

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HM 147 Status of Puerto Rico  
**SPONSOR(S):** Local, Federal & Veterans Affairs Subcommittee, Cortes, B.  
**TIED BILLS:** IDEN./SIM. **BILLS:** SM 940

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	14 Y, 0 N, As CS	Miller	Miller
2) Government Accountability Committee	21 Y, 0 N	Miller	Williamson

### SUMMARY ANALYSIS

The United States has administered the islands of Puerto Rico since the end of the Spanish-American War in 1898. Although the people of Puerto Rico have been United States citizens since 1917, the island was never “incorporated” into the United States. The United States Constitution applies within Puerto Rico, but as the islands remain an unincorporated territory, Congress may determine whether certain provisions, such as the right to a trial by jury, apply to Puerto Rico residents. Over time, the people of Puerto Rico acquired the right to certain forms of self-government through their own constitution (creating the Commonwealth of Puerto Rico) but receive different treatment under some federal laws simply because they are not entitled to the same treatment as United States citizens living within one of the states.

The memorial urges Congress to incorporate the territory and resident United States citizens of Puerto Rico into the United States and to apply law and policy in Puerto Rico on the same basis as in a state of the union without discrimination or inequality.

Legislative memorials are not subject to the Governor’s veto power and are not presented to the Governor for review. Memorials have no force of law, as they are mechanisms for formally petitioning the federal government to act on a particular subject.

This memorial does not have a fiscal impact on state or local governments.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

##### 1898 – 1899: Acquisition and Accession by the United States

The United States has administered the islands of Puerto Rico<sup>1</sup> since the conclusion of the Spanish-American War in 1898. The treaty ceding Puerto Rico and other territories to the United States<sup>2</sup> provided in part that the “civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by Congress.”<sup>3</sup>

The United States acceded to control of Puerto Rico under terms significantly different from prior territorial acquisitions. In the Louisiana Purchase, the United States provided the inhabitants of the territory “shall be *incorporated* into the Union of the United States, and admitted as soon as possible (to full rights of citizenship).”<sup>4</sup> The terms of acquiring Florida,<sup>5</sup> territory from Mexico,<sup>6</sup> and Alaska<sup>7</sup> similarly *incorporated* the inhabitants of the new territories into the United States. Contemporaneous with the acquisition of Puerto Rico, the former Republic of Hawaii was annexed as a territory of the United States.<sup>8</sup> In contrast, neither the territory nor the inhabitants of Puerto Rico were incorporated into or as part of the United States. This distinction continues to govern the status of the islands.

##### 1900-1952: Unincorporated Territory

While Puerto Rico initially was placed under military jurisdiction, in 1900 Congress passed what is commonly known as the “Foraker Act” or the “Organic Act of 1900,”<sup>9</sup> providing a civilian government for the territory,<sup>10</sup> an elected non-voting Resident Commissioner in Congress,<sup>11</sup> and applying certain federal laws to the islands.<sup>12</sup> The Foraker Act also recognized those residing on the islands as of April 11, 1900, who did not choose to retain Spanish citizenship, together with resident United States citizens, to constitute The People of Porto Rico<sup>13</sup> and exercise the governmental powers provided in the act.<sup>14</sup>

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<sup>1</sup> “Puerto Rico” applies not only to the main island but to several adjacent islands and their surrounding waters. 48 U.S.C. s. 731. The surrounding islands include Vieques, Culebra, Culebrita, Palomino, Mona, and Monito. At <http://welcome.topuertorico.org/geogra.shtml> (accessed 10/30/2017).

<sup>2</sup> “Treaty of Peace between the United States and Spain,” 30 Stat. 1754 (Dec. 10, 1898) (Treaty of Paris). Under the Treaty Spain ceded Puerto Rico, the Philippines, and Guam. Treaty of Paris, articles II & III.

<sup>3</sup> Treaty of Paris, art. IX, cl. 2.

<sup>4</sup> “Treaty Between the United States of America and the French Republic,” art. III, 8 Stat. 200 (1803), 1803 WL 890 (United States Treaty) (emphasis supplied).

<sup>5</sup> “Treaty of Amity, Settlement, and Limits, Between the United States of America and his Catholic Majesty,” art. VI, 8 Stat. 252, 1820 WL 2057 (United States Treaty) (1819).

<sup>6</sup> “Treaty of Guadalupe Hidalgo,” art. IX, 9 Stat. 922, 1848 WL 6374 (United States Treaty) (1848).

