

Calendar No. 736

108TH CONGRESS "
2d Session

SENATE

REPORT
108-377

AMERICAN SAMOA DELEGATE PLURALITY VOTE

SEPTEMBER 28, 2004.—Ordered to be printed

Mr. DOMENICI, from the Committee on Energy and Natural Resources, submitted the following

R E P O R T

[To accompany H.R. 2010]

The Committee on Energy and Natural Resources, to which was referred the Act (H.R. 2010) to protect the voting rights of members of the Armed Services in elections for the Delegate representing American Samoa in the United States House of Representatives, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the Act do pass.

PURPOSE

The purpose of H.R. 2010, as ordered reported, is to protect the voting rights of members of the Armed Services in elections for the Delegate representing American Samoa in the United States House of Representatives, and for other purposes.

BACKGROUND AND NEED

In 1978, Congress created the position of a non-voting Delegate to represent the Territory of American Samoa in the U.S. House of Representatives (Public Law 95-556). Pursuant to such law, the American Samoa Delegate is elected to office at large, by separate ballot, and by a majority vote. If no candidate receives a majority of the votes cast, a runoff election is held between the two candidates receiving the highest number of votes. Any such runoff takes place two weeks following the election.

The bill's sponsor, the current American Samoa Delegate, maintains that the two-week period between the general election and runoff for the Delegate office deprives members of the Armed Forces on active duty, and other overseas voters, of the opportunity

to participate in the Federal election process in American Samoa. According to the findings section of H.R. 2010, overseas voters who rely on absentee ballots are disenfranchised because the Federal postal service does not operate daily in American Samoa. Instead, postal service to American Samoa is dependent upon commercial air service originating in Hawaii and is delivered only twice a week. This situation has proven problematic in sending and receiving absentee ballots, in a timely manner, during the 14-day runoff election period.

H.R. 2010 would provide for the election of the American Samoa Delegate to the U.S. House of Representatives by plurality. The bill also authorizes the legislature of American Samoa (the Fono) to provide for primary elections for the Delegate race. If such primary elections are established by the Fono, H.R. 2010 requires the Delegate to be elected by a majority of votes cast in any subsequent general election.

LEGISLATIVE HISTORY

H.R. 2010 was introduced by Representative Faleomavaega (D-AS) on May 7, 2003, and referred to the House Committee on Resources. The Resources Committee conducted a hearing on H.R. 2010 on October 29, 2003, and favorably reported (H. Rept. 108-515) the bill on June 1, 2004. The House passed H.R. 2010 on June 14, 2004. The bill was received in the Senate on June 15, 2004, and referred to the Committee on Energy and Natural Resources. A hearing before the Subcommittee on Public Lands and Forests was conducted on July 14, 2004. The Energy and Natural Resources Committee, on September 15, 2004, by a unanimous vote of a quorum present, favorably reported H.R. 2010.

COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in an open business session on September 15, 2004, by a unanimous voice vote of a quorum present, recommends that the Senate pass H.R. 2010 without amendment.

SECTION-BY-SECTION ANALYSIS

Section 1 lists Congressional findings.

Section 2 amends Public Law 95-556 to provide for election of the Delegate by plurality. This section also authorizes the legislature of American Samoa to establish a primary election for the Delegate office and specifies that if such primary is established, then the Delegate shall be elected by a majority of votes cast in any subsequent general election.

Section 3 establishes the effective date for the plurality election system as January 1, 2006. This section also sets forth the effective date for the Fono's ability to establish a primary as January 1, 2005.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of the costs of this measure has been provided by the Congressional Budget Office:

H.R. 2010—An act to protect the voting rights of members of the armed services in elections for the delegate representing American Samoa in the United States House of Representatives, and for other purposes

H.R. 2010 would amend Public Law 95–556, which provides the Territory of American Samoa with a nonvoting delegate to the U.S. House of Representatives. Specifically, the legislation would revise the voting procedures used for the election of American Samoa's delegate. Currently, the delegate must be elected by a majority of votes, and a run-off election is held 14 days after the initial vote if no candidate receives a majority. Under H.R. 2010, only a plurality would be required and no run-off election would be held. However, if the legislature of American Samoa were to provide for primary elections for the election of the delegate, then the delegate would be elected by a majority of votes cast in a subsequent general election. CBO estimates that implementing H.R. 2010 would have no impact on the federal budget. The legislation would not affect direct spending or revenues.

