

117TH CONGRESS
1ST SESSION

S. 865

To recognize the right of the People of Puerto Rico to call a status convention through which the people would exercise their natural right to self-determination, and to establish a mechanism for congressional consideration of such decision, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 18, 2021

Mr. MENENDEZ (for himself, Mr. SANDERS, Mr. BROWN, Mr. BOOKER, Mrs. GILLIBRAND, Ms. WARREN, Mr. MARKEY, and Mr. WICKER) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To recognize the right of the People of Puerto Rico to call a status convention through which the people would exercise their natural right to self-determination, and to establish a mechanism for congressional consideration of such decision, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Puerto Rico Self-De-
5 termination Act of 2021”.

1 **SEC. 2. FINDINGS.**

2 Congress finds as follows:

3 (1) In 1898, the United States defeated the
4 Spanish Kingdom in the Spanish-American War and
5 acquired by conquest Puerto Rico, Guam, and the
6 Philippines pursuant to the Treaty of Paris.

7 (2) In 1900, Congress established a civilian
8 government on the island through the Foraker Act.
9 Among other points, that Act established an “execu-
10 tive council” consisting of various department heads
11 and a presidentially appointed civilian governor.

12 (3) The Foraker Act also established the Resi-
13 dent Commissioner position to represent island in-
14 terests in Congress. These duties came to include
15 nonvoting service in the House of Representatives.

16 (4) In 1901, the Supreme Court’s decisions in
17 *Downes v. Bidwell* and its progeny held that for pur-
18 poses of the Constitution’s Uniformity Clause, Puer-
19 to Rico was not part of the United States and sub-
20 ject to the plenary powers of Congress, which in
21 turn established a colonial relationship. Justice
22 White, in concurrence, opined that Congress has dis-
23 cretion to decide whether and when to incorporate a
24 territory into the United States.

25 (5) Congress recognized Puerto Rico’s authority
26 over matters of internal governance in 1950 with the

1 passage of the Puerto Rico Federal Relations Act of
2 1950 (Public Law 81–600), providing for a constitu-
3 tional government for the island which was adopted
4 by Congress as a compact for the people of Puerto
5 Rico and the subsequent ratification of the island’s
6 constitution in July 1952.

7 (6) On November 18, 1953, the United Nations
8 recognized Puerto Rico as a self-governing political
9 entity under the United Nations General Assembly
10 Resolution 748.

11 (7) The political status of Puerto Rico is of sig-
12 nificant interest to communities both on and off the
13 island, including diaspora groups that continue hav-
14 ing strong cultural ties and socioeconomic ties to
15 Puerto Rico.

16 (8) The United States has a legal duty to com-
17 ply with Article 1 of the International Covenant on
18 Civil and Political Rights, which establishes that all
19 peoples have the right to self-determination and “by
20 virtue of that right they freely determine their polit-
21 ical status and freely pursue their economic, social
22 and cultural development”.

23 (9) The status convention provides a delibera-
24 tive, comprehensive, and uninterrupted space of dia-
25 logue that can define the future of Puerto Rico.

1 **SEC. 3. PUERTO RICO STATUS CONVENTION.**

2 (a) IN GENERAL.—The legislature of Puerto Rico has
 3 the inherent authority to call a status convention through
 4 an Act or Concurrent Resolution, constituted by a number
 5 of delegates to be determined in accordance with legisla-
 6 tion approved by the Government of Puerto Rico, for the
 7 purpose of proposing to the people of Puerto Rico self-
 8 determination options. A status convention called by the
 9 legislature of Puerto Rico shall—

10 (1) be a semipermanent body that is dissolved
 11 only when the United States ratifies the self-deter-
 12 mination option presented to Congress by the status
 13 convention as selected by the people of Puerto Rico
 14 in the referendum under section 5; and

15 (2) consist of delegates elected by the voters of
 16 Puerto Rico in an election conducted according to
 17 the enabling legislation for the status convention as
 18 approved by the legislature of Puerto Rico.

