

The original documents are located in Box 69, folder “10/21/76 HR9460 Virgin Islands and Guam Constitutions” of the White House Records Office: Legislation Case Files at the Gerald R. Ford Presidential Library.

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APPROVED
OCT 21 1976

510/21/76

THE WHITE HOUSE
WASHINGTON
October 20, 1976

ACTION

Last Day: October 25

MEMORANDUM FOR THE PRESIDENT

FROM: JIM CANNON *JAC*

SUBJECT: H.R. 9460 - Virgin Islands and Guam
Constitutions

Posted
10/22/76

Attached for your consideration is H.R. 9460, sponsored by Delegate deLugo of the Virgin Islands and 24 others.

Archives
10/22/76

The enrolled bill would authorize the citizens of the Virgin Islands and Guam to organize territorial governments under constitutions drafted by their own elected representatives. Specifically, the bill would authorize the legislatures of the Virgin Islands and Guam to call constitutional conventions for the purpose of drafting constitutions for the local self-governance of their citizens. The bill would require that such constitutions:

- recognize and be consistent with, the sovereignty of the United States over the Virgin Islands and Guam, as well as all other provisions of the U.S. Constitution, treaties and laws of the United States applicable to them.
- provide for a republican form of government, consisting of executive, legislative and judicial branches.
- contain a bill of rights; and
- provide for the establishment of a system of local courts.

Upon completion of its work, each convention would submit a proposed constitution to its Governor, who would transmit the proposed constitution to the President of the United States. Within 60 days of receipt, the President would forward each constitution, together with his comments, to the Congress. The Congress would then have 60 days to approve, amend, or modify each constitution by joint resolution. If the Congress should fail to act within the allotted 60 days, the constitution would be deemed approved.

Additional information, including agency comments, is provided in OMB's enrolled bill report at Tab A.



OMB, Max Friedersdorf, Counsel's Office (Kilberg), NSC and I recommend approval of the enrolled bill.

RECOMMENDATION

That you sign H.R. 9460 at Tab B.





EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

OCT 19 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 9460 - Virgin Islands and
Guam Constitutions
Sponsors - Del. deLugo (D) Virgin Islands and
24 others

Last Day for Action

October 25, 1976 - Monday

Purpose

Provides for the establishment of a constitution for the
Virgin Islands and for Guam.

Agency Recommendations

Office of Management and Budget	Approval
Department of the Interior	Approval
Department of State	Approval
National Security Council	No objection (Informally)
Department of Justice	Defers to Interior and State
Department of Defense	Defers to Interior and Justice

Discussion

Both the Virgin Islands and Guam are organized under law
as unincorporated territories of the United States. They
are administered by the Department of the Interior under
separate Organic Acts adopted by the Congress in 1931

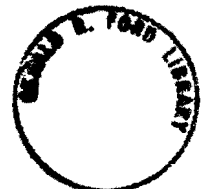


(Virgin Islands) and 1950 (Guam). In each case, subsequent amendments to these acts have provided for the popular election of a territorial governor since 1970 and of a non-voting delegate to the House of Representatives since 1972.

H.R. 9460 would authorize the citizens of the Virgin Islands and Guam to organize territorial governments under constitutions drafted by their own elected representatives. Specifically, the bill would authorize the legislatures of the Virgin Islands and Guam to call constitutional conventions for the purpose of drafting constitutions for the local self-governance of their citizens. The bill would require that such constitutions:

- recognize, and be consistent with, the sovereignty of the United States over the Virgin Islands and Guam, as well as all other provisions of the U.S. Constitution, treaties, and laws of the United States applicable to them;
- provide for a republican form of government, consisting of executive, legislative, and judicial branches;
- contain a bill of rights; and,
- provide for the establishment of a system of local courts.

Upon completion of its work, each convention would submit a proposed constitution to its Governor. The Governor, in turn, would transmit the proposed constitution to the President of the United States. Within 60 days of receipt, the President would forward each constitution, together with his comments, to the Congress. Under the bill, the Congress would then have 60 days to approve, amend, or modify each constitution in whole or in part, by joint resolution. If the Congress should fail to act within the allotted 60 days, the constitution would be deemed approved.



Once approved or modified by congressional action, each constitution would be submitted to the qualified voters of Guam and the Virgin Islands, respectively, for acceptance or rejection through territory-wide referendums. Upon approval by a majority of voters participating in such referendums, the constitutions would become effective in accordance with their terms.

In its attached enrolled bill letter, Interior recommends approval of H.R. 9460. The Department states:

"We are in favor of authorizing the citizens of Guam and the Virgin Islands to draft their own constitutions. Under the recently approved Covenant to Establish a Commonwealth of the Northern Mariana Islands, the people of the Northern Marianas may draft their own constitution. Guam has been under the United States flag since 1898, and the Virgin Islands has been under the U.S. flag since 1917. Therefore, like the people of the Northern Marianas, the citizens of Guam and the Virgin Islands should be given the opportunity to draft their constitutions."

Although we concur in Interior's recommendation that the enrolled bill be approved, we should point out three faults which, however, do not constitute sufficient grounds for disapproval:

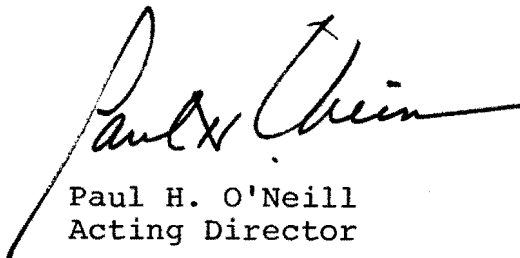
1. Section 2(b)(7) of the bill provides that the Constitution of Guam shall:

"provide for the establishment of a system of local courts the provision of which shall become effective no sooner than upon the enactment of legislation regulating the relationship between the local courts of Guam with the Federal judicial system."

Justice and Interior both point out that this section is ambiguous. The enrolled bill does not specify what legislation it is referring to. Prior to adjournment the Congress was considering a bill,

H.R. 4580, which would have fulfilled the requirement of the above provision. Justice indicates, however, that action is likely to be taken by the legislature of Guam which would obviate the need for H.R. 4580. This section, therefore, may cause confusion and uncertainties in the drafting of those provisions of a Guam Constitution which deal with the local judicial system. A clarifying amendment of this section may be necessary later.

2. Section 5 of the bill would allow Congress to amend the drafted constitutions before they are voted on in local referendums. The enrolled bill, therefore, defeats its basic intent of enabling the people of the two territories to organize their governments pursuant to constitutions of their own adoption. Interior, Justice, and OMB have consistently argued throughout the history of this legislation that congressional review of the territorial constitutions should come after the local referendums, not before, and that the constitutions should be approved or disapproved in total, not modified in part.
3. The enrolled bill does not specify which parts of the organic legislation of Guam and the Virgin Islands will cease to be operative when the constitutions become effective. The Senate Committee on Interior and Insular Affairs, in its report, does acknowledge this problem and states that it is expected that the President "... will transmit a list of those provisions as a part of his comments on the constitution[s]... ." Justice points out that confusion could arise if Congress fails to enact appropriate legislation relating to the Organic Acts before the constitutions become effective.



Paul H. O'Neill
Acting Director

Enclosures



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

00T 8 - 1976

Dear Mr. Lynn:

This responds to your request for the views of this Department on the enrolled bill H.R. 9460, "To provide for the establishment of constitutions for the Virgin Islands and Guam."

We recommend that the President approve the enrolled bill.

As enrolled, H.R. 9460 would authorize the respective legislatures of the Virgin Islands and Guam to call constitutional conventions to draft, within the existing territorial-Federal relationship, constitutions for the local self-government of the respective peoples of the Virgin Islands and Guam.

Any member of such constitutional convention shall be selected as provided by the laws of either the Virgin Islands or Guam, and must be a qualified voter of either territory, and a citizen of the United States.

