

THE WHITE HOUSE

WASHINGTON

March 11, 1980

MEMORANDUM FOR: THE PRESIDENT
FROM: STU EIZENSTAT
SUBJECT: Omnibus Territories Bill

Attached is an enrolled bill memo on H.R. 3756. I want to stress my strong support for your approval of this measure. While a few of the provisions in the omnibus bill prompt legitimate agency concern, on balance the bill warrants signature as it incorporates a number of worthwhile minor territorial items. Many of the problems cited can be corrected by further Congressional action. If you so direct, we will follow-up immediately on our informal requests to key sponsors who have indicated a willingness to cooperate for such action in the event of an approval.

I know that you are aware of the serious political implications of your action on this measure and I will not reiterate the political imperatives for a signature. I should note, however, that approval is probably essential to accomplishment of our overall territorial policy goals as outlined in your message to Congress of February 14. Additionally, a veto may have spinoffs on other Congressional initiatives as well due to the strong view on this bill held by Senators Jackson, Johnston and others and key Representatives such as Phillip Burton. Further, a veto might result in adverse international publicity and an exacerbation of Federal-territorial tensions.

Finally, the budgetary impact of the measure on the FY 81 budget is minimal.

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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 _____