

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: SM 940

INTRODUCER: Senator Rodriguez

SUBJECT: Puerto Rico

DATE: January 29, 2018

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	<b>Favorable</b>
2.	_____	_____	<u>RC</u>	_____

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**I. Summary:**

SM 940 urges Congress to incorporate the territory and resident United States citizens of Puerto Rico into the United States and apply, without discrimination or inequality, all law and policy in Puerto Rico on the same basis as in a state of the union.

Puerto Rico is currently classified as an “unincorporated territory.” An unincorporated territory is an area where Congress has not expressly and fully extended all of the United States Constitution within the meaning of Article IV, Section 3. In contrast, an “incorporated territory” is a territory to which the United States Constitution fully applies. Although Puerto Rico has been a possession of the United States since 1898, it has never been incorporated into the United States as other territories have been.

The memorial recounts the historical and legal relationship of the United States and Puerto Rico since 1898. It concludes by urging Congress to incorporate the territory and United States resident citizens of Puerto Rico into the United States.

**II. Present Situation:**

**The Commonwealth of Puerto Rico**

*Status*

The Commonwealth of Puerto Rico is an unincorporated territory of the United States. The term “commonwealth” does not convey a particular relationship or political status but broadly describes a self-governing area that has adopted and operates under its own constitution. Congress will not unilaterally withdraw a commonwealth’s right to govern itself. An “unincorporated territory” is an area where Congress has not expressly and fully extended the United States Constitution with the meaning of Article IV, Section 3 of the United States

Constitution.<sup>1</sup> An “incorporated territory” is defined as a territory to which the U.S. Constitution is fully applicable. Persons born in incorporated territories on or after the time the territory became part of the United States may claim citizenship under the 14th Amendment.<sup>2</sup>

### *History and Developments*

In the late 1800s and early 1900s, the sovereignty of the United States was extended to territories overseas. Unlike Alaska and Hawaii, these outlying territories were not considered to be a part of this country and it was determined that the Constitution did not fully apply to them. At the end of the Spanish-American War, Spain ceded Puerto Rico to the United States under the terms of the Treaty of Paris of 1899<sup>3</sup> and a brief U.S. military government was established.

In 1900, Congress passed the Foraker Act which established a civilian form of government in Puerto Rico and provided for an elected, non-voting member of Congress known as a Resident Commissioner in Congress.<sup>4</sup> The act also applied certain federal laws to the islands and “made United States coins sole legal tender in payment of debts . . . .”<sup>5</sup>

The U.S. Supreme Court decided a series of cases between 1901 and 1904, known collectively as the “Insular Cases.”<sup>6</sup> The term insular means pertaining to, or constituting, an island.<sup>7</sup> The Constitutional struggle in those cases was whether the United States could acquire territories and people without making those territories states.<sup>8</sup> The Court ultimately decided that the territories belonged to the United States, but were not a part of the United States. Incorporated territories were distinguished from unincorporated territories, and those distinctions remain today. For Puerto Rico, this meant that constitutional protections only apply if they are fundamental and that there is no guarantee of statehood.<sup>9</sup>

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<sup>1</sup> Article IV, Section 3 provides that “New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.”

“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; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.”

<sup>2</sup> U.S. DEPARTMENT OF STATE, FOREIGN AFFAIRS MANUAL AND HANDBOOK, 7 FAM 1121.2-1, DEFINITION OF TERMS, ACQUISITION OF U.S. NATIONALITY IN U.S. TERRITORIES AND POSSESSIONS, [https://fam.state.gov/FAM/07FAM/07FAM1120.html#M1121\\_2\\_1](https://fam.state.gov/FAM/07FAM/07FAM1120.html#M1121_2_1)

<sup>3</sup> *Id.*, at 7 FAM 1121.1, How Territories and Possessions Were Acquired.

<sup>4</sup> Library of Congress, The World of 1898: The Spanish-American War, Foraker Act (Organic Act of 1900), <http://www.loc.gov/rr/hispanic/1898/foraker.html>

<sup>5</sup> 48 U.S.C. s. 731 *et seq.*, Codification note after s. 755, <https://www.gpo.gov/fdsys/pkg/USCODE-2009-title48/html/USCODE-2009-title48-chap4-subchapI.htm>.