Such constitutions shall provide a republican form of government and contain a bill of rights, and shall deal only with those provisions of the respective Organic Acts which relate to local self-government. They shall recognize, and be consistent with, the sovereignty of the United States over the Virgin Islands and Guam, and the supremacy of the provisions of the Constitution, treaties, and laws of the U.S. applicable to these territories, including those provisions of the respective Organic Acts which do not concern local self government. Further, the constitutions will provide for a system of local courts in the respective territories.

The two constitutional conventions shall submit to the respective territorial Governors the proposed constitutions, and they, in turn, shall submit them to the President of the United States. Within 60 days of receipt of each proposed constitution, the President shall submit such to the U.S. Congress together with his comments. Congress has a period of 60 days after submission by the President to approve, amend or modify each constitution in whole or in part by joint resolution. If Congress does not do so within 60 days, each constitution will be deemed approved. If approved or modified within that period, each constitution will be submitted to the voters



of the respective territory for acceptance or rejection through island-wide referenda. Upon approval in the referenda, the respective constitutions will become effective in accordance with their terms.

We are in favor of authorizing the citizens of Guam and the Virgin Islands to draft their own constitutions. Under the recently approved Covenant to Establish a Commonwealth of the Northern Mariana Islands, the people of the Northern Marianas may draft their own constitution. Guam has been under the United States flag since 1898, and the Virgin Islands has been under the U.S. flag since 1917. Therefore, like the people of the Northern Marianas, the citizens of Guam and the Virgin Islands should be given the opportunity to draft their constitutions.

The enrolled bill only authorizes Guam and the Virgin Islands to convene constitutional conventions. Therefore, the decision is in these two territories whether or not to convene such conventions and draft such constitutions. We support this approach.

Further, we are in strong support of the stated goal and potential result of H.R. 9460, namely that the constitutions should concern issues of local self-government and not the territorial/Federal relationship. The constitutions authorized by H.R. 9460 would leave this relationship intact, and would not reorder the relations between the Federal Government and these two territories.

There appears to be a potential ambiguity with regard to section 2(b) (7) of the enrolled bill, which concerns the establishment of a local court system for Guam by the Guam constitution, to become effective upon the enactment of legislation regulating the relationship between the local courts of Guam with the Federal judicial system.

In Agana Bay Development Company (Hong Kong) Ltd. v. Supreme Court of Guam et al. (1974) the District Court of Guam held that the Legislature of Guam lacked the authority to establish an appellate court for Guam. The Legislature had attempted to establish such a court by the enactment of Guam Public Law 12-85. Although the U.S. Circuit Court of Appeals for the Ninth Circuit reversed the Agana decision, it affirmed the principle of Agana in People v. Olsen, and held that the establishment of appellate jurisdiction for Guam needed the authorization of the U.S. Congress.

The term "legislation" in section 2(b) (7) is unclear because it does not specify whether such would be enacted by the U.S. Congress or the Guam legislature, and there is no legislative history on this provision to clarify the intent of Congress. Any such action by

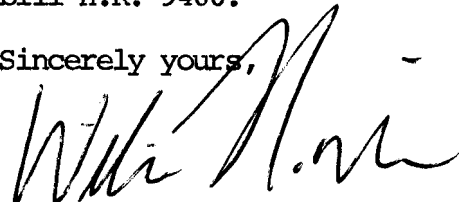


the Guam legislature could be invalid. However, since Congress did include section 2(b) (7) in the enrolled bill, it can be argued that Congress was aware of the Agana and Olsen decisions (see Rep. No. 94-1554 on H.R. 4580, establishing appellate courts for Guam) and thus section 2(b) (7) might either confer authority on the Guam legislature to enact legislation of this nature or refers to Federal legislation. In further support of this interpretation, section 2(b) (6) of the enrolled bill does not require a similar provision for the Virgin Islands in the establishment of their local court system, and the Virgin Islands did not have the same problem as Guam.

With regard to section 5 of the enrolled bill, we would have preferred that Congress approve or reject the respective constitutions in total, rather than amending or modifying them. This would have been more consistent with the goal of government by the consent of the governed and adoption by the peoples of their own territorial constitutions. However, under Article IV. Sec. 3, Cl. 2 of the U.S. Constitution, giving Congress the power to make all rules and regulations respecting U.S. territories, Congress clearly has this authority. Further, in the Act of July 3, 1950 (64 Stat. 319) authorizing a constitution for the Commonwealth of Puerto Rico, Congress retained the right to amend or modify such constitution.

As the Department charged with promoting the political welfare of Guam and the Virgin Islands, we support giving these territories control over their local self-governance. Accordingly, we recommend that the President approve enrolled bill H.R. 9460.

Sincerely yours,



Acting Secretary of the Interior

Honorable James T. Lynn
Director, Office of
Management and Budget
Washington, D.C.

Department of Justice
Washington, D.C. 20530

October 12, 1976

Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D. C. 20503

Dear Mr. Lynn:

At your request I have examined a facsimile of the enrolled bill H.R. 9460 "To provide for the establishment of constitutions for the Virgin Islands and Guam."

The purpose of the bill, as set forth in section 1, is to authorize the peoples of the Virgin Islands and Guam, respectively, "to organize governments pursuant to constitutions of their own adoption."

Section 2(a) would authorize the Legislatures of the Virgin Islands and Guam to call constitutional conventions to draft constitutions. Those constitutions would deal with the area of self-government but could not affect the existing territorial-Federal relationship. Section 2(b) covers the issues which the constitutions would have to address.

Section 3 would deal with the qualifications of the members of the constitutional conventions.

Sections 4 and 5 would set forth the procedure pursuant to which the constitutions would become effective. The conventions would submit to the respective Governors a proposed constitution which would comply with the requirement of section 2(b). The Governors would then submit the constitutions to the President of the United States (section 4).

Within sixty days after the receipt of the constitutions from the Governors, the President would transmit them to Congress together with his comments. Each constitution would

be deemed to have been approved by the Congress within sixty days after its submission by the President, unless prior to that date Congress should have approved the constitution, or modified or amended it, in whole or in part, by joint resolution. Each constitution as approved or modified by Congress would be submitted to a referendum in the respective territory and, if approved, would become effective in accordance with its terms.

The bill raises questions of policy and discretion which are outside the jurisdiction and expertise of the Department of Justice. We therefore defer to the views of the Departments of Interior and State, which are more directly concerned with the subject matter of this bill, as to whether it should receive Executive approval.

The Department of Justice, however, has the following comments on the bill:

1. Section 2(b)(7) provides that the constitution of Guam shall--

provide for the establishment of a system of local courts the provisions of which shall become effective no sooner than upon the enactment of legislation regulating the relationship between the local courts of Guam with the Federal judicial system.

The legislation referred to in this paragraph is H.R. 4580, 94th Cong., 1st Sess., which would have provided for the review of the decisions of the Supreme Court of Guam by the Federal courts. H.R. 4580 did not pass the 94th Congress. We have been advised informally that the congressional inaction was due to the likelihood that the Legislature of Guam would abolish the Supreme Court of Guam. This would obviate the need for H.R. 4580, since the decisions of the Superior Court of Guam can be reviewed by the Federal District Court of Guam under existing law. 48 U.S.C. 1424(a).

The likelihood that the legislation referred to in section 2(b)(7) will not be enacted may cause technical problems and uncertainties in the drafting of the provisions of the constitution of Guam dealing with the local judicial system. An early clarifying amendment of this bill may be desirable.

2. According to section 5 of the bill the draft constitutions, as adopted by the constitutional conventions, will be submitted to the Congress which will have the power to modify or amend them. Should Congress exercise that power, the people of the Virgin Islands and Guam would vote in referendums on the constitutions as so amended or modified. In our view this procedure is inconsistent with the basic spirit of the bill, viz., to enable the people of the two territories to organize their governments pursuant to constitutions of their own adoption. A vote by the people of Guam or the Virgin Islands on a constitution modified or amended by Congress is not a vote on a constitution of their own adoption. We do not deny that Congress has the right to disapprove a constitution adopted by the people of a territory. But we believe that the reservation of the right of amendment defeats the basic purpose of the bill.