<sup>7</sup> “Treaty concerning the Cession of the Russian Possessions in North America by his Majesty the Emperor of all the Russians to the United States of America,” art. III, 15 Stat. 539, 1867 WL 10236 (United States Treaty) (1867).

<sup>8</sup> “Joint Resolution to provide for annexing the Hawaiian Islands to the United States,” 55 Res. No. 55, 30 Stat. 750, (Newlands Resolution) (July 7, 1898).

<sup>9</sup> “An Act Temporarily to provide revenue and a civil government for Porto Rico, and for other purposes,” (sic) 31 Stat. 77 (April 12, 1900) (Foraker Act). See Library of Congress, *Foraker Act (Organic Act of 1900)*, at <https://www.loc.gov/rr/hispanic/1898/foraker.html> (accessed 10/10/2017).

<sup>10</sup> Foraker Act, ss. 15-37.

<sup>11</sup> Foraker Act, s. 39. The voters in Puerto Rico would elect the Resident Commissioner biennially.

<sup>12</sup> Foraker Act, s. 14. These included federal statutory laws not otherwise made inapplicable in Puerto Rico but did not include the internal revenue laws.

<sup>13</sup> The island officially was renamed “Puerto Rico” in 1932. See 48 U.S.C. s. 731a, codifying ch. 190, 47 Stat. 158 (May 17, 1932).

<sup>14</sup> Foraker Act, s. 7.

Contemporaneously, the United States Supreme Court decided a series of cases, known as the *Insular Cases*, addressing whether the United States Constitution applied to any territory that was not a state.<sup>15</sup> While the Court generally found the Constitution applied within the new territories by its own terms, not legislative action, this conclusion raised issues concerning the extent of such application and the resulting administration of law, particularly by the existing legal systems in the territories acquired from Spain. The Court thus developed the doctrine of “territorial incorporation” and found the Constitution fully applied in those territories incorporated into the United States and destined for statehood but only partially applied in those unincorporated territories over which the United States exerted exclusive control.<sup>16</sup>

The Jones-Shafroth Act of 1917<sup>17</sup> made significant changes in both the organization of the Puerto Rico government and the relationship of the territory with the United States. This act established a bill of rights for the territory,<sup>18</sup> created a bicameral legislature,<sup>19</sup> and increased the term of the Resident Commissioner from two to four years.<sup>20</sup> The act granted United States citizenship to all residents of the islands.<sup>21</sup> However, Puerto Rico remained an unincorporated territory of the United States.

In *Balzac v. People of Porto Rico*,<sup>22</sup> the United States Supreme Court resolved whether the United States Constitution guaranteed the right to a jury trial in Puerto Rico. The Court found the full guarantees of the Constitution would apply in any territory incorporated into the United States and recognized that incorporation into the Union was an important step towards statehood.<sup>23</sup> Incorporation would be accomplished by express congressional declaration or “implication so strong as to exclude any other view.”<sup>24</sup> Congress made no such declaration in the Jones-Shafroth Act and the terms of the act did not show a strong implication supporting incorporation. Accordingly, the Court found the act continued Puerto Rico’s unincorporated status and there was no constitutionally protected right to a jury trial.<sup>25</sup>

The Jones-Shafroth Act also provided that bonds issued by the government of Puerto Rico or under its authority are exempt from federal, state, and local taxation regardless of the location of the bondholder.<sup>26</sup> This provision made Puerto Rican municipal debts particularly attractive to bondholders, since municipal bonds generally are exempt from taxation only when held by residents of the issuing state.<sup>27</sup>

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<sup>15</sup> See *De Lima v. Bidwell*, 182 U.S. 1, 21 S.Ct. 743, 45 L.Ed. 1041 (1901); *Dooley v. United States*, 182 U.S. 222, 21 S.Ct. 762, 45 L.Ed. 1074 (1901); *Armstrong v. United States*, 182 U.S. 243, 21 S.Ct. 827, 45 L.Ed. 1086 (1901); *Downes v. Bidwell*, 182 U.S. 244, 21 S.Ct. 770, 45 L.Ed. 1088 (1901); *Hawaii v. Mankichi*, 190 U.S. 197, 23 S.Ct. 787, 47 L.Ed. 1016 (1903); *Dorr v. United States*, 195 U.S. 138, 24 S.Ct. 808, 49 L.Ed. 128 (1904).

