

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

JUNE 1, 2004.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. POMBO, from the Committee on Resources,
submitted the following

R E P O R T

[To accompany H.R. 2010]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (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, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. FINDINGS.

Congress finds the following:

(1) It is in the national interest that qualifying members of the Armed Forces on active duty and other overseas voters be allowed to vote in Federal elections.

(2) Since 1980, when the first election for the Congressional Delegate from American Samoa was held, general elections have been held in the first week of November in even-numbered years and runoff elections have been held 2 weeks later.

(3) This practice of holding a run-off election 2 weeks after a general election 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.

(4) Prior to and since September 11, 2001, and due to limited air service, mail delays, and other considerations, it has been and remains impossible for absentee ballots to be prepared and returned within a 2-week period.

(5) American Samoa law requiring members of the Armed Forces on active duty and other overseas voters to register in person also prevents participation in the Federal election process and is contrary to the Uniformed and Overseas Citizens Absentee Voting Act.

(6) Given that 49 states elect their Representatives to the United States House of Representatives by plurality, it is in the national interest for American Samoa to do the same until such time as the American Samoa Legislature establishes primary elections and declares null and void the local practice of re-

quiring members of the Armed Forces on active duty and other overseas voters to register in person which is contrary to the federal Uniformed and Overseas Citizens Absentee Voting Act.

SEC. 2. PLURALITY OF VOTES REQUIRED FOR ELECTION OF DELEGATE.

Section 2 of the Act entitled “An Act to provide that the Territory of American Samoa be represented by a nonvoting Delegate to the United States House of Representatives, and for other purposes”, approved October 31, 1978 (48 U.S.C. 1732; Public Law 95-556) is amended—

(1) in subsection (a)—

(A) by striking “majority” and inserting “plurality” the first place it appears; and

(B) by striking “If no candidate” and all that follows through “office of Delegate.”; and

(2) by adding at the end the following new subsections:

“(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.”.

SEC. 3. EFFECTIVE DATES.

The amendments made by paragraph (1) of section 2 shall take effect on January 1, 2006. The amendment made by paragraph (2) of section 2 shall take effect on January 1, 2005.

PURPOSE OF THE BILL

The purpose of H.R. 2010 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 FOR LEGISLATION

H.R. 2010 replaces the current “majority” requirement needed in the election for the Delegate of American Samoa to the U.S. House of Representatives with a plurality requirement. The “majority” requirement will be kept, however, if the American Samoa legislature (Fono) enacts a primary election system for the Delegate position prior to the general election of 2006, or for any other subsequent general election thereafter.

The position of a non-voting Delegate to the U.S. House of Representatives to represent the Territory of American Samoa was created in 1978 with the enactment of Public Law 95-556. Pursuant to such law, the first non-voting Delegate from American Samoa was elected in 1980. Under this law, the Delegate from American Samoa to the U.S. House of Representatives is elected to office at large, by separate ballot, and by a majority of the votes cast for the office of Delegate. If no candidate receives a majority, a runoff election is held on the fourteenth day following the election between the candidates receiving the highest and the second highest number of votes cast for the office of Delegate.

Although the U.S. Postal Service operates in American Samoa, its service is not daily and it is dependent upon commercial air service originating from Hawaii. Flights arriving from and departing to Hawaii operate twice per week. This situation has proven problematic in sending and receiving absentee ballots in a timely

manner during the Congressionally-mandated 14 day runoff election period.

The Uniformed and Overseas Citizens Absentee Voting Act was enacted to ensure that the right to vote in federal elections can be exercised by all, especially U.S. military servicemen and women and their families living abroad. The procedures and deadlines to vote absentee vary based on State laws. The circumstances of a runoff election being held 14 days after a general election, coupled with inadequate mail service to American Samoa, has the potential of disenfranchising absent voters from fully participating in electing American Samoa's non-voting Delegate.

