

111TH CONGRESS
2D SESSION

S. J. RES.

To provide for the reconsideration and revision of the proposed constitution of the United States Virgin Islands to correct provisions inconsistent with the Constitution and Federal law.

IN THE SENATE OF THE UNITED STATES

Mr. BINGAMAN (for himself and Ms. MURKOWSKI) introduced the following joint resolution; which was read twice and referred to the Committee on

JOINT RESOLUTION

To provide for the reconsideration and revision of the proposed constitution of the United States Virgin Islands to correct provisions inconsistent with the Constitution and Federal law.

Whereas Congress, recognizing the basic democratic principle of government by the consent of the governed, enacted Public Law 94-584 (94 Stat. 2899) authorizing the people of the United States Virgin Islands to organize a government pursuant to a constitution of their own adoption;

Whereas a proposed constitution to provide for local self-government for the people of the United States Virgin Islands was submitted by the President to Congress on March 1, 2010, pursuant to Public Law 94-584;

Whereas Congress, pursuant to Public Law 94-584, after receiving a proposed United States Virgin Islands constitution from the President may approve, amend, or modify the constitution by joint resolution, but the constitution "shall be deemed to have been approved" if Congress takes no action within "sixty legislative days (not interrupted by an adjournment sine die of the Congress) after its submission by the President";

Whereas in carrying out Public Law 94-584, the President asked the Department of Justice, in consultation with the Department of the Interior, to provide views on the proposed constitution;

Whereas the Department of Justice concluded that several features of the proposed constitution warrant analysis and comment, including—

- (1) the absence of an express recognition of United States sovereignty and the supremacy of Federal law;
- (2) provisions for a special election on the territorial status of the United States Virgin Islands;
- (3) provisions conferring legal advantages on certain groups defined by place and timing of birth, timing of residency, or ancestry;
- (4) residence requirements for certain offices;
- (5) provisions guaranteeing legislative representation of certain geographic areas;
- (6) provisions addressing territorial waters and marine resources;
- (7) imprecise language in certain provisions of the bill of rights of the proposed constitution;
- (8) the possible need to repeal certain Federal laws if the proposed constitution of the United States Virgin Islands is adopted; and

(9) the effect of congressional action or inaction on the proposed constitution; and

Whereas Congress shares the concerns expressed by the executive branch of the Federal Government on certain features of the proposed constitution of the United States Virgin Islands and shares the view that consideration should be given to revising those features: Now, therefore, be it

1 *Resolved by the Senate and House of Representatives*
2 *of the United States of America in Congress assembled,*

3 **SECTION 1. SENSE OF CONGRESS ON PROPOSED CON-**
4 **STITUTION FOR UNITED STATES VIRGIN IS-**
5 **LANDS.**

6 It is the sense of Congress that Congress—

7 (1) recognizes the commitment and efforts of
8 the Fifth Constitutional Convention of the United
9 States Virgin Islands to develop a proposed constitu-
10 tion; and

11 (2) urges the Fifth Constitutional Convention
12 of the United States Virgin Islands to reconvene for
13 the purpose of reconsidering and revising the pro-
14 posed constitution in response to the views of the ex-
15 ecutive branch of the Federal Government.

16 **SEC. 2. REVISION OF PROPOSED CONSTITUTION.**

17 Section 5 of Public Law 94-584 (90 Stat. 2900) is
18 amended—

1 (1) by designating the first, second, third, and
2 fourth sentences as subsections (a), (b), (d), and (e),
3 respectively;

4 (2) in subsection (b) (as so designated)—

5 (A) by striking “within” and all that fol-
6 lows through “after” and inserting “within 60
7 legislative days after”; and

8 (B) by inserting “or has urged the con-
9 stitutional convention to reconvene,” after “in
10 whole or in part,”;

11 (3) by inserting after subsection (b) (as so des-
12 ignated) the following:

13 “(c) REVISION OF PROPOSED CONSTITUTION.—

14 “(1) IN GENERAL.—If a convention reconvenes
15 and revises the proposed constitution, the convention
16 shall resubmit the revised proposed constitution si-
17 multaneously to the Governor of the Virgin Islands
18 and the President.

19 “(2) COMMENTS OF PRESIDENT.—Not later
20 than 60 calendar days after the date of receipt of
21 the revised proposed constitution, the President
22 shall—

23 “(A) notify the convention, the Governor,
24 and Congress of the comments of the President
25 on the revised proposed constitution; and

1 “(B) publish the comments in the Federal
2 Register.”; and
3 (4) in subsection (d) (as so designated), by in-
4 serting “under subsection (b) (or, if revised pursu-
5 ant to subsection (c), on publication of the com-
6 ments of the President in the Federal Register)”
7 after “or modified”.