The reservation by Congress of the power to amend the draft constitutions of Guam and the Virgin Islands could adversely affect future attempts to terminate our requirement to report on those territories pursuant to Article 73e of the Charter of the United Nations. The United States has conceded that Guam and the Virgin Islands are territories whose people have not yet attained a full measure of self-determination within the meaning of Article 73 and reports on them to the Secretary General pursuant to subsection e. of that Article. When the people of Puerto Rico approved a "constitution of their own adoption" the United States took the position that Puerto Rico had attained a full measure of self-government and therefore ceased to report on that territory pursuant to section 73e. It may well be that our ability to follow that precedent will be jeopardized should Congress make substantial modifications in the draft constitutions proposed by the constitutional conventions. We assume that the comments

of the Department of State will address themselves to this problem in greater detail.

3. In contrast to the legislation authorizing Puerto Rico to organize a government pursuant to a constitution of their own adoption, this bill does not specify which parts of the organic legislation of Guam and the Virgin Islands will cease to be operative when the constitutions become effective. The Senate Report is aware of this defect and "expects that the President will transmit a list of those provisions as a part of his comments on the constitution[s] pursuant to Section 5." S. Rept. 94-1033, p. 4. Actually the Department of Justice had informally supplied the Senate Committee on Interior and Insular Affairs with a list of the Federal laws, in particular the various provisions of the organic legislation relating to self-government, which would be superseded by the new constitutions. The requirement to enact such legislation at the time of the approval of the constitutions is undesirable. It may encourage amendment of the constitutions instead of letting them become effective by inaction. On the other hand, serious confusion may arise should Congress fail to enact this superseding legislation before the constitutions would become effective according to section 5 of the bill.

Sincerely,

A handwritten signature in cursive script, reading "Michael M. Uhlmann". The signature is written in dark ink and is positioned below the word "Sincerely,".

Michael M. Uhlmann
Assistant Attorney General
Office of Legislative Affairs



DEPARTMENT OF STATE

Washington, D.C. 20520

OCT 13 1976

The Honorable
James T. Lynn
Director
Office of Management
and Budget
Executive Office Building
Washington, D.C. 20503

Dear Mr. Lynn:

This is in response to Mr. Frey's request of October 7, 1976, for the views and recommendations of the Department of State concerning H.R. 9460, an enrolled bill providing for the establishment of constitutions for the Virgin Islands and Guam.

The bill would authorize the Legislatures of the Virgin Islands and Guam, respectively, to convene constitutional conventions to draft, within the territorial-Federal relationship, constitutions for the local self-government of the people of the Virgin Islands and Guam. In addition to certain other requirements, the bill specifies that the draft constitutions shall recognize and be consistent with the sovereignty of the United States over the Virgin Islands and Guam, and the supremacy of the provisions of the Constitution, treaties and laws of the United States applicable to the Virgin Islands and Guam.

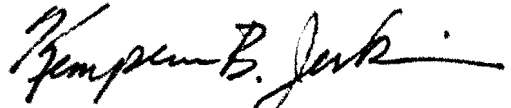
The bill provides that, when drafted, the proposed constitutions shall be submitted through the Governors of the Virgin Islands and Guam to the President, who shall within sixty days after receipt transmit each constitution together with his comments to the Congress. Unless specifically approved, modified or amended by joint resolution of the Congress within sixty days after submission, the constitution(s) shall be deemed to have been approved.

As so approved or modified, the constitutions shall then be submitted to the qualified voters of the Virgin Islands and Guam for their acceptance or rejection in island-wide referendums. The constitutions shall become effective upon approval of not less than a majority of the voters participating in the referendum.

Although not initially put forward by the Administration, we understand that the proposal for such constitutional conventions has had the support of the Department of Interior, principally through testimony at House and Senate hearings thereon, and that the Department of the Interior has recommended approval of the bill.

The Department of State considers the bill acceptable and notes that the establishment of constitutions for the Virgin Islands and Guam, within the framework of the territorial-Federal relationship, is consistent with the broad objective of the United States to provide for greater participation by the citizens of the Virgin Islands and Guam in the process of self-government. The Department recommends that the President approve the bill.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Kempton B. Jenkins". The signature is written in dark ink and is positioned above the typed name.

Kempton B. Jenkins
Acting Assistant Secretary
for Congressional Relations



GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE

WASHINGTON, D. C. 20301

13 October 1976

Honorable James T. Lynn
Director, Office of Management
and Budget
Washington, D. C. 20503

Dear Mr. Lynn:

Reference is made to your request for the views of the Department of Defense on the Enrolled Enactment of H.R. 9460, 94th Congress, "To provide for the establishment of constitutions for the Virgin Islands and Guam." The Department of Defense believes that the objectives of H.R. 9460 are timely and constructive.

The Department of Defense defers to the views of the Department of the Interior as to the advisability of the procedures envisaged, within the existing territorial-Federal relationship, for the drafting and adoption of constitutions for these territories.

The Department of Defense notes that section 5 of H.R. 9460 proposes a novel method of amending those portions of the United States law (the organic acts of Guam and of the Virgin Islands) which "relate to local self-government" and which therefore would not be preserved by section 2(b)(1). On this constitutional matter, the Department of Defense defers to the views of the Department of Justice.

Sincerely yours,

A handwritten signature in cursive script, reading "Richard A. Wiley", is written over the typed name. The signature is fluid and extends downwards and to the right.

Richard A. Wiley

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: October 19

Time: 1000pm

FOR ACTION: George Humphrey *GH* cc (for information):
Steve McConahey *SM*
Bobbie Kilberg *BK*

Jack Marsh
Ed Schmultz

FROM THE STAFF SECRETARY

DUE: Date: October 20

Time: noon

SUBJECT:

H.R.9460-Viggin Islands and Guam Constitutions

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

K. R. COLE, JR.
For the President

THE WHITE HOUSE

6

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: October 19

Time: 1000pm

FOR ACTION: George Humphreys
Steve McConahey
Bobbie Kilberg

cc (for information):
Jack Marsh
Ed Schmults

FROM THE STAFF SECRETARY

DUE: Date: October 20

Time: noon

SUBJECT:

H.R.9460-Virgin Islands and Guam Constitutions

ACTION REQUESTED:

- For Necessary Action
- For Your Recommendations
- Prepare Agenda and Brief
- Draft Reply
- For Your Comments
- Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing

Recommend Approval. [Signature]

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please

W. Cannon

THE WHITE HOUSE

6

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: October 19

Time: 1000pm

FOR ACTION: George Humphreys
Steve McConahey
Bobbie Kilberg

cc (for information):

Jack Marsh
Ed Schmults

FROM THE STAFF SECRETARY

DUE: Date: October 20

Time: noon

SUBJECT:

H.R.9460-Virgin Islands and Guam Constitutions

ACTION REQUESTED:

___ For Necessary Action

___ For Your Recommendations

___ Prepare Agenda and Brief

___ Draft Reply

x

___ For Your Comments

___ Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing

~~Call judy approval - pat~~
I received approval
SWS

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please

W. Cannon

THE WHITE HOUSE

6

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: October 19

Time: 1000pm

FOR ACTION: George Humphreys
Steve McConahey
Bobbie Kilberg

cc (for information):

Jack Marsh
Ed Schmults

FROM THE STAFF SECRETARY

DUE: Date: October 20

Time: noon

SUBJECT:

H.R.9460-Virgin Islands and Guam Constitutions

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

x

For Your Comments

Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing

no objection Kelley 10/20/76

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please

W. Cannon

PROVIDING FOR THE ESTABLISHMENT OF A CONSTITUTION FOR THE VIRGIN ISLANDS

SEPTEMBER 24, 1975.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

REPORT

[To accompany H.R. 9460]

The Committee on Interior and Insular Affairs, to whom was referred the bill (H.R. 9460) to provide for the establishment of a constitution for the Virgin Islands, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Page 3, lines 2 and 3, strike the words "the constitution submitted under subsection (d) is transmitted to him," and insert in lieu thereof "he has received the constitution."