19 (b) PUBLIC FINANCING OF DELEGATE ELEC-
 20 TIONS.—

21 (1) FUND ESTABLISHED.—There is hereby es-
 22 tablished in the Treasury of the United States a
 23 fund to be known as the “Puerto Rico Status Con-
 24 vention Public Matching Fund” which shall be ad-
 25 ministered by the Puerto Rico State Commission on
 26 Elections and subject to oversight by the Federal

1 Election Commission. To the extent amounts are
2 made available in the fund for this purpose, the
3 Puerto Rico State Commission on Elections shall
4 distribute amounts in the fund such that \$4 is dis-
5 tributed to each candidate for delegate for every \$1
6 that the candidate receives as a campaign contribu-
7 tion that is—

8 (A) less than \$100; and

9 (B) donated by a resident of Puerto Rico.

10 (2) REQUIREMENTS FOR FUNDING.—To be eli-
11 gible to receive funds under this subsection, a can-
12 didate for delegate shall—

13 (A) agree to increased financial oversight
14 from the Federal Election Commission;

15 (B) limit campaign spending to not more
16 than \$25,000; and

17 (C) demonstrate a basic level of support
18 from residents of Puerto Rico by receiving from
19 residents of Puerto Rico not fewer than 50 do-
20 nations from 50 individuals of not more than
21 \$50.

22 (3) ADMINISTRATIVE AMOUNTS.— Not more
23 than 10 percent of amounts made available under
24 paragraph (4) may be use for administrative costs of
25 the Federal Election Commission.

1 (4) AUTHORIZATION OF APPROPRIATIONS.—

2 There is authorized to be appropriated and deposited
3 into the Puerto Rico Status Convention Public
4 Matching Fund to carry out this section \$5,500,000.

5 (c) DELEGATES.—Delegates elected under subsection
6 (a)(2), in consultation with the Commission, shall—

7 (1) debate and draft definitions on self-deter-
8 mination options for Puerto Rico, which shall be
9 outside the Territorial Clause of the United States
10 Constitution;

11 (2) draft a least one accompanying transition
12 plan for each self-determination option; and

13 (3) select and present to the people of Puerto
14 Rico the self-determination options that will be in-
15 cluded in the referendum under section 5.

16 **SEC. 4. CONGRESSIONAL BILATERAL NEGOTIATING COM-**
17 **MISSION.**

18 (a) ESTABLISHMENT.—There is established a Con-
19 gressional Bilateral Negotiating Commission (hereinafter
20 referred to as the “Commission”) to provide advice and
21 consultation to delegates elected under section 3(a)(2).

22 (b) COMPOSITION.—

23 (1) IN GENERAL.—The members of the Com-
24 mission shall include—

1 (A) the chairs of the Committee on Nat-
2 ural Resources of the House of Representatives
3 and the Committee on Energy and Natural Re-
4 sources of the Senate;

5 (B) the ranking members of the Com-
6 mittee on Natural Resources of the House of
7 Representatives and the Committee on Energy
8 and Natural Resources of the Senate;

9 (C) one member selected by the majority
10 leader of the House of Representatives;

11 (D) one member selected by the minority
12 leader of the House of Representatives;

13 (E) one member selected by the majority
14 leader of the Senate;

15 (F) one member selected by the minority
16 leader of the Senate;

17 (G) the Resident Commissioner of Puerto
18 Rico;

19 (H) with the consent of the Speaker of the
20 House of Representatives and majority leader
21 of the Senate, a member from the Department
22 of Justice; and

23 (I) with the consent of the Speaker of the
24 House of Representatives and majority leader

1 of the Senate, a member from the Department
2 of the Interior.

3 (2) REQUIREMENTS FOR CERTAIN MEMBERS.—

4 Members selected under subparagraphs (C) through
5 (F) of paragraph (1) shall represent a State or dis-
6 trict in a State that, as determined by the most re-
7 cently publicly available data from the Bureau of the
8 Census, represents one of the 10 States with the
9 largest population of people who identified on the
10 most recent Census as Puerto Rican.

