the U.S. Constitution. U.S. citizenship of those born in Puerto Rico would have been guaranteed in accordance with the Fifth Amendment and would have been equal to that granted to citizens born in the states. All “rights, privileges, and immunities” set forth in the U.S. Constitution would have applied. Federal benefits equal to those provided in other states would have been assured, contingent upon equitable contributions being made. Proposals for international agreements would have been presented to Congress and the President, with both branches determining the outcome of the proposals.

*Issues of Debate on H.R. 4765.* Compared to the official record of debate on S. 712, that for H.R. 4765 is scant. The nearly unanimous approval of H.R. 4765 by the Committee on Interior and Insular Affairs (37 ayes to 1 nay) reportedly “represented a hard-won compromise between committee members who favored

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<sup>108</sup> U.S. Congress, House Committee on Interior and Insular Affairs, *Puerto Rico Self-Determination Act*, report to accompany H.R. 4765, 101<sup>st</sup> Cong., 2<sup>nd</sup> sess., H.Rept. 101-790, Part I (Washington: GPO, 1990), p. 39.

<sup>109</sup> The Resident Commissioner of Puerto Rico, in an additional viewpoint appended to the report, considered the definitions in the report “morally and politically binding.”

widely different options.”<sup>110</sup> Differences among Members, administration officials, and Puerto Rico’s leaders were resolved prior to the committee vote. As noted by the floor manager for the legislation during the debate on the House floor, “The substitute before the House was worked out in months of negotiations with the White House and Puerto Rico’s parties.”<sup>111</sup>

No statements in opposition to the legislation were made on the floor of the House, and the bill passed under suspension of the rules.<sup>112</sup> However, certain issues mentioned by some Members of Congress during the floor debate provided an indication of the issues under discussion. These included the expedited implementation procedures (which overrode normal rules of the House), the scope of the status options in the House report, the absence of a provision protecting the language and culture of Puerto Ricans, participation of nonresidents in the plebiscite, the option of including self-executing provisions, and judicial consideration of cases relating to the referendum.

**102<sup>nd</sup> Congress.** Relatively little action occurred on the status issue during the 102<sup>nd</sup> Congress. Senator Johnston introduced legislation (S. 244) that, unlike the self-executing text in S. 712 as reported in the 101<sup>st</sup> Congress, provided that Congress would consider implementing legislation subsequent to a referendum. Following adoption of that legislation by Congress, a second vote would have been held in Puerto Rico to ratify the implementing legislation. S. 244 was not reported out of committee for a variety of reasons, including projected costs, disagreement over the role of Congress in the status debate, and concern over language and cultural differences.<sup>113</sup> Status legislation in the House (H.R. 316) that was similar to H.R. 4765 in the previous Congress also received no action.

**103<sup>rd</sup> Congress.** Three concurrent resolutions (H.Con.Res. 94, H.Con.Res. 300, S.Con.Res. 75) were introduced in the 103<sup>rd</sup> Congress on the status issue. The House Resources Committee held a hearing on H.Con.Res. 94, a resolution expressing congressional endorsement that Puerto Ricans had the right of self-determination.<sup>114</sup> No other actions were taken on any of the three resolutions.

Despite the lack of progress on the issue in Congress, Governor Pedro Rosselló and the legislature of Puerto Rico agreed to authorize a plebiscite on status. The

<sup>110</sup> “Puerto Rico’s Status Remains Unresolved,” *Congressional Quarterly Almanac*, 101<sup>st</sup> Cong., 2<sup>nd</sup> sess. (Washington: Congressional Quarterly, Inc., 1990), p. 426.

<sup>111</sup> Rep. Ron de Lugo, remarks in the House, *Congressional Record*, daily edition, vol. 136, Oct. 10, 1990, p. 28309.

<sup>112</sup> The debate is found in *ibid.*, pp. 28307-28337.

<sup>113</sup> “No Progress Made on Puerto Rico Plebiscite,” *Congressional Quarterly Almanac*, 102<sup>nd</sup> Congress, 1<sup>st</sup> Session, Vol. XLVII (Washington: Congressional Quarterly, Inc., 1991), pp. 184-185.

<sup>114</sup> U.S. Congress, House Committee on Natural Resources, Subcommittee on Insular and International Affairs, *Puerto Rico Self-Determination Part I and II*, hearings, 103<sup>rd</sup> Cong., 1<sup>st</sup> sess., July 13, 1993 (Washington: GPO, 1994), p. 194, 232.

second plebiscite on Puerto Rico's political status was held on November 14, 1993, as discussed on page 9 this report.

**104<sup>th</sup> Congress.** On December 14, 1994, the legislature of Puerto Rico approved a concurrent resolution that called on the 104<sup>th</sup> Congress to act on the 1993 plebiscite. Subsequently, during the 104<sup>th</sup> Congress (1995-1996), action was taken on one political status bill. The House Committees on Resources and Rules reported legislation (H.R. 3024) that would have authorized a referendum, a transition period, and implementation mechanisms on the status issue. Opposition to the legislation focused on the definition of "commonwealth" in the bill, the proposed referendum process, and the transition mechanism.<sup>115</sup> The House did not act on the reported bill.