Page 3, line 5, strike the word "Act." and insert in lieu thereof "Act, and is otherwise satisfactory."

Page 3, line 6, following the word "Act," insert "and is otherwise satisfactory."

PURPOSE

The purpose of H.R. 9460, as amended, and approved unanimously by the Committee on Interior and Insular Affairs is to authorize the people of the Virgin Islands to organize a government pursuant to a constitution of their own adoption.

H.R. 9460 was introduced by Mr. Ron de Lugo, for himself, Mr. Phillip Burton, Mr. Don H. Clausen, Mr. O'Neill, Mr. Rhodes, Mr. Anderson of Illinois, Mr. Haley, Mr. Skubitz, Mr. Taylor of North Carolina, Mr. Yates, Mrs. Chisholm, Mr. Kastenmeier, Mrs. Mink, Mr. Meeds, Mr. Stephens, Mr. Vigorito, Mr. Won Pat, Mr. Benitez, Mr. Miller of California, Mr. Ruppe, Mr. Ketchum, Mr. Lagomarsino, Mrs. Pettis, Mr. Rangel, and Mr. Bauman.

An identical bill, H.R. 9461, was introduced by Mr. Ron de Lugo, for himself, Mr. Johnson of California, Mr. Steiger of Arizona, Mr. Udall, Mr. Lujan, Mr. Kazen, Mr. Sebelius, Mr. Eilberg, Mrs. Burke

of California, Mr. Melcher, Mr. Young of Georgia, Mr. Steelman, Mr. Roncalio, Mr. Young of Alaska, Mr. Fauntroy, Mr. Symms, Mr. Bingham, Mr. Johnson of Colorado, Mr. Diggs, Mr. Seiberling, Mrs. Smith of Nebraska, Mr. Runnels, Mr. Nix, Mr. Davis, and Mr. Rees.

Another identical bill, H.R. 9462, was introduced by Mr. Ron de Lugo, for himself, Mr. Eckhardt, Mr. Hawkins, Mr. Fraser, Mr. Conyers, Mr. Alexander, Mr. Stokes, Mr. LaFalce, Mr. Moakley, Mr. Clay, Mr. Patterson of California, Mr. Dellums, Mr. Byron, Mr. Metcalfe, Mr. Charles Wilson of Texas, Mr. Mitchell of Maryland, Mr. Santini, Mrs. Jordan, Ms. Collins of Illinois, Mr. Tsongas, Mr. Howe, Mr. Weaver, Mr. Carr, Mr. Ford of Tennessee, and Mr. Risenhoover.

Mr. de Lugo also introduced the identical bill, H.R. 9608, for himself, Mr. Rodino, Mr. Pritchard, Mr. Bolling, Mr. Lent, Mr. McFall, Mr. Gude, Mr. Charles H. Wilson of California, Mr. Rinaldo, Mr. Burke of Massachusetts, Mr. Zablocki, Mr. Treen, Mrs. Spellman, Mr. Ottinger, Mr. Pepper, Mr. Pattison of New York, Mr. Mollohan, Mr. Leggett, Mr. Mezvinsky, Mr. Biaggi, Mrs. Schroeder, Mr. Harris, Mr. Mineta, Mr. Murphy of New York, and Mr. Anderson of California.

Another identical bill, H.R. 9660 was introduced by Mr. Ron de Lugo, for himself, Mr. Bowen, Mr. Oberstar, Mr. Stark, Mr. Brown of California, Ms. Abzug, and Mr. Zeferetti.

BACKGROUND AND NEED

The Virgin Islands, acquired by the United States in 1917, was administered by naval governors until 1981, when jurisdiction was given to the Department of the Interior. The Organic Act of 1936 organized the territory, was revised in 1954, and marked the first steps toward internal self-government. The trend was bolstered in 1968, when the Congress provided for an elective governor commencing with the 1970 election, and in 1972, when an elected delegate to the United States House of Representatives was approved.

H.R. 9460, as amended, is the product of thoughtful consideration leading to the view that Congress, instead of periodically amending the Organic Act of the Virgin Islands in piecemeal fashion, should now authorize the people of the Virgin Islands to adopt their own constitution and more fully exercise their basic rights of self-determination.

SECTION-BY-SECTION ANALYSIS OF H.R. 9460, AS AMENDED

The first section of H.R. 9460, as amended, authorizes the people of the Virgin Islands to organize a government pursuant to a constitution of their own adoption.

Section 2(a) authorizes the Legislature of the Virgin Islands to call a constitutional convention to draft a constitution, which shall provide for a republican form of government and shall include a bill of rights.

Section 2(b) requires members of the convention to be citizens of the United States and qualified voters in the Virgin Islands.

Section 2(c) authorizes the Legislature of the Virgin Islands to determine, by law, how the members of the convention shall be selected.

Section 2(d) requires the convention to submit the constitution to

the voters in a referendum for approval or disapproval. The referendum shall be conducted in accordance with procedures to be established under Virgin Islands law. It requires that the constitution be approved by not less than a majority of voters participating in the referendum and that, when so approved, it be submitted to the President of the United States by the Governor of the Virgin Islands for his approval. It is to become effective unless disapproved as provided in Section 2(e).

Section 2(e) requires the President to determine within 60 days after he has received the constitution whether or not it is in compliance with Section 2(a), which requires a republican form of government and a bill of rights, and is otherwise satisfactory. If it is in compliance and is otherwise satisfactory, the constitution shall take effect upon the President's promulgation of that determination. If it is determined that the proposed constitution is not in compliance or not otherwise satisfactory, it is intended that the President shall return the constitution, together with his objections, for further deliberation by the constitution convention, approval by a referendum of the people, and reconsideration by the President.

Section 2(f) provides that the constitution, when effective, will supersede inconsistent provisions of the Organic Act. Such inconsistencies should be determined by the President when the constitution is approved.

COST AND BUDGET ACT COMPLIANCE

Enactment of this legislation would have no Federal budgetary impact.

OVERSIGHT STATEMENT

Pursuant to Rule X, clause 2(b)(1), the Subcommittee on Territorial and Insular Affairs continued to exercise oversight responsibilities in connection with territorial legislation. No recommendations were submitted to the Committee pursuant to Rule X, clause 2(b)(2).

COMMITTEE RECOMMENDATION

The bill, H.R. 9460 as amended, having been passed out of the Subcommittee on Territorial and Insular Affairs without a dissenting vote, was unanimously approved by the Committee on Interior and Insular Affairs, in open mark-up session on September 18, 1975, by voice vote.

INFLATIONARY IMPACT

The enactment of H.R. 9460 should have no inflationary impact since it involves no expenditures or appropriations other than those which are incidental to the cost of conducting the constitutional convention prescribed by the bill.

CHANGES IN EXISTING LAW

This legislation makes no changes in existing law except that the constitution which may be developed may supersede some provisions of the Organic Act of the Virgin Islands at a future time.

of California, Mr. Melcher, Mr. Young of Georgia, Mr. Steelman, Mr. Roncalio, Mr. Young of Alaska, Mr. Fauntroy, Mr. Symms, Mr. Bingham, Mr. Johnson of Colorado, Mr. Diggs, Mr. Seiberling, Mrs. Smith of Nebraska, Mr. Runnels, Mr. Nix, Mr. Davis, and Mr. Rees.