11 (c) DUTIES AND FUNCTIONS.—The Commission—

12 (1) shall meet periodically with the delegates in
13 Puerto Rico and the District of Columbia, at the re-
14 quest of a majority of the delegates, with each meet-
15 ing required to include at least one delegate from
16 each of the self-determination options;

17 (2) shall have the authority to—

18 (A) study;

19 (B) make findings;

20 (C) develop recommendations regarding
21 self-determination options on constitutional
22 issues and policies related to—

23 (i) culture;

24 (ii) language;

1 (iii) judicial and public education sys-
2 tems;

3 (iv) taxes; and

4 (v) United States citizenship; and

5 (D) provide technical assistance and con-
6 stitutional advice to the delegates during the
7 Puerto Rico status convention;

8 (3) may hold public hearings in connection with
9 any aspects of the convention at the request of the
10 delegates or on its own; and

11 (4) may receive testimony.

12 (d) REPORTS.—The Commission shall—

13 (1) not less than quarterly, provide status re-
14 ports, findings, and studies to the House of Rep-
15 resentatives and the Senate;

16 (2) not less than once every 12 months, submit
17 a status report to the House of Representatives and
18 the Senate; and

19 (3) make reports submitted under paragraph
20 (2) available to the general public in widely acces-
21 sible formats in English and Spanish on the same
22 day that such reports are submitted under para-
23 graph (2).

1 **SEC. 5. PUERTO RICO STATUS REFERENDUM; EDUCATION**
2 **CAMPAIGN.**

3 (a) STRUCTURE AND PROCESS.—

4 (1) IN GENERAL.—A referendum vote by the
5 people of Puerto Rico—

6 (A) may be conducted in a ranked-choice
7 voting format in which voters rank choices by
8 preference on their ballots without a limit on
9 the number of choices ranked;

10 (B) may consist of choices each composed
11 of a self-determination definition and accom-
12 panying transition plan as presented by the del-
13 egates under section 3; and

14 (C) may include more than one choice with
15 the same self-determination definition, but a
16 distinct accompanying transition plan as pre-
17 sented by the delegates under section 3.

18 (2) AUTHORIZATION OF APPROPRIATIONS.—

19 There is authorized to be appropriated the Puerto
20 Rico State Commission on Elections, \$2,500,000 to
21 carry out a referendum vote under this subsection.

22 (b) EDUCATIONAL CAMPAIGN.—

23 (1) IN GENERAL.—Delegates shall carry out an
24 educational campaign through traditional paid media
25 related to the referendum under subsection (a).

1 (2) AUTHORIZATION OF APPROPRIATIONS.—
2 There is authorized to be appropriated the Puerto
3 Rico State Commission on Elections, \$5,000,000 to
4 carry out an educational campaign under this sub-
5 section. The Federal Election Commission shall en-
6 sure that funds made available under this paragraph
7 are divided equally among each self-determination
8 option represented on the referendum held under
9 this Act.

10 (3) QUARTERLY CAMPAIGN REPORTS.—Each
11 delegates shall submit quarterly campaign reports of
12 the educational campaigns to the Federal Election
13 Commission.

14 **SEC. 6. CONGRESSIONAL DELIBERATION AND ENACTING**
15 **RESOLUTION.**

16 If the referendum under this Act is approved by the
17 people of Puerto Rico, Congress shall approve a joint reso-
18 lution to ratify the preferred self-determination option ap-
19 proved in that referendum vote. If the Congress adjourns
20 sine die before acting on the self-determination option, the
21 Puerto Rico status convention created under this Act may
22 meet again and send or resend a self-determination op-
23 tions to the following Congress.