The Committee recognizes that the time allotted between the general election and runoff for Delegate is a hindrance to the full participation of eligible active duty military personnel, their families, and students located abroad in the runoff elections through the use of absentee ballots. It is estimated that there are potentially 2,000 active duty military personnel, their families, and 120 students living abroad who could be eligible to participate in the election of American Samoa's Delegate. The Committee believes that steps should be taken to increase the participation of these voters in the election for the office of Delegate.

Other insular areas, including the Virgin Islands and Guam, have acted within their territorial powers under subsection (a) of 48 U.S.C. 1734 to enact requirements for a primary to select candidates for their non-voting representative to Congress, thereby avoiding the problem faced by American Samoa.

In the Committee's continuing effort to provide insular governments a greater measure of self-government, H.R. 2010, as amended by the Committee, makes clear that the authority to establish a primary election system rests with the Fono. In addition, the Fono has the authority to enact legislation governing all other matters of local application pertaining to the election and the office of Delegate for which H.R. 2010, as amended, has not otherwise expressly provided for. In so doing, and in recognition that such action will have a direct effect on the office of Delegate, the Committee encourages that the Fono work collaboratively with the Delegate from American Samoa, and act consistently with the laws of the United States and the Revised Constitution of American Samoa, where applicable.

COMMITTEE ACTION

H.R. 2010 was introduced on May 7, 2003, by Congressman Eni Faleomavaega (D-AS).¹ The bill was referred to the Full Committee on Resources. On October 29, 2003, the Committee held a hearing on the bill. On May 5, 2004, the Full Resources Committee met to consider the bill. Congressman Faleomavaega offered an amendment in the nature of a substitute to clarify the powers of the Fono to adopt a primary voting structure for the office of the Delegate, as well as to make technical changes to the legislation with regard to dates of implementation. It was adopted by unani-

¹In the 107th Congress, Congressman Faleomavaega introduced both H.R. 3576 and H.R. 4838, which are similar to the legislation introduced as H.R. 2010 in the 108th Congress. During the 107th Congress, the Committee scheduled a Full Committee hearing on H.R. 4838, but Mr. Faleomavaega asked that the hearing be postponed due to a request made by the Legislature of American Samoa (Fono) on July 10, 2002.

mous consent. The bill, as amended, was then ordered favorably reported to the House of Representatives by unanimous consent.

SECTION-BY-SECTION ANALYSIS

Section 1. Findings

This section lists Congressional findings regarding how members of the Armed Forces and other overseas voters face specific logistical obstacles to their ballots being included in the election of the Delegate from American Samoa.

Section 2. Plurality of Votes Required for Election of Delegate

Section 2 amends subsection 1732 (a) of Public Law 95–556 (48 U.S.C. 1732) to provide for a primary election system. This section also specifically authorizes the Fono to establish a primary election for the office of Delegate. Further, if the Fono establishes this primary, the general election will revert to a majority election system.

Section 3. Effective Dates

Section 3 makes the legislation effective on January 1, 2006. This does not include subsection (c) regarding the powers of the Fono to establish a primary, which is effective on January 1, 2005.

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 Resources' oversight findings and recommendations are reflected in the body of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 and Article IV, section 3 of the Constitution of the United States grant Congress the authority to enact this bill.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

2. Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

3. General Performance Goals and Objectives. This bill does not authorize funding and therefore, clause 3(c)(4) of rule XIII of the Rules of the House of Representatives does not apply.

4. Congressional Budget Office Cost Estimate. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Com-

mittee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 21, 2004.

Hon. RICHARD W. POMBO,
*Chairman, Committee on Resources,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2010, a bill 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.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Matthew Pickford (for federal costs) and Marjorie Miller (for the state and local impact).

Sincerely,

ELIZABETH M. ROBINSON
(For Douglas Holtz-Eakin).

Enclosure.

H.R. 2010—A bill 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 provided the Territory of American Samoa with a nonvoting delegate to the U.S. House of Representatives. Specifically, the bill 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 vote 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.

The CBO staff contacts for this estimates are Matthew Pickford (for federal costs) and Marjorie Miller (for the state and local impact). This estimate was approved by Robert A. Sunshine, Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

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, 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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