In response to the concurrent resolution approved by the Puerto Rican legislature in December 1994, two House subcommittees with jurisdiction held a hearing.<sup>116</sup> The subcommittees received statements from the major political leaders in Puerto Rico and others. Subsequently, three House chairmen and one subcommittee chairman with jurisdiction over Puerto Rico sent a letter to the leaders of the Puerto Rican legislature on February 29, 1996. The letter noted the Members' disagreement with the terms and definitions of "commonwealth" that were included on the 1993 ballot and affirmed that Congress must define the "real options for change and the true legal and political nature of the status quo, so that the people can know what the actual choices will be in the future." The letter ended with the notation that "The question of Puerto Rico's political status remains open and unresolved."<sup>117</sup>

**H.R. 3024.** On March 6, 1996, the chair of the House Resources Committee introduced H.R. 3024 to provide for a referendum to be held no later than December 31, 1998. The bill would have required that the ballot present two "paths" before the voters — (1) self-government through independence or free association or (2) United States sovereignty leading to statehood. Under independence or free association, treaties or bilateral pacts would have governed in areas of shared interest between the two nations, Congress would have established citizenship criteria for retention of citizenship, and aid would have been provided as determined by the Congress and the President.

The bill set out three stages to be followed in the status determination process. (The three transition stages would have required actions to be taken over a span of roughly 14 years.) First would have been an initial decision stage for the two questions to be placed before Puerto Rican voters. Second would have been a transition stage that would have required the President, within six months of

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<sup>115</sup> "Puerto Rico Status," *Congressional Quarterly Almanac, 104<sup>th</sup> Congress, 2<sup>nd</sup> Session, Vol. LII* (Washington: Congressional Quarterly, Inc., 1996), pp. 3-8.

<sup>116</sup> U.S. Congress, House Committee on Resources, Subcommittee on Native American and Insular Affairs, and House Committee on International Relations, Subcommittee on the Western Hemisphere, *Puerto Rico Status Plebiscite*, hearing, 104<sup>th</sup> Cong., 1<sup>st</sup> sess., Oct. 17, 1995 (Washington: GPO, 1996), p. 377.

<sup>117</sup> Statement of Rep. Don Young, remarks in the House, *Congressional Record*, daily edition, vol. 142, Mar. 6, 1996, p. E299.

certification of ballot results, to submit legislation to establish a 10-year transition plan, allow for expedited congressional consideration of the plan, and a second referendum before the people of Puerto Rico on the transition plan approved by the President and the Congress. Third would have been an implementation stage that, no less than two years before the end of the 10-year transition plan to require expedited congressional approval of a presidential proposal for self-government under the preferred status option. Following approval of this plan by Congress and the President, a third referendum would have been held, with majority approval required for the results to be considered valid. Should any of the referenda have proven inconclusive, the existing commonwealth form of government would have continued. The bill would have authorized grants to be provided by the President for the referenda and for voter education.

Following a hearing on the bill that was held in Puerto Rico,<sup>118</sup> sponsors sought to revise H.R. 3024 to include a third path on the ballot — enhanced commonwealth. If approved by voters, the revision would have specified a guarantee of irrevocable citizenship, fiscal autonomy for Puerto Rico, and other benefits.<sup>119</sup> This amendment was rejected in subcommittee on June 12, 1996.

On July 26, 1996, the Committee on Resources reported out the legislation. As reported, the bill would have modified the initial decision stage in the original bill by placing the following options before voters: continuation of “the present Commonwealth structure,” self-government through either independence or free association, or, sovereignty leading to statehood. The second, or transition, stage was amended to authorize the legislature of Puerto Rico to call for a constitutional convention if a vote for separate sovereignty prevailed in the referendum.

*Issues of Debate on H.R. 3024.* During the March 1996 hearing in San Juan, Puerto Rico, leaders of the statehood, commonwealth, and independence factions spoke to the interpretation of the referendum held on November 14, 1993 and the legislation before the subcommittee. Discussion during the hearing centered on the definition of “commonwealth,” the differences in culture and language between Puerto Rico and the states, and standards established by the United Nations on decolonization.<sup>120</sup>

In June 1996, during subcommittee and committee debate on the legislation, some Members of Congress considered amendments that would have altered components of the bill. Most were rejected, including an amendment that would

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<sup>118</sup> U.S. Congress, House Committee on Resources, *U.S.-Puerto Rico Political Status Act*, hearing on H.R. 3024, 104<sup>th</sup> Cong., 2<sup>nd</sup> sess., Mar. 23, 1996 (Washington: GPO, 1996), p. 249.

<sup>119</sup> Refer to statement of Rep. Elton Gallegly, remarks in the House, *Congressional Record*, daily edition, vol 142, June 4, 1996, p. E988-989.