Another identical bill, H.R. 9462, was introduced by Mr. Ron de Lugo, for himself, Mr. Eckhardt, Mr. Hawkins, Mr. Fraser, Mr. Conyers, Mr. Alexander, Mr. Stokes, Mr. LaFalce, Mr. Moakley, Mr. Clay, Mr. Patterson of California, Mr. Dellums, Mr. Byron, Mr. Metcalfe, Mr. Charles Wilson of Texas, Mr. Mitchell of Maryland, Mr. Santini, Mrs. Jordan, Ms. Collins of Illinois, Mr. Tsongas, Mr. Howe, Mr. Weaver, Mr. Carr, Mr. Ford of Tennessee, and Mr. Risenhoover.

Mr. de Lugo also introduced the identical bill, H.R. 9608, for himself, Mr. Rodino, Mr. Pritchard, Mr. Bolling, Mr. Lent, Mr. McFall, Mr. Gude, Mr. Charles H. Wilson of California, Mr. Rinaldo, Mr. Burke of Massachusetts, Mr. Zablocki, Mr. Treen, Mrs. Spellman, Mr. Ottinger, Mr. Pepper, Mr. Pattison of New York, Mr. Mollohan, Mr. Leggett, Mr. Mezvinsky, Mr. Biaggi, Mrs. Schroeder, Mr. Harris, Mr. Mineta, Mr. Murphy of New York, and Mr. Anderson of California.

Another identical bill, H.R. 9660 was introduced by Mr. Ron de Lugo, for himself, Mr. Bowen, Mr. Oberstar, Mr. Stark, Mr. Brown of California, Ms. Abzug, and Mr. Zeferetti.

BACKGROUND AND NEED

The Virgin Islands, acquired by the United States in 1917, was administered by naval governors until 1931, when jurisdiction was given to the Department of the Interior. The Organic Act of 1936 organized the territory, was revised in 1954, and marked the first steps toward internal self-government. The trend was bolstered in 1968, when the Congress provided for an elective governor commencing with the 1970 election, and in 1972, when an elected delegate to the United States House of Representatives was approved.

H.R. 9460, as amended, is the product of thoughtful consideration leading to the view that Congress, instead of periodically amending the Organic Act of the Virgin Islands in piecemeal fashion, should now authorize the people of the Virgin Islands to adopt their own constitution and more fully exercise their basic rights of self-determination.

SECTION-BY-SECTION ANALYSIS OF H.R. 9460, AS AMENDED

The first section of H.R. 9460, as amended, authorizes the people of the Virgin Islands to organize a government pursuant to a constitution of their own adoption.

Section 2(a) authorizes the Legislature of the Virgin Islands to call a constitutional convention to draft a constitution, which shall provide for a republican form of government and shall include a bill of rights.

Section 2(b) requires members of the convention to be citizens of the United States and qualified voters in the Virgin Islands.

Section 2(c) authorizes the Legislature of the Virgin Islands to determine, by law, how the members of the convention shall be selected.

Section 2(d) requires the convention to submit the constitution to

the voters in a referendum for approval or disapproval. The referendum shall be conducted in accordance with procedures to be established under Virgin Islands law. It requires that the constitution be approved by not less than a majority of voters participating in the referendum and that, when so approved, it be submitted to the President of the United States by the Governor of the Virgin Islands for his approval. It is to become effective unless disapproved as provided in Section 2(e).

Section 2(e) requires the President to determine within 60 days after he has received the constitution whether or not it is in compliance with Section 2(a), which requires a republican form of government and a bill of rights, and is otherwise satisfactory. If it is in compliance and is otherwise satisfactory, the constitution shall take effect upon the President's promulgation of that determination. If it is determined that the proposed constitution is not in compliance or not otherwise satisfactory, it is intended that the President shall return the constitution, together with his objections, for further deliberation by the constitution convention, approval by a referendum of the people, and reconsideration by the President.

Section 2(f) provides that the constitution, when effective, will supersede inconsistent provisions of the Organic Act. Such inconsistencies should be determined by the President when the constitution is approved.

COST AND BUDGET ACT COMPLIANCE

Enactment of this legislation would have no Federal budgetary impact.

OVERSIGHT STATEMENT

Pursuant to Rule X, clause 2(b) (1), the Subcommittee on Territorial and Insular Affairs continued to exercise oversight responsibilities in connection with territorial legislation. No recommendations were submitted to the Committee pursuant to Rule X, clause 2(b) (2).

COMMITTEE RECOMMENDATION

The bill, H.R. 9460 as amended, having been passed out of the Subcommittee on Territorial and Insular Affairs without a dissenting vote, was unanimously approved by the Committee on Interior and Insular Affairs, in open mark-up session on September 18, 1975, by voice vote.

INFLATIONARY IMPACT

The enactment of H.R. 9460 should have no inflationary impact since it involves no expenditures or appropriations other than those which are incidental to the cost of conducting the constitutional convention prescribed by the bill.

CHANGES IN EXISTING LAW

This legislation makes no changes in existing law except that the constitution which may be developed may supersede some provisions of the Organic Act of the Virgin Islands at a future time.

EXECUTIVE COMMUNICATION

A communication from the Department of the Interior dated September 17, 1975 relevant to H.R. 9460 as introduced is set forth below:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., September 17, 1975.

HON. JAMES A. HALEY,
Chairman, Committee on Interior and Insular Affairs, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This responds to your request for our views on H.R. 9460, H.R. 9461, and H.R. 9462, three identical bills "To provide for the establishment of a constitution for the Virgin Islands," and on H.R. 9491 and H.R. 9492, two identical bills "To provide for the establishment of a constitution for Guam."

We recommend that the Committee defer consideration on these bills for the reasons set forth below.

H.R. 9460 and H.R. 9491 would authorize the respective legislatures of the Virgin Islands and Guam to call constitutional conventions to draft constitutions for the respective peoples of the Virgin Islands and Guam. Such constitutions shall provide a republican form of government and shall include a bill of rights. The provisions of the two bills are identical as they apply to the Virgin Islands and Guam.

Any member of such constitutional convention shall be selected as provided by the laws of either the Virgin Islands or Guam (enacted after the date of enactment of either H.R. 9460 or H.R. 9491), and must be a qualified voter of either territory, and a citizen of the United States.

The constitutional conventions of the Virgin Islands and Guam shall submit the proposed constitutions to the qualified voters of the respective territories for approval. The respective referenda shall be conducted as provided under the laws of the Virgin Islands and Guam (enacted after the date of enactment of H.R. 9460 and H.R. 9491). Upon approval by not less than a majority of the voters participating in the respective referenda, each constitution shall be submitted to the President of the United States by the Governor of the Virgin Islands or Guam. The respective constitutions shall become effective in accordance with their terms unless disapproved by the President.

Within sixty calendar days after each constitution is submitted to the President, he shall determine whether such constitution complies with section 2(a) of H.R. 9460 or H.R. 9491, *i.e.*, that such constitution provides a republican form of government and includes a bill of rights. If the President determines that each such constitution complies with section 2(a), then that constitution shall take effect upon the promulgation of such determination.

As soon as the constitutions take effect under H.R. 9460 and H.R. 9491, they shall supersede inconsistent provisions of the respective Organic Acts of the Virgin Islands and Guam.

These bills would set in motion processes which would result in a fundamental reordering of the relations between the Federal Government and the Territories of Guam and the Virgin Islands. We believe

that enactment of these bills would be premature at this time because the Administration has not had sufficient time to consider the broad issues surrounding such changes and to develop its position on them. Specifically, with regard to these bills, we have some question concerning whether they will adequately protect the Virgin Islands/Federal and the Guam/Federal relationships, and we need to examine this more thoroughly. Accordingly, we recommend that the Committee defer its consideration of these bills until the Administration has developed its position on them. We would hope that this position could be developed within the next few weeks.

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

Sincerely yours,

ROYSTON C. HUGHES,
Assistant Secretary of the Interior.

