

THE WHITE HOUSE

WASHINGTON

March 10, 1980

MEMORANDUM FOR: STU EIZENSTAT

FROM: AL STERN *AL*

SUBJECT: Enrolled Omnibus Territories Bill
(H.R. 3756)

Curt Hessler, representing OMB, sent you a memo on the Omnibus Territories Bill (copy attached). In it he takes up the issue of a Presidential veto of the bill which OMB will recommend along with Justice, Energy and DoD. Not mentioned, of course, is that fact that Interior will recommend approval, as no doubt will HEW.

The issue is whether we join with OMB in advocating a veto and then going further in the light of the Hessler memo and working for a "clean" bill, or on the other hand if we advocate signing and taking our chances with a veto. There is a third possibility which is that we argue against a veto and then work later, should the President decide to veto, for a "clean" bill from Burton. If we were to agree with the veto position, OMB would have us excise some six items from the bill. I do not feel that all of them are as reprehensible as OMB suggests in its memo, and further I do not feel that OMB's statements of their objections are either fully honest or accurate. Let me take them up in sequence:

(1) Authorization of Interest on Guam Land Claims.

- The budget exposure numbers from DOJ here are very soft and one of the reasons Justice does not want the numbers released publicly is that they cannot justify these estimates.
- The inflationary impact on Guam would depend upon a rate of payout and the use of the money on Guam and not merely on the dollars into the economy.
- The fact that questionable practices of the past may be open up to inspection and to redress, is hardly an argument we'd like to hear from Justice, as a reason for a veto.

(2) Health Care System for the Northern Marianas

This is a more difficult section of the bill to support particularly for the non-radiation items. It should be noted, however, that the population there is small, that the radiation exposures were over 20 years ago, and that the population to which it would apply is therefore limited. However, barring payment for radiation related illnesses, it is no doubt generous and we might wish to eliminate it.

(3) Spent Nuclear Fuel Shortage

The issue here is a requirement for Congressional approval. Our arguments opposed to this, other than the problem of allowing Congress to veto an Executive decision, are somewhat contradictory. OMB argues that there are already sufficient number of laws restricting the placement of spent nuclear fuel (the spent nuclear fuel being referred to here is not that from U.S plants but from overseas plants and foreign nuclear facilities). They also argue that there are no plans or desires to place nuclear waste in U.S. territories which would have no voice in such a decision, at least in Congress. Having said we do not intend to use the Territories for a depository and that we could not do it without Congressional approval anyway, it seems only to fuel the paranoid on this subject to resist another Congressional approval.

(4) Puerto Rican Submerged Lands

-- The position of Puerto Rico will be superior to some coastal States, but it will be equivalent to two other coastal states, Florida and Texas, which have won arguments in the courts.

-- The issue of DoD concerns is itself a politically hot subjects in Puerto Rico and relates to the ability to use Puerto Rico as a training ground. This which has always been an object of great controversy in Puerto Rico, is especially on the question of the ability to be represented in these decisions. In large part, DoD's objection represents a colonialist mentality and a continuing inability to make their real interests understood in Puerto Rico.

(5) The Issue of Continuing Levels of Program Funding into the Territory.

This matter must be considered on a case-by-case basis. Many of the programs, if continued permanently, would exacerbate the problem of overdependence and waste. However, some education programs and health programs (e.g. those mutually agreed to) are in the interest of the Islands and do not force their perpetual dependence. The issue is not whether the programs should be continued but how the money and the programs really relate to Island needs and aspirations.

(6) Northern Marianas Hospital

This particular item is probably useful for the Northern Marianas. But one might either approve or disapprove of it without in the long run significantly affecting the health care in the Northern Marianas. In fact passage between the Marianas and the Guam medical facilities is not easy at all times of the year, and therefore the Guam hospital is not directly useful for all purposes of the Marianas. What should be avoided is duplication of facilities. I would suggest that authorizing the hospital is not the same thing as immediately building it. If I were talking to Burton, I would suggest that we authorize it, allow for fairly long program to build the hospital.