1 **SEC. 7. JOINT RESOLUTION.**

2 (a) DEFINITION.—The term “joint resolution” means
3 a joint resolution that is introduced within the 10-day pe-
4 riod beginning on the date when the results of the ref-
5 erendum are certified by Puerto Rico’s Commission on
6 Elections.

7 (b) REFERRAL.—A resolution described in subsection
8 (a) that is introduced in the House of Representatives
9 shall be referred to the Committee on Natural Resources
10 and in the Senate shall be referred to the Committee on
11 Energy and Natural Resources.

12 (c) DISCHARGE.—If the committee to which a resolu-
13 tion described in subsection (a) is referred has not re-
14 ported such resolution (or an identical resolution) by the
15 end of the day period beginning on the day of certification
16 of referendum results shall be, at the end of such period,
17 discharged from further consideration of such resolution,
18 and such resolution shall be placed on the appropriate cal-
19 endar of the body involved.

20 (d) CONSIDERATION.—(1) On or after the third day
21 after the date on which the committee to which such a
22 resolution is referred has reported, or has been discharged
23 (under subsection (c)) from further consideration of, such
24 a resolution, it is in order (even though a previous motion
25 to the same effect has been disagreed to) for any Member
26 of the respective body to move to proceed to the consider-

1 ation of the resolution. A Member may make the motion
2 only on the day after the calendar day on which the Mem-
3 ber announces to the body concerned the Member's inten-
4 tion to make the motion, except that, in the case of the
5 House of Representatives, the motion may be made with-
6 out such prior announcement if the motion is made by
7 direction of the committee to which the resolution was re-
8 ferred. All points of order against the resolution (and
9 against consideration of the resolution) are waived. The
10 motion is highly privileged in the House of Representatives
11 and is privileged in the Senate and is not debatable. The
12 motion is not subject to amendment, or to a motion to
13 postpone, or to a motion to proceed to the consideration
14 of other business. A motion to reconsider the vote by
15 which the motion is agreed to or disagreed to shall not
16 be in order. If a motion to proceed to the consideration
17 of the resolution is agreed to, the respective body shall
18 immediately proceed to consideration of the joint resolu-
19 tion without intervening motion, order, or other business,
20 and the resolution shall remain the unfinished business of
21 the respective body until disposed of.

22 (2) Debate on the resolution, and on all debatable
23 motions and appeals in connection therewith, shall be lim-
24 ited to not more than 2 hours, which shall be divided
25 equally between those favoring and those opposing the res-

1 olution. An amendment to the resolution is not in order.
2 A motion further to limit debate is in order and not debat-
3 able. A motion to postpone, or a motion to proceed to the
4 consideration of other business, or a motion to recommit
5 the resolution is not in order. A motion to reconsider the
6 vote by which the resolution is agreed to or disagreed to
7 is not in order.

8 (3) Immediately following the conclusion of the de-
9 bate on a resolution described in subsection (a) and a sin-
10 gle quorum call at the conclusion of the debate if re-
11 quested in accordance with the rules of the appropriate
12 body, the vote on final passage of the resolution shall
13 occur.

14 (4) Appeals from the decisions of the Chair relating
15 to the application of the rules of the Senate or the House
16 of Representatives, as the case may be, to the procedure
17 relating to a resolution described in subsection (a) shall
18 be decided without debate.

19 (e) CONSIDERATION BY OTHER BODY.—If, before
20 the passage by one body of a resolution of that body de-
21 scribed in subsection (a), that body receives from the other
22 body a resolution described in subsection (a), then the fol-
23 lowing procedures shall apply:

24 (1) The resolution of the other body shall not
25 be referred to a committee and may not be consid-

1 ered in the body receiving it except in the case of
2 final passage as provided in subparagraph (B)(ii).

3 (2) With respect to a resolution described in
4 subsection (a) of the body receiving the resolution—

5 (A) the procedure in that body shall be the
6 same as if no resolution had been received from
7 the other body; but

8 (B) the vote on final passage shall be on
9 the resolution of the other body.

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