<sup>120</sup> See House Committee on Resources, *U.S.-Puerto Rico Political Status Act*. Because the hearing was held in San Juan, a number of witnesses replied in Spanish to Members’ questions. As a result, while all prepared statements included in the hearing record are in English, a considerable amount of information on witnesses’ viewpoints is presented solely in Spanish.



have placed the option of enhanced commonwealth, as approved by a plurality of those voting in the referendum, in the legislation.<sup>121</sup> Another rejected amendment would have revised the process set forth in the legislation by separating statehood and independence, instead of combining them in one option to be subsequently differentiated in another question. Still another amendment would have replaced the transition period of a decade with immediate effectuation after the results of the referendum were tabulated. Amendments that were adopted included a continuation of commonwealth status on the ballot (a definition opposed by the PDP) and continued referenda every four years “until Puerto Rico’s unincorporated territory status is terminated in favor of a recognized form of full self-government in accordance with this Act.”

The House Committee on Rules reported out the bill in September 1996, in the closing days of the 104<sup>th</sup> Congress, and amended Section 6 of the bill concerning expedited congressional consideration of the legislation specified in H.R. 3024. No further action was taken on H.R. 3024 during the 104<sup>th</sup> Congress.

**105<sup>th</sup> Congress.** As in the 104<sup>th</sup> Congress, the primary action on the status issue took place only in the House. The chairman of the House Resources Committee introduced H.R. 856, the United States-Puerto Rico Political Status Act, on February 27, 1997. The bill, in amended form, was reported out of committee in a near unanimous vote (44 ayes to 1 nay) on June 12, 1997. On March 4, 1998, the bill was debated on the floor of the House and was approved by a one vote margin. No action occurred in the Senate on the bill, but a resolution (S.Res. 279) was adopted that acknowledged Senate support for a plebiscite in Puerto Rico.

**H.R. 856.** The text of H.R. 856 was roughly similar to H.R. 3024 considered during the previous Congress. H.R. 856, like its predecessor legislation, included definitions of the status options and provided for a three-stage process — initial decision, transition, and implementation, with the transition period for separate sovereignty or statehood lasting no more than 10 years.

Some provisions differed between the two bills. H.R. 856, as approved by the House, included an English language provision, along with the expectation (“it is anticipated”) that English would be the “official language of the federal government in Puerto Rico” to the extent required by law throughout the United States. Also, like H.R. 3024, the bill called for additional referenda to be held in the event the initial referendum proved inconclusive. The difference, however, was that the referenda would be held at least once every 10 years (unlike the quadrennial schedule in H.R. 3024) if neither statehood nor separate sovereignty received a majority of the votes. Also, the descriptions of the status options were altered in H.R. 856 to reflect suggestions from political leaders in Puerto Rico.

*Issues of Debate on H.R. 856.* As in previous debates, disagreement over the definitions of the status options dominated. Advocates of H.R. 856 perceived the bill would establish a fair process to enable Puerto Ricans to select a status option.

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<sup>121</sup> Information summarized from H.Rept. 104-713, Part 1, and “Puerto Rico Status,” *Congressional Quarterly Almanac* (Washington: 1996), vol. LII, pp. 3-8.

Others disagreed, however, with some arguing that the legislation biased the referendum process toward statehood. Members of the PDP disagreed with the commonwealth description in the bill. Critics argued that, under the legislation, a vote in favor of statehood would be the catalyst for congressional action, whereas a majority vote for continuing commonwealth status would require additional future referenda “until you get it right.”<sup>122</sup> It was also argued that the definition of “commonwealth” in the legislation was anathema to commonwealth supporters, leaving them only one option — to boycott the referendum. One Member of Congress contended that the bill:

[would] deny U.S. citizenship to the children of Puerto Ricans if commonwealth is chosen ... threatens the Puerto Rican people with the loss of federal benefits if they reject statehood ... denies Puerto Ricans on the mainland in the United States the right to participate in this vital process ... neglects our distinct Puerto Rican history as a people and a nation ... abandons the idea of democracy and embraces the imposition of the will of the few on the hopes and dreams of the many.<sup>123</sup>

During the 10-hour debate on the floor of the House on March 4, 1998, some of the same issues discussed in previous years were raised again. Some argued that this bill, like H.R. 3024 from the 104<sup>th</sup> Congress, was biased toward the statehood position. Opponents also argued that it included unconstitutional provisions, established an expedited process that did not allow for sufficient consideration, and did not adequately address the citizenship issue. Some of the reasons stated for Senate inaction included the lack of time, the dearth of backing from commonwealth supporters, and concern on the part of the Republican leadership that statehood would result in Democratic gains in Congress. The 105<sup>th</sup> Congress, like those before it, ended without resolution of the matter

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<sup>122</sup> Rep. Roger Wicker, remarks in the House, *Congressional Record*, daily edition, vol. 144, Mar. 4, 1998, p. H768.

<sup>123</sup> Rep. Luis Gutierrez, remarks in the House, *Congressional Record*, daily edition, vol. 143, Sept. 24, 1997, p. H7738.