<sup>16</sup> See *Boumediene v. Bush*, 553 U.S. 723, 757-758, 128 S. Ct. 2229, 2254, 171 L.Ed. 2d 41 (2008)

<sup>17</sup> “An Act To provide a civil government for Porto Rico, and for other purposes” (sic), Pub. L. No. 64-368, 39 Stat. 951 (Mar. 2, 1917) (Jones-Shafroth Act). Generally codified at 48 U.S.C. ch. 4.

<sup>18</sup> Jones-Shafroth Act, s. 2.

<sup>19</sup> Jones-Shafroth Act, s. 25.

<sup>20</sup> Jones-Shafroth Act, s. 29.

<sup>21</sup> Jones-Shafroth Act, s. 5.

<sup>22</sup> 258 U.S. 298, 42 S.Ct. 343, 66 L.Ed. 627 (1922).

<sup>23</sup> *Balzac*, supra at 258 U.S. 311.

<sup>24</sup> *Balzac*, supra at 258 U.S. 306.

<sup>25</sup> For example, the Court noted the act provided a bill of rights, which would not have been necessary if the act incorporated the territory into the Union, thereby making applicable the entire Bill of Rights in the Constitution. By articulating a separate bill of rights for citizens in Puerto Rico, Congress displayed its intent not to incorporate the territory into the United States. *Balzac*, supra at 258 U.S. 306-307.

<sup>26</sup> Jones-Shafroth Act, s. 3.

<sup>27</sup> See “The Bonds that Broke Puerto Rico” (N.Y. Times, June 30, 2015), at <http://www.nytimes.com/2015/07/01/business/dealbook/the-bonds-that-broke-puerto-rico.html> (accessed 10/10/2017).

## 1952 – Present: Commonwealth of Puerto Rico

Passage of the Puerto Rico Federal Relations Act of 1950 paved the way for modern self-government.<sup>28</sup> The act authorized the Legislature of Puerto Rico to call for a referendum to establish a constitutional convention.<sup>29</sup> The new constitution drafted by the convention was approved by voters on March 3, 1952,<sup>30</sup> approved by Congress on July 3, 1952,<sup>31</sup> and officially proclaimed on July 25, 1952.<sup>32</sup>

United States citizens residing in Puerto Rico have those rights, privileges, and immunities of citizens of all states in the same manner as if Puerto Rico was a state.<sup>33</sup> Residents in Puerto Rico may qualify for benefits under Old-Age, Survivors, and Disability Insurance administered by the Social Security Administration.<sup>34</sup> Supplemental Security Income benefits are not provided to residents in Puerto Rico.<sup>35</sup> Those in Puerto Rico may enroll in Medicaid and the Children's Health Insurance Program (CHIP).<sup>36</sup>

Resident United States citizens of Puerto Rico are treated separately from United States citizens in the several states. Puerto Rico residents may exclude all sources of income from sources in the Commonwealth when reporting income for United States income taxes. Such taxpayers need not file a tax return if all income is from sources in Puerto Rico. However, if they have income from sources outside Puerto Rico that exceeds the filing thresholds, they are required to file a United States tax return.<sup>37</sup> In 2015, residents of Puerto Rico paid \$3,524,557 in federal taxes, primarily FICA but also self-employment taxes, unemployment insurance taxes, estate and trust taxes, estate taxes, gift taxes, and excise taxes.<sup>38</sup>

As an unincorporated territory, the Commonwealth of Puerto Rico continues to be administered by Congress and the rights of the resident United States citizens are subject to interpretation as to which constitutionally protected rights are applicable in the territory. In a recent decision, the United States Supreme Court reaffirmed the concept that questions of extraterritorial application of the United States Constitution hinge on objective factors and practical concerns, not a rigid formalistic approach.<sup>39</sup>

### The Status Question

Since the adoption and promulgation of its constitution in 1952, the Commonwealth of Puerto Rico exercises significant local governmental control but remains an unincorporated territory. In a series of referenda, the people of Puerto Rico affirmed the current Commonwealth status but support for statehood increased. Some local judicial decisions examined whether actions by Congress over time should be interpreted as effectively incorporating Puerto Rico into the United States, resulting in full application of the United States Constitution to the rights of resident United States citizens. Finally, beginning in 2000, a series of Presidential executive orders created and continued a task force to examine the island's political status as well as looking to economic development and other needs of the citizens.

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<sup>28</sup> "Puerto Rico Federal Relations Act of 1950," Pub. L. No. 81-600 (July 3, 1950). See 48 U.S.C. ss. 731a – 731e. The proposed constitution was required to provide for both a republican form of government and a bill of rights. 48 U.S.C. s. 731c.

