

TO RESTORE THE ABILITY OF THE PEOPLE OF AMERICAN SAMOA TO APPROVE AMENDMENTS TO THE TERRITORIAL CONSTITUTION BASED ON MAJORITY RULE IN A DEMOCRATIC ACT OF SELF-DETERMINATION, AS AUTHORIZED PURSUANT TO AN ACT OF CONGRESS DELEGATING ADMINISTRATION OF FEDERAL TERRITORIAL LAW IN THE TERRITORY TO THE PRESIDENT, AND TO THE SECRETARY OF THE INTERIOR UNDER EXECUTIVE ORDER 10264, DATED JUNE 29, 1951, UNDER WHICH THE CONSTITUTION OF AMERICAN SAMOA WAS APPROVED AND MAY BE AMENDED WITHOUT REQUIREMENT FOR FURTHER CONGRESSIONAL ACTION, SUBJECT TO THE AUTHORITY OF CONGRESS UNDER THE TERRITORIAL CLAUSE IN ARTICLE IV, SECTION 3, CLAUSE 2 OF THE UNITED STATES CONSTITUTION

JUNE 27, 2024.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. WESTERMAN, from the Committee on Natural Resources,
submitted the following

R E P O R T

[To accompany H.R. 6062]

The Committee on Natural Resources, to whom was referred the bill (H.R. 6062) to restore the ability of the people of American Samoa to approve amendments to the territorial constitution based on majority rule in a democratic act of self-determination, as authorized pursuant to an Act of Congress delegating administration of Federal territorial law in the territory to the President, and to the Secretary of the Interior under Executive Order 10264, dated June 29, 1951, under which the Constitution of American Samoa was approved and may be amended without requirement for further congressional action, subject to the authority of Congress under the Territorial Clause in article IV, section 3, clause 2 of the United States Constitution, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE LEGISLATION

The purpose of H.R. 6062 is to restore the ability of the people of American Samoa to approve amendments to the territorial constitution based on majority rule in a democratic act of self-determination, as authorized pursuant to an Act of Congress delegating administration of Federal territorial law in the territory to the

President, and to the Secretary of the Interior under Executive Order 10264, dated June 29, 1951, under which the Constitution of American Samoa was approved and may be amended without requirement for further congressional action, subject to the authority of Congress under the Territorial Clause in article IV, section 3, clause 2 of the United States Constitution.

BACKGROUND AND NEED FOR LEGISLATION

Following U.S. acquisition, American Samoa was placed under the U.S. Navy's administrative authority until 1951 when the authority was transferred to the Department of the Interior (DOI) in 1956 through Executive Order 10264.¹ The Department of the Interior's Office of Insular Affairs (OIA) coordinates political relations with American Samoa and other U.S. territories (except Puerto Rico, which falls under the Executive Office of the President).² American Samoa has a local (territorial) constitution; however, Congress has not enacted an Organic Act for the territory. American Samoa's constitution is unique in that it seeks to preserve Samoan cultural identity and way of life, particularly on land ownership, Samoa's "Maitai" social hierarchy, and immigration.³ Furthermore, American Samoa does not have an Organic Act due to concerns within American Samoa that it would erode the Samoan way of life.⁴ The Secretary of the Interior retains broad administrative authority over American Samoa, including over its constitutional amendment process.

In 1983, Congress passed, and the President signed into law Public Law 98–213. Section 12 of the law stated that any changes to the Constitution of American Samoa may be made only by an Act of Congress.⁵ Prior to 1983, only the approval of the Secretary of the Interior was required for constitutional amendments.⁶ The legislative history concerning Section 12 suggests that a personnel dispute embodying self-government concerns motivated Congress to enact the provision. There were concerns within American Samoa about the then-Assistant Secretary of the Interior, acting on behalf of the Secretary of the Interior, making a unilateral decision to remove the incumbent Attorney General of American Samoa.⁷ Changing federal law ensured that the Secretary of the Interior could not make unilateral appointments of American Samoa's cabinet and removed the possibility of unilateral amendment to the Constitution by the Secretary of the Interior.⁸

¹ E.O. 10264. <https://www.archives.gov/federal-register/codification/executive-order/10264.html>.