Section 4 of the Unfunded Mandates Reform Act excludes from the application of that act any legislative provisions that enforce the constitutional rights of individuals. CBO has determined that H.R. 2010 would fall within that exclusion because it would protect the voting rights of absentee voters, including members of the armed forces. Therefore, CBO has not reviewed the bill for mandates.

On May 21, 2004, CBO transmitted a cost estimate for H.R. 2010, as passed by the House Committee on Resources on May 5, 2004. The two versions of the legislation are identical, as are the cost estimates.

The CBO staff contacts for this estimate are Matthew Pickford (for federal costs) and Marjorie Miller (for the state and local impact). This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out H.R. 2010. The Act is not a regulatory measure in the sense of imposing government-established standards or significant responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of H.R. 2010.

EXECUTIVE COMMUNICATIONS

On July 9, 2004, the Committee on Energy and Natural Resources requested legislative reports from the Department of the Interior and the Office of Management and Budget setting forth executive views on H.R. 2010. These reports had not been received at the time the report on H.R. 2010 was filed. The testimony provided by the Department of the Interior at the Subcommittee hearing follows:

STATEMENT OF DAVID B. COHEN, DEPUTY ASSISTANT
SECRETARY OF THE INTERIOR FOR INSULAR AFFAIRS

Current law provides that the Delegate to the House of Representatives from American Samoa shall be elected by majority vote. Under current practice, a runoff is conducted two weeks after the general election in November of each even numbered year if no candidate for Delegate receives a majority in the general election. The result is that members of the armed services and other voters overseas may be disenfranchised in the runoff election due to transportation and communication difficulties that delay the return of runoff ballots in time for counting.

H.R. 2010 would establish a flexible system for ensuring that the votes of American Samoans, who are overseas, are counted. In the first instance, H.R. 2010 would substitute a plurality of votes for election of Delegate for the currently required majority. If, however, the members of the American Samoa Fono, or legislature, believe that a majority vote is preferable, H.R. 2010 would authorize the Fono to establish a primary election prior to the November balloting.

The issues raised in this bill are clearly within Congress's authority to determine, given American Samoa's special status as a U.S. territory. However, we note that, subject to certain limitations, the citizens of the various states are generally given the latitude to establish, through their elected representatives, the policies that govern elections for Federal officials who will represent the people of those states.

We recognize that in the special case of American Samoa, this is a matter for Congress to decide. The wishes of the people of American Samoa, however, should be given the same deference that the wishes of the citizens of a state would be given under analogous circumstances. We respectfully suggest, therefore, that the Congress note the positions of recognized leaders of the territory, in order to discern the preferences of the people of American Samoa. If the Congress finds that this bill is a reasonable reflection of the wishes of the people of American Samoa, the Administration would have no objection to its enactment. We would like to stress, however, that to the extent that deficiencies in the current system may result in the disenfranchisement of absentee voters, including the many men and women from American Samoa who serve honorably in our armed forces, we would urge Congress to correct any such deficiencies as soon as possible.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by H.R. 2010, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italic*, existing law in which no change is proposed is shown in roman):

ACT OF OCTOBER 31, 1978

(Public Law 95-556)

AN ACT To provide that the Territory of American Samoa be represented by a non-voting Delegate to the United States House of Representatives, and for other purposes

* * * * *

SEC. 2. (a) The Delegate shall be elected by the people qualified to vote for the popularly elected officials of the Territory of American Samoa at the general Federal election of 1980, and thereafter at such general election every second year thereafter. The Delegate shall be elected at large, by separate ballot, and by a [majority] plurality of the votes cast for the office of Delegate. [If no candidate receives such majority, on the fourteenth day following such election a runoff election shall be held between the candidates receiving the highest and the second highest number of votes cast for the office of Delegate.] In case of a permanent vacancy in the office of Delegate, by reason of death, resignation, or permanent disability, the office of Delegate shall remain vacant until a successor shall have been elected and qualified.

* * * * *

(c) *ESTABLISHMENT OF PRIMARY ELECTIONS.*—The legislature of American Samoa may, but is not required to, provide for primary elections for the election of Delegate.

(d) *EFFECT OF ESTABLISHMENT OF PRIMARY ELECTIONS.*—Notwithstanding subsection (a), if the legislature of American Samoa provides for primary elections for the election of Delegate, the Delegate shall be elected by a majority of votes cast in any subsequent general election for the office of Delegate for which such primary elections were held.

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