<sup>29</sup> Puerto Rico Federal Relations Act of 1950, s. 2.

<sup>30</sup> Dieter Nohlen, *Elections in the Americas A Data Handbook Volume 1: North America, Central America, and the Caribbean* 556 (Oxford University Press 2005).

<sup>31</sup> Pub. L. No. 82-447 (July 3, 1952).

<sup>32</sup> PBS, Puerto Rico: A Timeline, <http://www.pbs.org/wgbh/masterpiece/americancollection/woman/timeline.html> (last visited Mar. 10, 2015).

<sup>33</sup> 48 U.S.C. s. 737.

<sup>34</sup> At <https://www.ssa.gov/policy/docs/statcomps/supplement/2016/oasdi.pdf> (accessed 10/6/2017).

<sup>35</sup> At <https://www.ssa.gov/policy/docs/statcomps/supplement/2016/ssi.pdf> (accessed 10/6/2017).

<sup>36</sup> As of June 2105, 1,671,657 people in Puerto Rico were enrolled in Medicaid or CHIP. At <https://www.medicaid.gov/medicaid/by-state/puerto-rico.html> (accessed 10/7/2017).

<sup>37</sup> At <https://www.irs.gov/taxtopics/tc900/tc901> (accessed 10/7/2017)

<sup>38</sup> At <https://www.irs.gov/statistics/soi-tax-stats-gross-collections-by-type-of-tax-and-state-irs-data-book-table-5> (accessed 10/7/2017).

<sup>39</sup> *Boumediene*, supra at 553 U.S. 757-758, 764, 128 S. Ct. 2229, 2254-2255, 2258.

In a case about the Commonwealth's compliance with federal law concerning adequate Medicaid payments, the United States District Court for the District of Puerto Rico examined whether the Spending Clause of the United States Constitution<sup>40</sup> applied to Puerto Rico.<sup>41</sup> Restating findings from an earlier order in the same case, the Court observed that Congress' entire course of conduct since 1899 effectively incorporated Puerto Rico into the United States.<sup>42</sup> In a subsequent case, a different judge from the same court considered a suit to compel the United States to apportion Puerto Rico into congressional districts. The plaintiffs in that case previously brought similar actions, and the court reiterated its prior decisions that citizens of Puerto Rico do not have the right to vote for members of Congress because Puerto Rico is not a state.<sup>43</sup> Plaintiffs argued the *Rullan* case showed Congress *de facto* had incorporated Puerto Rico into the United States. The court observed that even if that reasoning was correct, that only meant Puerto Rico would be an incorporated territory, not a state for purposes of electing members to Congress.<sup>44</sup>

In a memorandum dated November 30, 1992, President George H. W. Bush directed all federal executive departments and agencies to treat Puerto Rico administratively as if it was a state, to the extent doing so would not disrupt federal programs or operations.<sup>45</sup> President Clinton created the President's Task Force on Puerto Rico's Status in 2000 with its primary purpose to examine proposals for Puerto Rico's future political status.<sup>46</sup> The scope of the Task Force's area of inquiry was expanded by President Obama to include the administration of federal programs in Puerto Rico, job creation, education, health care, clean energy, and economic development.<sup>47</sup> In its 2011 report, the Task Force recommended a referendum be conducted in Puerto Rico, preferably posing two questions. First, whether the voters wanted to remain under the United States or preferred some form of independence. Second, if staying with the United States, whether Puerto Rico should continue as a commonwealth or become a state. Alternatively, if preferring independence, would that be complete independence or some form of "free association" under which the island would be independent but still have some integrated relationship with the United States.<sup>48</sup>

The population of Puerto Rico in 2016 was approximately 3,411,307.<sup>49</sup> If admitted to the Union as a state, Puerto Rico would rank 30<sup>th</sup> in population<sup>50</sup> with a potential congressional delegation of five members in the House of Representatives and two Senators.<sup>51</sup>

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<sup>40</sup> Art. I, s. 8, cl. 1, U.S. Const.

<sup>41</sup> *Consejo de Salud Playa de Ponce v. Rullan*, 586 F. Supp. 22 (D. Puerto Rico 2008).

<sup>42</sup> *Rullan*, supra at 43-44.

<sup>43</sup> *Igartua v. U.S.*, 86 F. Supp. 3d 50 (D. Puerto Rico 2015).

<sup>44</sup> *Igartua* supra at 56-57.

<sup>45</sup> At <https://bush41library.tamu.edu/archives/public-papers/5096> (accessed 10/28/2017).