² Memorandum for the Heads of Executive Departments and Agencies. 57 Fed. Reg. 57093.

³ For more information on American Samoa's culture and relationship with the U.S. Constitution, refer to *Defining Status—A Comprehensive Analysis of U.S. Territorial Policy*. Arnold H. Leibowitz. 2013.

⁴ *Id.*

⁵ Office of Rep. Eni Faleomavaega, "Faleomavaega Announces a Draft Bill to Repeal Congressional Approval for Amendments to the American Samoa Constitution," press release, February 10, 2012, https://www.webharvest.gov/congress112th/20121215060831/http://www.house.gov/list/press/as00_faleomavaega/appealfolaw.html.

⁶ 48 U.S.C. § 1662a.

⁷ U.S. Congress, Senate Committee on Energy and Natural Resources, Subcommittee on Energy Conservation and Supply, Revised Constitution of American Samoa, hearing, 98th Cong., 2nd sess., May 8, 1984, S. Hrg. 98–997 (Washington: GPO, 1984), pp. 3–4. Rep. Sunia's written statement appears in all capital letters. The quoted material is reformatted to comport with CRS style.

⁸ *Legal Authority Supporting DOI and Congressional Approval or Disapproval of Amendments to the Constitution of American Samoa*. Jon Van Dyke. University of Hawaii School of Law Library. Jon Van Dyke Archives Collection. <https://scholarspace.manoa.hawaii.edu/server/api/core/bitstreams/159c73b2-1b50-407a-b59e-8e757fb03ba4/content>.

Debate over Section 12 continued in 1984, both in Congress and in American Samoa, even though the provision became law in late 1983. In May 1984, the same Senate subcommittee that had overseen Section 12's development again received testimony about the provision. On that occasion, Section 12 discussions arose amid consideration of constitutional amendments proposed in 1984, after a territorial convention.⁹

Since 1984, American Samoa has made attempts to return to the pre-1983 policy where the Secretary of the Interior has the sole authority to approve changes to the American Samoan Constitution as there were no longer concerns about unilateral actions by the Department of the Interior. Concerns have been raised within American Samoa and personnel at the U.S. Department of Justice (DOJ) about whether Section 12 could adversely affect American Samoan culture. In a May 8, 1984, Senate Energy and Natural Resources hearing, the DOJ witness stated:

I feel constrained to bring to your attention a case now pending in the Supreme Court of the United States on petition for a writ of certiorari. This case raises the seemingly paradoxical possibility that the very Congressional approval of the Samoan Constitution, in particular of those provisions which might be inconsistent with the Constitution of the United States, could facilitate scrutiny and possible invalidation of Samoan institutions by the federal courts under our own Constitution.¹⁰

Furthermore, concerns have been raised within American Samoa that Section 12 has stalled the approval of all amendments to the Constitution of American Samoa and has created an inequitable amendment process for American Samoa when compared to the other U.S. territories. Of the other U.S. territories with a local constitution, American Samoa is the only territory that must go through Congress to institute changes voted by their own citizens.¹¹

H.R. 6062 would repeal Section 12 of Public Law 98-213, granting the President of the United States, and subsequently the Secretary of the Interior, the power to approve amendments to the Constitution of American Samoa without Congressional approval. Congress would still retain its authority to regulate the territories, including the authority to make any changes to the Constitution of American Samoa, provided under the Territories Clause of the U.S. Constitution.

The Territorial Clause of the U.S. Constitution grants Congress broad authority over U.S. territories. Specifically, Article IV, Sec-

⁹U.S. Congress, Senate Committee on Energy and Natural Resources, Subcommittee on Energy Conservation and Supply, Revised Constitution of American Samoa, hearing, 98th Cong., 2nd sess., May 8, 1984, S. Hrg. 98-997 (Washington: GPO, 1984). https://republicans-naturalresources.house.gov/UploadedFiles/Hearing_Revised_Constitution_of_American_Samoa.pdf.