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PROVIDING FOR THE ESTABLISHMENT OF A CONSTITUTION FOR THE VIRGIN ISLANDS

SEPTEMBER 26, 1975.—Ordered to be printed

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

SUPPLEMENTAL REPORT

[To accompany H.R. 9460]

The Committee on Interior and Insular Affairs, to whom was referred the bill (H.R. 9460) to provide for the establishment of a constitution for the Virgin Islands, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass. In addition to the amendments set forth in Part 1 of this report, filed September 24, 1975, there are two additional amendments as follows:

On page 3, line 7, strike the word "determination." and insert in lieu thereof the following:

determination; otherwise, the President shall return the constitution together with his objections for further deliberation by the constitutional convention and approval by the people as provided above.

On page 3, line 10, strike the word "may" and insert in lieu thereof "the President may determine to".



VIRGIN ISLANDS CONSTITUTION

JULY 15, 1976.—Ordered to be printed
Filed under authority of the order of the Senate of July 1, 1976

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

REPORT

[To accompany H.R. 9460]

The Committee on Interior and Insular Affairs to which was referred the bill (H.R. 9460) to provide for the establishment of a constitution for the Virgin Islands, having considered the same, reports favorably thereon with an amendment to the text and recommends that the bill as amended do pass.

AMENDMENTS

The Committee adopted an amendment in the nature of a substitute. Strike out all after the enacting clause and insert instead the following:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress, recognizing the basic democratic principle of government by the consent of the governed, authorizes the people of the Virgin Islands to organize a government pursuant to a constitution of their own adoption as provided in this Act.

SEC. 2. (a) The Legislature of the Virgin Islands is authorized to call a constitutional convention to draft, within the existing territorial-Federal relationship, a constitution for the local self-government of the people of the Virgin Islands.

(b) Such constitution shall:

(1) recognize, and be consistent with, the sovereignty of the United States over the Virgin Islands, and the supremacy of the provisions of the Constitution, treaties, and laws of the United States applicable to the Virgin Islands, including, but not limited to, those provisions of the Organic Act and Revised Organic Act of the Virgin Islands which do not relate to local self-government;

(2) provide for a republican form of government, consisting of three branches: executive, legislative, and judicial;

(3) contain a bill of rights;

(4) deal with the subject matter of those provisions of the Revised Organic Act of the Virgin Islands of 1954, as amended, which relate to local self-government; and

(5) provide for a system of local courts consistent with the provisions of the Revised Organic Act of the Virgin Islands, as amended.

Sec. 3. The members of such constitutional convention shall be chosen as provided by the laws of the Virgin Islands (enacted after the date of enactment of this Act): *Provided, however*, that no person shall be eligible to be a member of the constitutional convention, unless he is a citizen of the United States and qualified to vote in the Virginia Islands.

Sec. 4. The convention shall submit to the Governor of the Virgin Islands a proposed constitution for the Virgin Islands which shall comply with the requirements set forth in section 2(b) above. Such constitution shall be submitted to the President of the United States by the Governor of the Virgin Islands.

Sec. 5. Within sixty calendar days after the date on which he has received the constitution, the President shall transmit such constitution together with his comments to the Congress which may modify or amend the proposed constitution. As approved by the Congress, the constitution shall be submitted to the qualified voters of the Virgin Islands for acceptance or rejection through an island-wide referendum to be conducted as provided under the laws of the Virgin Islands (enacted after the date of enactment of this Act). Upon approval by not less than a majority of the voters participating in such referendum (counting only the affirmative or negative votes), the constitution shall become effective in accordance with its terms.

PURPOSE

The purpose of H.R. 9460, as amended, is to authorize the people of the Virgin Islands to organize a government pursuant to a constitution of their own adoption.

BACKGROUND AND NEED

The Virgin Islands were acquired by the United States from Denmark in 1917. The territory was administered by naval governors until administration was transferred to the Department of the Interior. The Virgin Islands is an organized unincorporated territory. The Organic Act of 1936 was revised in 1954 and serves as the basic administrative framework for local government. In 1968, the Congress provided for an elective governor and in 1972 for an elected non-voting delegate in the House of Representatives.

H.R. 9460, as amended, represents the view of the Committee that the Congress, instead of periodically amending the Revised Organic Act of the Virgin Islands should permit the people of the territory, within the existing federal-territorial relationship, to adopt their own constitution and more fully exercise their rights of self-determination.

LEGISLATIVE HISTORY

H.R. 9460 was introduced by Congressman Ron DeLugo and passed the House on October 6, 1975. Hearings were held before the full Interior Committee on April 12, 1976. The measure was considered by the full Committee on June 23, 1976, and was considered further on June 28, and ordered reported with an amendment proposed by Senator Johnston.

COMMITTEE RECOMMENDATION

The Senate Committee on Interior and Insular Affairs, in open business session on June 28, 1976, by unanimous vote of a quorum present

recommends that the Senate pass H.R. 9460, if amended as described herein.

COMMITTEE AMENDMENT

The Committee adopted an amendment to eliminate certain ambiguities present in the House-approved version of the legislation.

Analysis: H.R. 9460 as approved by the House authorizes the Virgin Islands legislature to call a constitutional convention to draft a constitution which must "provide a republican form of government and . . . include a bill of rights". (Sec. 2(a)) Convention members are to be selected in a manner determined by the Virgin Islands legislature (§ 2(c)) and must be a U.S. citizen and a qualified Virgin Island voter (§ 2(b)). The constitution is to be submitted to the people of the Virgin Islands for referendum, and if approved by a majority of those voting will become effective unless disapproved by the President in whole or in part (§ 2(d)(e)). The President has 60 days from receipt of the approved Constitution to approve the Constitution in whole or in part. His criteria are whether the Constitution provides for a republican form of government, includes a bill of rights, "and is otherwise satisfactory". If he approves the entire Constitution, it takes effect 60 days thereafter. If he approves only part, he shall transmit the approved parts to the Virgin Islands legislature and those portions will become effective when "approved in the same manner as the laws of the Virgin Islands provide for the enactment of legislation". The disapproved portions are to be transmitted back to the Constitutional convention (§ 2(e)). The constitution will supersede any provisions of the Revised Organic Act which the President determines to be inconsistent.

Several questions arose during Committee consideration, most of which concern the delegation to the President of the Constitutional authority of Congress over territories.

In the case of Puerto Rico, the Congress provided for Congressional approval of the constitution (Act of July 3, 1950, 64 Stat. 319) retaining the right to amend or modify the proposed contract. The Puerto Rico constitution, in fact, was amended and approved by Congress by joint resolution (July 3, 1952, 66 Stat. 327).

The territorial power is vested in the Congress under Article IV, Sec. 3, Cl. 2 of the Constitution. In the territories, Congress has the entire dominion and sovereignty, national and local, and has full legislative power over all subjects upon which a state legislature might act. (*Simms v. Simms* 175 U.S. 162, 168 (1899)). This power may be transferred to local legislatures except as limited by the Constitution and acts of Congress. (*Walker v. New Mexico & S.P.R. Co.*, 165 U.S. 593, 604 (1897); *Simms v. Simms*, 175 U.S. 167, 163 (1899)).

The amendment adopted by the Committee would avoid the delegation of approval to the President in the House version by requiring the Congress to approve the Constitution. The Committee feels that this is appropriate in light of Article IV of the Constitution.

Other questions raised by the House measure include the legal status of the constitution.

Has the Congress impliedly repealed the Organic Act in whole or in part? Is the President's determination binding on the courts? Can a Presidential determination modify the extension of quasi-constitutional guarantees by the Congress in the Organic Act? What about

subsequent acts of Congress which do not specifically repeal provisions of the Constitution? Can the constitution expand upon those internal legislative powers reserved to the Congress as they were not previously extended in the Organic Act? What effect does the lack of a Presidential finding of inconsistency have on subsequent judicial construction? What is the legal status of those provisions of the constitution (of elective governor) which may be consistent with the Revised Organic Act: since they do not supersede the provisions of the Organic Act, do they have any effect? What are the standards and criteria for the Presidential finding of inconsistency?