My recommendation would be first to call in OMB and explain which issues we really feel are objectionable, to get them not to be so adamantly opposed to all the six items, to agree if necessary then to a veto, and finally to get the clean bill from Burton. All this must be done this week. Final day for Presidential action is March 15.

cc: Jeff Farrow
David Rubenstein

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WASHINGTON

MEMORANDUM FOR THE PRESIDENT

FROM: STU EIZENSTAT
JEFFREY FARROW

SUBJECT: Enrolled Bill H.R. 3756 - Omnibus Territories Bill

Sponsors: Rep. Phillip Burton and 17 others

THE BILL

All U.S. territories (including Puerto Rico), the Trust Territory of the Pacific Islands and Hawaii are impacted by or concerned about issues covered by provisions among the 29 which make up this bill. Most of the provisions are minor in scope. They accomplish purposes advocated by the Administration, incorporate amendments at our request, provide assistance not opposed by the pertinent agencies or which are strongly supported by several key Congressional leaders. The measure follows your Territorial Message of February 14 by outlining the first comprehensive national policy for the insular territories. While this measure does approach a number of territorial problems on a piecemeal basis, the items involved are so insubstantial as not to contravene any of the major objectives outlined in our new territorial policy. Sponsors took cognizance of the policy initiatives in their consideration of the bill, amended it accordingly and approved items which do not seriously contradict the most important policy objectives.

The most important sections:

- o authorize normal operational funding for Trust Territory, including capital improvement projects already in the budget;
- o authorize medical care and compensation for the victims of U.S. nuclear testing on Bikini and other atolls in the Marshall Islands;
- o authorize the continuance of Federal health and educational programs in Micronesia after termination of the trusteeship, similar to the compact we are negotiating with the Micronesian entities;

- o authorize funding for needed health care facilities for the Northern Mariana Islands;
- o authorize the payment of interest and set a statute of limitations on claims on land fraudulently or unfairly acquired by the military on Guam after liberation of the island during World War II;
- o extend and provide for repayment of an essential loan to the Guam Power Authority;
- o repeal an authorization which would grant the Virgin Islands \$60 million to offset local budget deficits - appropriations for which have been opposed by the Administration;
- o continue the Federal guarantee of bonds for important capital projects in the Virgin Islands;
- o allow equipment and program poor territories to use U.S. facilities and services on a cost-reimbursable basis;
- o forgive interest on loans made to Guam after a 1962 typhoon;
- o recognize Puerto Rico's longstanding claim to three marine league submerged lands jurisdiction;
- o require Congressional authorization of projects to transport or store nuclear wastes or fuel in the Pacific, a serious concern in the region; and
- o waive Interior matching requirements in the territories and matching requirements of under \$100,000 for programs of all agencies for American Samoa and the Northern Mariana Islands which lack an adequate tax base.

VOTES IN CONGRESS

House: voice vote

Senate: voice vote

ARGUMENTS FOR VETO

Various agencies, including OMB, contend four of the 29 provisions warrant a veto. The issues are:

1. Puerto Rico Submerged Lands: In recognizing Puerto Rico's three marine league (10.35 mile) claim, the Island is treated better than the coastal states were in the Submerged Lands Act which recognized three mile jurisdiction and gave the right to sue for a further boundary. Further, drafting problems could unintentionally limit access to the naval base at Roosevelt Roads and areas of the island of Vieques used for training exercises.
2. Guam Land Claims: Additional budgetary exposure from granting interest on claims previously authorized to be litigated potentially ranges between \$100 million and \$500 million over several future years. It is contended that the measure may also set a precedent for paying interest in cases involving now-discarded Federal land acquisition methods.
3. Marshall Islands Radiation Victim Medical Care: The medical care proposed for victims of nuclear testing in the Marshall Islands includes generalized care, potentially setting a precedent for treatment of nuclear test victims in western states. The measure duplicates an existing, adequate program for victims in two of the islands.
4. Nuclear Waste or Fuel Transportation Storage in the Pacific: The Non-Proliferation Act of 1978 provides the necessary Congressional oversight of nuclear storage projects. Adding another Congressional approval process would add little real additional control over a spent fuel program but might place in doubt U.S. willingness to proceed with international agreements.