¹⁰U.S. Congress, Senate Committee on Energy and Natural Resources, Subcommittee on Energy Conservation and Supply, Revised Constitution of American Samoa, hearing, 98th Cong., 2nd sess., May 8, 1984, S. Hrg. 98-997 (Washington: GPO, 1984). See "Statement of Robert B. Shanks, Deputy Assistant Attorney General, Office of Legal Counsel, Department of Justice." https://republicans-naturalresources.house.gov/UploadedFiles/Hearing_Revised_Constitution_of_American_Samoa.pdf.

¹¹Commonwealth of Northern Mariana Islands. Constitution. <https://cnmilaw.org/cons.php#gsc.tab=0> and Puerto Rico Law. <https://law.justia.com/puerto-rico/#:-:text=Article%20Seven%20provides%20the%20process,abolish%20the%20Bill%20of%20Rights.>

tion 3 of the Constitution states, in part, that “The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States.”¹²

COMMITTEE ACTION

H.R. 6062 was introduced on October 25, 2023, by Del. Aumua Radewagen (R-AS). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Indian and Insular Affairs. On January 18, 2024, the Subcommittee on Indian and Insular Affairs held a hearing on the bill. On May 7, 2024, the Committee on Natural Resources met to consider the bill. The Subcommittee on Indian and Insular Affairs was discharged from further consideration of H.R. 6062 by unanimous consent. The bill was ordered favorably reported to the House of Representatives by unanimous consent.

HEARINGS

For the purposes of clause 3(c)(6) of House rule XIII, the following hearing was used to develop or consider this measure: hearing by the Subcommittee on Indian and Insular Affairs held on January 18, 2024.

SECTION-BY-SECTION ANALYSIS

Section 1. Removal of restriction on amendments to or modifications of the Constitution of American Samoa

Repeals Section 12 P.L. 98–213 (48 U.S.C. § 1662a) which requires any amendments or modifications to American Samoa’s constitution, as approved by the Secretary of the Interior, to be made only by an Act of Congress.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources’ oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII AND CONGRESSIONAL BUDGET ACT

1. *Cost of Legislation and the Congressional Budget Act.* Pursuant to clause 3(c)(2) of House rule XIII and section 308(a) of the Congressional Budget Act of 1974, and pursuant to clause 3(c)(3) of House rule XIII and section 402 of the Congressional Budget Act of 1974, the Committee has requested but not received from the Director of the Congressional Budget Office a budgetary analysis and a cost estimate of this bill.

2. *General Performance Goals and Objectives.* As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to restore the ability of the people of American Samoa to approve amendments to the territorial constitution based on ma-

¹²“Article 4 Section 3 Clause 2.” U.S. Constitution Annotated. <https://constitution.congress.gov/browse/article-4/section-3/clause-2/>.

jority rule in a democratic act of self-determination, as authorized pursuant to an Act of Congress delegating administration of Federal territorial law in the territory to the President, and to the Secretary of the Interior under Executive Order 10264, dated June 29, 1951, under which the Constitution of American Samoa was approved and may be amended without requirement for further congressional action, subject to the authority of Congress under the Territorial Clause in article IV, section 3, clause 2 of the United States Constitution.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

UNFUNDED MANDATES REFORM ACT STATEMENT

An estimate of federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act was not made available to the Committee in time for the filing of this report. The Chair of the Committee shall cause such estimate to be printed in the Congressional Record upon its receipt by the Committee, if such estimate is not publicly available on the Congressional Budget Office website.

EXISTING PROGRAMS

Directed Rule Making. This bill does not contain any directed rule makings.

Duplication of Existing Programs. This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139 or identified in the most recent Catalog of Federal Domestic Assistance published pursuant to the Federal Program Information Act (Public Law 95–220, as amended by Public Law 98–169) as relating to other programs.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

Any preemptive effect of this bill over state, local, or tribal law is intended to be consistent with the bill's purposes and text and the Supremacy Clause of Article VI of the U.S. Constitution.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets):

SECTION 12 OF PUBLIC LAW 98-213

【SEC. 12. Amendments of, or modifications to, the constitution of American Samoa, as approved by the Secretary of the Interior pursuant to Executive Order 10264 as in effect January 1, 1983, may be made only by Act of Congress.】