<sup>46</sup> Executive Order 13183, 65 F.R. 82889 (12/29/2000). This original order required a report no later than May 1, 2001, which deadline was extended by President George W. Bush to August 1, 2001. Executive Order 13209, 66 F.R. 22105 (4/30/2001). This in turn was converted to a biennial reporting period by Executive Order 13319, 68 F.R. 68233 (12/3/2003).

<sup>47</sup> Executive Order 13517, 74 F.R. 57239 (10/30/2009).

<sup>48</sup> "Report by the President's Task Force on Puerto Rico's Status, Executive Summary" (3/16/2011), at <http://www.oslpr.org/v2/PDFS/ESTaskForceReportPRStatus.pdf> (accessed 10/28/2017).

<sup>49</sup> At <https://www.census.gov/search-results.html?q=puerto+rico&page=1&stateGeo=none&searchtype=web&cssp=SERP&search.x=0&search.y=0> (accessed 10/10/2017).

<sup>50</sup> Greater than the states of Alaska, Arkansas, Delaware, Hawaii, Idaho, Iowa, Kansas, Maine, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Dakota, Rhode Island, South Dakota, Utah, Vermont, West Virginia, Wyoming, and the District of Columbia. United States Census Bureau estimates at <https://www.census.gov/search-results.html?q=population+comparison+states+puerto+rico&page=1&stateGeo=none&searchtype=web&search.x=0&search.y=0> (accessed 10/10/2017).

<sup>51</sup> See <https://www.nytimes.com/2017/09/25/us/puerto-rico-hurricane-american.html> (accessed 10/10/2017).

Since 1967, there have been five separate referenda on Puerto Rico's status. The following table shows the results:<sup>52</sup>

Year	Voting Participation	Commonwealth	Statehood	Independence	Free Ass'n	None of the Above	Void/Blank
1967	65.9%	425,132	274,312	4,248	N/A	N/A	N/A
1993	73.5 %	826,326	788,296	75,620	N/A	N/A	10,748
1998	71.3%	993	728,157	39,838	4,536	787,900	4,846
2012	78.2%	N/A	834,191	74,895	Sovereign Cmnwth: 454,768	Blank: 498,604 Void: 16,744	
		Ballot Question: Retain Present Status: 828,077  Reject present status: 970,910	N/A	N/A		N/A	80,215
2017	22.9%	6,823	502,801	7,786	N/A	983	

According to these results, the voters' preference for statehood appeared to increase over time.

### Effect of Memorial

The memorial urges Congress to incorporate the territory and resident United States citizens of Puerto Rico into the United States and to apply law and policy in Puerto Rico on the same basis as in a state of the union without discrimination or inequality.

Copies of the memorial will be sent to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, and to each member of the Florida delegation to the United States Congress.

Legislative memorials are not subject to the Governor's veto power and are not presented to the Governor for review. Memorials have no force of law, as they are mechanisms for formally petitioning the federal government to act on a particular subject.

### B. SECTION DIRECTORY:

Not applicable.

<sup>52</sup> Results at <http://electionspuertorico.org/cgi-bin/events.cgi> (accessed 10/28/2017).

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

### B. RULE-MAKING AUTHORITY:

The memorial neither authorizes nor requires administrative rulemaking by executive branch agencies.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On November 8, 2017, the Local, Federal & Veterans Affairs Subcommittee adopted a strike-all amendment and approved the memorial as a committee substitute. The amendment revised the precatory clauses of the memorial to describe how Puerto Rico was not incorporated into the territory of the United States at the time the islands were acquired from Spain and the limited extent of the United States Constitution due to the ongoing unincorporated status. The amendment clarified that neither the grant of United States citizenship to Puerto Rico residents in 1917, nor the authorization of the Commonwealth's constitution in 1952, changed this unincorporated status. The amendment further argued that Congress' actions since 1898 appear effectively to have incorporated Puerto Rico into the United States to the extent

Congress should make official this change of status, particularly as to the impact on rights under federal law of individual United States citizens residing in Puerto Rico. Finally, the amendment noted that incorporation into the United States would not make Puerto Rico a state but would entitle its citizens to the same treatment and protection they would receive if residing in one of the states, especially pertaining to natural disaster relief. Therefore, the amendment urged Congress to incorporate Puerto Rico and its citizens into the territory of the United States but did not request an express path to statehood.

This analysis is drafted to the committee substitute as approved by the Local, Federal & Veterans Affairs Subcommittee.