ARGUMENTS FOR SIGNING

Through the important sections cited above and others, the bill accomplishes several worthwhile, albeit minor, objectives in the territories. There is reason to treat seriously

the concerns expressed in the veto recommendations, however the following factors should be considered regarding the controversial sections and militate against a veto:

1. Puerto Rico Submerged Lands: The Commonwealth's claim is based both on Spanish law and Congressional action in 1917 which granted the island "control" of the submerged lands. In H.R. 3756 Congress merely recognizes the 1917 act as conveying title in the transfer of control. Puerto Rico's political status argues for treatment different from that of the states as is the case with other aspects of Federal policy. But an unintentional impact of the bill's language may cast doubt on the access guaranteed to military facilities. Principal sponsors and the Governor have agreed to support immediate Congressional correction of the ambiguities. Further, in addition to the political problems posed by a veto, a failure to resolve the issue legislatively will renew pressure for an administrative solution the Administration would reject.
2. Guam Land Claims: Any additional budgetary impact of paying interest on successful claims would probably not be felt until FY 1983 given the current court schedule. Awards are only to be made in cases where fraud or duress on the part of the military is determined. It is, therefore, difficult to justify not awarding interest when such a determination is made. While Bennett Johnston is adamant in favor of enactment of the provision, he would also support settlement of the cases through the release of unneeded military land holdings. We are developing a proposal that would effect such settlements and minimize not only the additional budgetary impacts of interest payments but the basic cost of compensation as already authorized by law in 1977 as well.
3. Marshall Islands Radiation Victim Care: The U.S. cannot morally avoid living up to its responsibility to victims of nuclear testing in the Pacific. Our trust responsibility to the inhabitants of these islands is inherent in our administration of Micronesia on behalf of the United Nations. That trust was violated by testing which has rendered atolls including Bikini uninhabitable and seriously impaired the health of several hundred Micronesians. A failure to care for

the victims would surely result in international criticism. Given the uniqueness of the island circumstance and the distance of the islands involved from other land masses, we see no justification for viewing this as a precedent for western state cases. Our view is shared by Congressional sponsors, including leading conservatives who feel strongly about this matter.

4. Nuclear Waste or Fuel Transportation and Storage in the Pacific: We agree that current law provides for necessary Congressional oversight of nuclear storage projects. We doubt, however, that the provision specifically requiring prior approval by Congress which, of course, must fund any such projects, warrants a veto. Our view mirrors in this respect that of the State Department which although concerned about the impact on non-proliferation agreements, has not advised a veto. This is the second time the Senate has passed a measure explicitly requiring authorization of Pacific nuclear transportation or storage projects. It reflects the determination of Senators Jackson, Matsunga, McClure and Hatfield to assure a conscious and proper Federal decision to proceed with any such plans. Their determination responds to the very strong expressions on the subject by Governor Ariyoshi, other American Pacific governors, the entire Pacific Congressional delegation and other elements of the Pacific community.

AGENCY AND STAFF RECOMMENDATIONS

The Vice President, Interior, NRC, OPM, Jack, Sarah, Frank and I recommend approval. OMB, Treasury, Energy, Defense and Justice recommend disapproval. HEW defers to Interior. ACDA, GSA and Commerce have no objection to approval. State and the Office for Micronesian Status Negotiations have concern about the bill but have not recommended a veto. NSC has not commented. A signing statement will be ready later this morning.

DECISION

Sign H.R. 3756 _____

Veto H.R. 3756 _____