<sup>6</sup> Legal scholars disagree as to which cases should be the actual Insular cases. The various lists often include: *DeLima v. Bidwell*, 182 U.S. 1 (1901), *Goetze v. United States*, 182 U.S. 221 (1901), *Armstrong v. United States*, 182 U.S. 243 (1901), *Downes v. Bidwell*, 182 U.S. 244 (1901), *Huus v. New York & Porto Rico S.S. Co.*, 182 U.S. 392 (1901), *Dooley v. United States*, 183 U.S. 151 (1901), *Fourteen Diamond Rings v. United States*, 183 U.S. 176 (1901), *Hawaii v. Mankichi*, 190 U.S. 197 (1903), *Kepner v. United States*, 195 U.S. 100 (1904), *Dorr v. United States*, 195 U.S. 138 (1904), *Gonzales v. Williams*, 192 U.S. 1 (1904). Insular Cases, Wikipedia [https://en.wikipedia.org/wiki/Insular\\_Cases](https://en.wikipedia.org/wiki/Insular_Cases).

<sup>7</sup> The American Heritage Dictionary 667 (1985).

<sup>8</sup> Lana Birbrair, *The Insular Cases; Constitutional Experts Assess the Status of Territories Acquired in the Spanish American War*, Harvard Law Today (March 18, 2014), <https://today.law.harvard.edu/insular-cases-constitutional-experts-assess-status-territories-acquired-spanish-american-war-video/>.

<sup>9</sup> *Id.*

The Jones-Shafroth Act of 1917<sup>10</sup> granted citizenship to all residents of Puerto Rico.<sup>11</sup> The act established a bill of rights for the territory,<sup>12</sup> created a bicameral legislature,<sup>13</sup> and increased the term of the Resident Commissioner from two to four years.<sup>14</sup> However, Puerto Rico remained an unincorporated territory of the United States.

Under the Nationality Act of 1940, which was effective from 1941-1952, Puerto Rico came under the definition of the “United States” but was not made an incorporated territory. Pursuant to the Immigration and Nationality Act of 1952,<sup>15</sup> which is presently in effect, people born in Puerto Rico on or after December 24, 1952, receive U.S. citizenship at the time of their birth on the same terms as people born in other parts of the United States.

### ***Modern Self-Government***

Congress passed the Puerto Rico Federal Relations Act of 1950 which laid the foundation for self-government. The act permitted the Legislature of Puerto Rico to call for an island-wide referendum to establish a constitutional convention to draft a constitution. The constitution was required to provide a republican form of government and include a bill of rights.<sup>16</sup> The new constitution was approved by the voters on March 3, 1952, by Congress on July 3, 1952,<sup>17</sup> and became effective on July 25, 1952.<sup>18</sup>

### ***Puerto Rico’s Population Today***

According to the United States Census Bureau, Puerto Rico’s estimated population was 3,337,177 people as of July 1, 2017.<sup>19</sup> The Pew Research Center states that 84,000 people left Puerto Rico in 2015 for the United States mainland. This migration is due in large measure to the economic recession that has lasted for almost a decade. Similarly, tax revenues have also declined further creating financial problems for the island.<sup>20</sup> Many residents who leave Puerto Rico settle in Florida. As of 2014, more than 1 million Hispanics of Puerto Rican origin have settled here.<sup>21</sup>

### ***Natural Disasters***

Hurricane Irma, one of the Atlantic’s most powerful storms, skirted north of Puerto Rico on September 5, 2017, as a Category 5 storm. High winds, rain, and flashfloods damaged the island,

<sup>10</sup> “An Act to Provide a Civil Government for Porto Rico, and for Other Purposes” (sic), Pub. L. No. 64-368, 39 Stat. 951 (Mar. 2, 1917) (Jones-Shafroth Act). Generally codified at 48 U.S.C. ch. 4.

<sup>11</sup> Jones-Shafroth Act, s. 5.

<sup>12</sup> Jones-Shafroth Act, s. 2.

<sup>13</sup> Jones-Shafroth Act, s. 25.

<sup>14</sup> Jones-Shafroth Act, s. 29.

<sup>15</sup> *Supra* at 2, 7 FAM 1121.4-2

<sup>16</sup> 48 U.S.C. ss. 731a-731e.

<sup>17</sup> Pub. L. No. 82-447 (July 3, 1952).

<sup>18</sup> Department of State, Office of the Historian, Foreign Relations of the United States, 1952-1954, United Nations Affairs, Volume III, Document 911 (Sept. 2, 1953), <https://history.state.gov/historicaldocuments/frus1952-54v03/d911>.

<sup>19</sup> United States Census Bureau, QuickFacts, Puerto Rico, <https://www.census.gov/quickfacts/PR>.

<sup>20</sup> Jens Manuel Krogstad, Pew Research Center, Puerto Ricans Leave in Record Numbers for Mainland U.S. (Oct.14, 2015) <http://www.pewresearch.org/fact-tank/2015/10/14/puerto-ricans-leave-in-record-numbers-for-mainland-u-s/>.