PUBLIC LAW 94-584 As Amended June, 2010

**CONSTITUTIONS FOR VIRGIN ISLANDS AND GUAM:
ESTABLISHMENT; CONGRESSIONAL AUTHORIZATION**

Pub. L. 94-584, Oct. 21, 1976, 90 Stat. 2899, as amended by Pub. L. 96-597, title V, Sec. 501, Dec. 24, 1980, 94 Stat. 3479, provided:

"[Section 1. Authorization to organize governments] 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. [Constitutional conventions and draft provisions] (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 [this chapter] and Revised Organic Act of the Virgin Islands [section 1541 et seq. of this title]

and the Organic Act of Guam [section 1421 et seq. of this title] 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. [Selection and qualifications of members] 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 [Oct. 21, 1976]): Provided, however, That no person shall be eligible to be a member of 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. [Submittal of proposed constitutions to governors and

President] 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. [Transmittal to Congress and submittal to voters]

- (a) 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.
- (b) The constitution, in each case, shall be deemed to have been approved by the Congress within 60 legislative 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, or has urged the constitutional convention to reconvene by joint resolution.
- (c) REVISION OF PROPOSED CONSTITUTION.-
 - (1) IN GENERAL.—If a convention reconvenes and revises the proposed constitution, the convention shall resubmit the revised proposed constitution simultaneously to the Governor of the Virgin Islands and the President.
 - (2) COMMENTS OF PRESIDENT.—Not later than 60 calendar days after the date of receipt of the revised proposed constitution, the President shall
 - (A) notify the convention, the Governor, and Congress of the comments of the President on the revised proposed constitution; and
 - (B) publish the comments in the Federal Register.

(d) As so approved or modified under subsection (b) (or, if revised pursuant to subsection (c), on publication of the comments of the President in the Federal Register) the constitutions shall be submitted to the qualified voters of the Virgin Islands and Guam, respectively, for acceptance or rejection through Island wide 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) [Oct. 21, 1976].

(e) Upon approval by not less than a majority of the votes (counting only the affirmative or negative votes) participating in such referendums, the constitutions shall become effective in accordance with their terms."

**Statement by Senator Bingaman on the introduction of legislation regarding
the proposed constitution of the U.S. Virgin Islands**

Mr. President, the U.S. Virgin Islands is an unincorporated territory of the United States that was acquired from Denmark in 1917. It is one of only two United States' territories which does not have a locally adopted constitution to provide for basic governmental organization and operations. Instead, the V.I. government operates under the Revised Organic Act of 1954, as amended, a Federal law written by Congress (48 U.S.C. 1541 - 1645).

In 1976, to enhance local self-government, Congress enacted Public Law 94-584, which, as amended, authorizes the people of the V.I. to convene a constitutional convention and draft a constitution. The law provides for two consecutive 60-day periods for Presidential and Congressional review. Upon receiving a proposed constitution from the President, Congress may approve, modify, or amend the document by joint resolution, but if Congress does not act within its 60 legislative day review period, then the constitution is deemed approved by Congress. If Congress approves the proposed constitution, or passes modifications or amendments, it then goes before the V.I. voters to be accepted or rejected in a referendum. Since 1964, the people of the Virgin Islands have attempted five times to write a constitution, but previous efforts have been unsuccessful.

On December 31, 2009 the Governor of the Virgin Islands submitted a Proposed Constitution drafted by the Fifth Constitutional Convention to President Obama, and it was transmitted to Congress with Administration comments. The end of the 60 legislative day Congressional review period is June 30.

In his February 26, 2010 message to Congress President Obama attached the Proposed Constitution and a memorandum of the Justice Department which noted that several features of the proposed constitution warranted comment: (1) the absence of an express recognition of United States sovereignty and the supremacy of Federal law; (2) provisions for a special election on the V.I.'s territorial status; (3) provisions conferring legal advantages on certain groups defined by place and timing of birth, timing of residency, or ancestry; (4) residence requirements for certain offices; (5) provisions guaranteeing legislative representation of certain geographic areas; (6) provisions addressing territorial waters and marine resources; (7) imprecise language on certain provisions of the proposed constitution's bill of rights; (8) the possible need to repeal certain Federal laws if the proposed USVI constitution is adopted; and (9) the effect of Congressional action or inaction on the proposed constitution (See the Presidential Message and DOJ memorandum in the March 1, 2010, Congressional Record, p. S 856). Both in the memorandum and in testimony on May 19th before the Senate Committee on Energy and Natural Resources, the Justice Department recommended that "the provisions conferring legal advantages on certain groups defined by place and timing of birth, timing of residency, or ancestry..." (Item 3 above) be removed from the Constitution and that consideration be given to shortening the residence requirements for certain officers (Item