The amendment adopted by the Committee provides as follows:

SEC. 1. This section authorizes the people of the Virgin Islands to organize a government pursuant to a constitution of their own adoption.

SEC. 2(a). This section authorizes the Virgin Islands legislature to call a constitutional convention to draft a constitution within the existing territorial-federal relationship. The Committee emphasizes that the constitution is not a status document and that the issue of local self-government should not be delayed or confused with discussions relating to alterations in existing federal relations.

SEC. 2(b). This section requires that the constitution address certain issues: (1) the sovereignty of the United States; (2) provision of a republican tri-partite government; (3) a bill of rights; (4) the subject matter of the local government provisions of federal law; and (5) provide for a system of local courts. An earlier draft of the amendment had provided for the repeal of all provisions of federal law affecting local government, and modifying other provisions which contained a mix of local government and federal relations. Both the Department of Justice and the Department of the Interior indicated that they had no objections to the provisions being repealed. In light, however, of the number of federal laws which, although archaic and presumably superseded by the Revised Organic Act, still remain on the books, the repeal provisions were deleted in favor of a requirement that the constitution address the subject matter of the local government provisions. The Committee recognizes that for the constitution to become effective, it will be necessary to repeal the local government provisions of existing law, and expects that the President will transmit a list of those provisions as a part of his comments on the constitution pursuant to Section 5.

SEC. 3. This section provides for the membership of the Constitutional convention.

SEC. 4 and 5. These sections set forth the procedure by which the constitution drafted by the convention may become effective. The convention will submit its draft constitution which must comply with the requirements of section 2(b) to the Governor who is to submit it to the President. The President is required to transmit it together with his comments to the Congress for approval within 60 days from the date he has received it from the Governor. The Committee expects that the President will transmit a comprehensive listing of those provisions of federal law which deal with local government as a part of his comments so that they may be repealed in order to make the constitution effective. The Committee expects that both the Department of Justice and the Department of the Interior will begin to compile a list of such

provisions both as an aid to the convention and also so as not to delay Congressional approval of the draft constitution once developed. The Committee notes that the case of *Virgo Corporation v. Paiewansky*, 384 F. 2d. 569 (3rd Cir. 1967) cert. denied 390 U.S. 1041, reh. denied 392 U.S. 917, casts doubt on the vitality of many pre-1954 provisions of federal law, but these provisions still remain on the books and should be affirmatively eliminated to foreclose any future challenges to the approved constitution on the basis of some arcane provision of federal law.

Upon approval by the Congress, the constitution will be submitted to the people of the Virgin Islands for approval by referendum. If approved, the constitution, as adopted by the people of the Virgin Islands, will become effective in accordance with its terms.

COST AND BUDGETARY CONSIDERATIONS

This bill involves no cost to the federal government.

EXECUTIVE COMMUNICATIONS

The pertinent legislative reports and communications received by the committee from the Department of Interior and from the Office of Management and Budget setting forth Executive agency recommendations relating to H.R. 9460 are set forth below:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., April 9, 1976.

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

DEAR MR. CHAIRMAN: This responds to your request for our views on H.R. 9460 in the Senate, a bill "To provide for the establishment of a constitution for the Virgin Islands," and on H.R. 9491 in the Senate, a bill "To provide for the establishment of a constitution for Guam."

We would have no objection to enactment of the two bills if amended as suggested herein.

H.R. 9460 and H.R. 9491 would authorize the respective legislatures of the Virgin Islands and Guam to call constitutional conventions to draft constitutions for the respective peoples of the Virgin Islands and Guam. Such constitutions shall provide a republican form of government and shall include a bill of rights. The provisions of the two bills are identical as they apply to the Virgin Islands and Guam.

Any member of such constitutional convention shall be selected as provided by the laws of either the Virgin Islands or Guam (enacted after the date of enactment of either H.R. 9460 or H.R. 9491), and must be a qualified voter of either territory, and a citizen of the United States.

The constitutional conventions of the Virgin Islands and Guam shall submit the proposed constitutions to the qualified voters of the respective territories for approval. The respective referenda shall be conducted as provided under the laws of the Virgin Islands and Guam.

(enacted after the date of enactment of H.R. 9460 and H.R. 9491). Upon approval by not less than a majority of the voters participating in the respective referenda, each constitution shall be submitted to the President of the United States by the Governor of the Virgin Islands or Guam. The respective constitutions shall become effective in accordance with their terms unless disapproved by the President.

Within sixty calendar days after each constitution is submitted to the President, he shall determine whether such constitution complies with section 2(a) of H.R. 9460 or H.R. 9491, *i.e.*, that such constitution provides a republican form of government and includes a bill of rights, and "is otherwise satisfactory." If the President approves each constitution in its entirety, then each such constitution will become effective in 60 days. If the President only approves each such constitution in part, he shall submit the approved portions to the Governors and heads of the Legislatures of the Virgin Islands and Guam and such portions shall become effective if approved in the same manner as provided by the laws of those territories for the enactment of legislation. The President shall return the disapproved sections of each such constitution to the respective constitutional conventions for further deliberation.

As soon as the constitutions take effect under H.R. 9460 and H.R. 9491, they shall supersede provisions of the respective Organic Acts of the Virgin Islands and Guam as the President determines to be inconsistent with such constitutions.

We have no objection if the citizens of Guam and the Virgin Islands wish to draft their own constitutions. Under the recently approved Covenant to Establish a Commonwealth of the Northern Mariana Islands, the people of the Northern Marianas may draft their own constitution. Guam has been under the United States flag since 1898, and the Virgin Islands has been under the U.S. flag since 1917. Therefore, like the people of the Northern Marianas, the citizens of Guam and the Virgin Islands should be given the opportunity to draft their constitutions.

We would first point out that these two bills only authorize Guam and the Virgin Islands to convene constitutional conventions. Therefore, the decision is in these two territories whether or not to convene such conventions and draft such constitutions. We support this approach.

However, we are concerned about two provisions of the respective bills.

Subsection 2(e) would provide for Presidential approval of the respective constitutions in whole or in part. The effect of this provision is unclear, and could lead to confusion, especially if those parts of a constitution which are approved depend upon or interrelate with those parts which are disapproved. These constitutions should be approved or disapproved in their entirety. Accordingly, we recommend the deletion of subsection 2(e) of H.R. 9460 and H.R. 9491 and the insertion of the following language:

"(e) The president shall determine, within 60 calendar days after the date on which he received the constitution, whether or not such constitution in its entirety is in compliance with section 2(a) of this Act and is otherwise satisfactory. If the President determines that such

constitution in its entirety is in compliance with section 2(a) of this Act and is otherwise satisfactory, the constitution shall take effect upon the promulgation of such determination. If the President determines that the constitution in its entirety is not in compliance with section 2(a) of this Act and is not otherwise satisfactory then he shall return the constitution together with his objections for further deliberation by the constitutional convention and approval by the people as provided in section 2(d) of this Act. After further deliberation by the constitutional convention and approval by the people, the constitution shall be resubmitted to the President who shall approve it at such time that he is satisfied that such constitution in its entirety meets the conditions set forth in this Act."

Subsection 2(f) is ambiguous in that it leaves unclear whether the President or the courts will be the final arbiter in determining whether the provisions of the two constitutions are inconsistent with the Guam and Virgin Islands Organic Acts and supersede them. Will this determination be exclusively in the President, and preclude judicial determination of inconsistency and repeal? In this regard we would note that the two bills do not provide for Congressional approval of the constitutions. In the case of Puerto Rico, the Congress had final approval of the constitution it had authorized Puerto Rico to draft, and Congress then enacted a Puerto Rican Federal Relations Act which delineated those provisions of United States law which no longer applied to Puerto Rico. Congress could clearly do the same thing with regard to H.R. 9460 and H.R. 9491. As a legal matter, we see no problem with the Congress delegating this approval authority to the President. However, we question whether the President should exclusively make the determination as to what provisions of the Organic Acts are inconsistent and should be superseded, or if this matter should be subject to judicial review. We would defer on this legal issue to the Department of Justice.