<sup>21</sup> *Id.*

wiping out electricity to almost two-thirds of the residents, and leaving at least three people dead.<sup>22</sup>

On September 20, 2017, Hurricane Maria made landfall as a Category 4 storm, devastating the island. The infrastructure was crippled. Electricity was cut off to all of the island. Many homes and buildings were destroyed, roads became impassable rivers. Access to clean water and food was severely limited. The damage has been estimated at \$94 billion.<sup>23</sup>

### ***Rights and Benefits***

United States citizens residing in Puerto Rico today have many of the same rights, privileges, and immunities enjoyed by citizens of all states in the same manner as if Puerto Rico were a state.<sup>24</sup> Residents in Puerto Rico may qualify for benefits under Old-Age, Survivors, and Disability Insurance administered by the Social Security Administration.<sup>25</sup> Those in Puerto Rico may also enroll in Medicaid and the Children's Health Insurance Program (CHIP).<sup>26</sup> However, Supplemental Security Income benefits are not provided to residents in Puerto Rico.<sup>27</sup>

For the purposes of federal income taxes, resident United States citizens of Puerto Rico are treated differently than United States citizens in other states. Puerto Rico residents may exclude all sources of income from sources in the Commonwealth when reporting income for United States income taxes. Those taxpayers do not need to file a tax return if all income is from sources in Puerto Rico. However, if they have income from sources outside Puerto Rico that exceeds the filing thresholds, they are required to file a United States tax return.<sup>28</sup>

Although the residents of Puerto Rico enjoy many privileges of U.S. citizens, they do not have a voting representative in the U.S. House of Representatives, are not represented by two Senators in the U.S. Senate, nor do they have a vote in the U.S. presidential elections.

### **III. Effect of Proposed Changes:**

A memorial is an official legislative document addressed to Congress, the President of the United States, or some other governmental entity that expresses the will of the Legislature on a matter within the jurisdiction of the recipient. A memorial requires passage by both legislative houses but does not require the Governor's approval nor is it subject to a veto. Memorials often

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<sup>22</sup> Alex Johnson, Daniel Arkin, Jason Cumming, and Bill Karins, NBC News, *Hurricane Irma Skirts Puerto Rico, Leaves 1 Million Without Power* (Sept. 7, 2017), <https://www.nbcnews.com/storyline/hurricane-irma/hurricane-irma-skirts-puerto-rico-lashing-it-powerful-winds-flooding-n799086>.

<sup>23</sup> Reliefweb, United Nations Office for the Coordination of Humanitarian Affairs, *Quick Facts: Hurricane Maria's Effect on Puerto Rico* (Jan. 19, 2018), <https://reliefweb.int/report/puerto-rico-united-states-america/quick-facts-hurricane-marias-effect-puerto-rico>.

<sup>24</sup> 48 U.S.C. s. 737.

<sup>25</sup> Social Security Administration, *2016 Annual Statistical Supplement: Social Security (Old-Age, Survivors, and Disability Insurance)*, <https://www.ssa.gov/policy/docs/statcomps/supplement/2016/oasdi.pdf>.

<sup>26</sup> As of June 2105, 1,671,657 people in Puerto Rico were enrolled in Medicaid or CHIP. At <https://www.medicaid.gov/medicaid/by-state/puerto-rico.html>.

<sup>27</sup> Social Security Administration, *2016 Annual Statistical Supplement: Supplemental Security Income*, <https://www.ssa.gov/policy/docs/statcomps/supplement/2016/ssi.pdf>.

<sup>28</sup> INTERNAL REVENUE SERVICE, TOPIC NUMBER 901: TOPIC NUMBER: 901 - IS A PERSON WITH INCOME FROM PUERTO RICO REQUIRED TO FILE A U.S. FEDERAL INCOME TAX RETURN? (Updated Jan. 4, 2018), <https://www.irs.gov/taxtopics/tc901>.

express the Legislature's desire that Congress take action on a certain matter or request that Congress propose an amendment to the United States Constitution.<sup>29</sup>

This memorial urges Congress to incorporate the territory and resident United States citizens of Puerto Rico into the United States and apply all law and policy in Puerto Rico, without discrimination or inequality, on the same basis as in a state of the union.

Copies of the memorial are to be sent to the President, the President of the United States Senate, the Speaker of the House of Representatives, and each member of the Florida delegation to Congress.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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<sup>29</sup>Office of Bill Drafting Services, *Manual for Drafting Legislation*, The Florida Senate, at 137-138. (2009), available at <http://intranet.flsenate.gov/Document?filePath=/Publications%20and%20Forms/Publications/&fileName=Bill%20Drafting%20Manual.pdf>.

**VIII. Statutes Affected:**

None.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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