In its report on H.R. 9460 and H.R. 9491 the Department of Justice has recommended a number of amendments to the two bills. This Department concurs with those recommendations.

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

Sincerely yours,

JOHN KYL,
Assistant Secretary of the Interior.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., June 22, 1976.

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

DEAR MR. CHAIRMAN: This will respond to your letter of June 8 requesting Departmental review of draft amendments to H.R. 9460

and H.R. 9491, legislation to authorize the territories of Guam and the Virgin Islands to develop and adopt constitutions for local self-government.

The Department has two objections to the amendments as drafted. (1) The first section of each draft bill enunciates the principle of government by the consent of the governed and authorizes the peoples of Guam and the Virgin Islands to adopt their own constitutions. We agree with the implied goal of these bills that the constitutions should concern issues of local self-government and not the territorial/Federal relationship, but suggest that this distinction be more explicitly stated than it is currently. Accordingly, we recommend the following amendments:

(a) Section 2(a) of each draft amendment should read as follows:

"SEC. 2. (a) the Legislature of Guam (the Virgin Islands) is authorized to call a constitutional convention to draft, within the existing territorial/Federal relationship (except as herein provided), a constitution for the local self-government of the people of Guam (the Virgin Islands)."

(b) In section 2(b)(4) in each draft amendment insert between the word "amended" and the colon the words "relating to local self-government".

(2) We would be opposed to the approval process as set out in sections 4 and 5 of the respective draft amendments. Section 5 states that the Congress may modify or amend the proposed constitution prior to the people expressing their will to accept or reject such in their respective referenda. Such a process contradicts the goals stated in section 1 namely government by the consent of the governed and adoption by the peoples of their own territorial constitutions. To assure that the goals of section 1 are implemented, the respective constitutions should be approved or rejected in whole following the respective referenda. Accordingly, we recommend that the following language be substituted for sections 4 and 5.

"SEC. 4. The Convention shall submit to the voters of Guam (the Virgin Islands) a proposed constitution for Guam (the Virgin Islands) which shall comply with the requirements set forth in section 2(b) above. There shall be held a referendum for approval or disapproval of such constitution by the voters of Guam (the Virgin Islands). Such referendum shall be conducted as provided under the laws of Guam (the Virgin Islands) (enacted after the date of enactment of this Act). Upon approval by not less than a majority of the voters participating in such referendum (counting only the affirmative or negative votes), such constitution shall be submitted to the President of the United States by the Governor of Guam (the Virgin Islands). Such constitution shall become effective in accordance with its terms unless disapproved in the manner and within the time limits set forth in section 5."

"SEC. 5. The President shall determine, within sixty calendar days after the date on which he has received the constitution, whether or not such constitution is in compliance with section 2(b) of this Act and is otherwise satisfactory. In the event he approves the constitu-

tion, the constitution will become effective on the 60th day following such approval. In the event the President disapproves the constitution, he shall return it to the constitutional convention together with his objections for further deliberation by the constitutional convention and approval by the people and by the President as provided above."

Should the Congress wish to approve the constitutions, the following might be used as a alternative to our section 5.

"SEC. 5. Within sixty calendar days after the date on which he has received the constitution, the President shall transmit such constitution together with his comments to the Congress for its approval or disapproval. The constitution shall be deemed to have been approved by the Congress within six months after its submission by the President unless the Congress prior to that date has approved or disapproved it by joint resolution. In the event the Congress approves the constitution, the constitution will become effective on the 60th day following such approval. In the event the Congress disapproves the constitution, the President shall return it to the constitutional convention together with his objections for further deliberation by the constitutional convention and approval by the people and Congress as provided above."

The Department has no objection to the treatment by the draft amendments of the statutory provisions which will be either repealed or modified when the constitutions become effective.

Sincerely yours,

JOHN KYL,

Assistant Secretary of the Interior.

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, D.C., April 12, 1976.

HON. HENRY M. JACKSON,
*Chairman, Committee on Interior and Insular Affairs, U.S. Senate,
New Senate Office Building, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in response to your requests of March 8, 1976, for the views of the Office of Management and Budget on the following legislation:

1. H.R. 9460, a bill "To provide for the establishment of a constitution for the Virgin Islands;" and,
2. H.R. 9491, a bill "To provide for the establishment of a constitution for Guam."

The Office of Management and Budget concurs in the views of the Departments of the Interior and Justice in their reports on H.R. 9460 and H.R. 9491, and accordingly, recommends enactment of these bills if amended as suggested by the Departments.

Sincerely yours,

JAMES M. FREY,
*Assistant Director for
Legislative Reference.*

CHANGES IN EXISTING LAW

In compliance with subsection (4) of the rule XXIX of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the bill H.R. 9460 as reported.

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Ninety-fourth Congress of the United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Monday, the nineteenth day of January,
one thousand nine hundred and seventy-six*

An Act

To provide for the establishment of constitutions for the Virgin Islands and Guam.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress, recognizing the basic democratic principle of government by the consent of the governed, authorizes the peoples of the Virgin Islands and of Guam, respectively, to organize governments pursuant to constitutions of their own adoption as provided in this Act.

SEC. 2. (a) The Legislatures of the Virgin Islands and Guam, respectively, are authorized to call constitutional conventions to draft, within the existing territorial-Federal relationship, constitutions for the local self-government of the people of the Virgin Islands and Guam.

(b) Such constitutions shall—

(1) recognize, and be consistent with, the sovereignty of the United States over the Virgin Islands and Guam, respectively, and the supremacy of the provisions of the Constitution, treaties, and laws of the United States applicable to the Virgin Islands and Guam, respectively, including, but not limited to, those provisions of the Organic Act and Revised Organic Act of the Virgin Islands and the Organic Act of Guam which do not relate to local self-government.

(2) provide for a republican form of government, consisting of three branches: executive, legislative, and judicial;

(3) contain a bill of rights;

(4) deal with the subject matter of those provisions of the Revised Organic Act of the Virgin Islands of 1954, as amended, and the Organic Act of Guam, as amended, respectively, which relate to local self-government;

(5) with reference to Guam, provide that the voting franchise may be vested only in residents of Guam who are citizens of the United States;

(6) provide for a system of local courts consistent with the provisions of the Revised Organic Act of the Virgin Islands, as amended; and

(7) provide for the establishment of a system of local courts the provisions of which shall become effective no sooner than upon the enactment of legislation regulating the relationship between the local courts of Guam with the Federal judicial system.

SEC. 3. The members of such constitutional conventions shall be chosen as provided by the laws of the Virgin Islands and Guam, respectively (enacted after the date of enactment of this Act): *Provided, however,* That no person shall be eligible to be a member of

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the constitutional conventions, unless he is a citizen of the United States and qualified to vote in the Virgin Islands and Guam, respectively.

SEC. 4. The conventions shall submit to the Governor of the Virgin Islands a proposed constitution for the Virgin Islands and to the Governor of Guam a proposed constitution for Guam which shall comply with the requirements set forth in section 2(b) above. Such constitutions shall be submitted to the President of the United States by the Governors of the Virgin Islands and Guam.

SEC. 5. Within sixty calendar days after the respective date on which he has received each constitution, the President shall transmit such constitution together with his comments to the Congress. The constitution, in each case, shall be deemed to have been approved by the Congress within sixty days after its submission by the President, unless prior to that date the Congress has approved the constitution, or modified or amended it, in whole or in part, by joint resolution. As so approved or modified, the constitutions shall be submitted to the qualified voters of the Virgin Islands and Guam, respectively, for acceptance or rejection through islandwide referendums to be conducted as provided under the laws of the Virgin Islands and Guam, respectively, (enacted after the date of enactment of this Act). Upon approval by not less than a majority of the voters (counting only the affirmative or negative votes) participating in such referendums, the constitutions shall become effective in accordance with their terms.

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*