

1 101ST CONGRESS  
2 1ST SESSION

# S. 711

3  
4 To provide for a referendum on the political status of Puerto Rico.

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6  
7 IN THE SENATE OF THE UNITED STATES

8  
9 [MAY 9, 1989]

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11 MR. JOHNSTON (for himself and MR. MCCLURE) introduced the following bill; which was read twice and  
12 referred to the Committee on Energy and Natural Resources.

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## A BILL

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19 To provide for a referendum on the political status of Puerto Rico.

20 *Be it enacted by the Senate and House of Representatives of the United States of*  
21 *America in Congress assembled,*

22 That—

23 (1) the United States of America recognizes the principles of international law with  
24 respect to its relationship with Puerto Rico; and

25 (2) the United States is committed to a process of consultation and negotiation with  
26 the People of Puerto Rico leading to a referendum on the issue of political status to  
27 be conducted in a fair and equitable manner, and the implementation of the results of  
28 such referendum.

1 **SEC. 2. REFERENDUM.**

2 (a) **IN GENERAL.**— An islandwide referendum shall be held in Puerto Rico in  
3 which eligible voters of the Commonwealth of Puerto Rico shall be presented a  
4 choice of negotiating one of three status options for Puerto Rico as follows:

- 5 (1) Statehood;  
6 (2) Independence; or  
7 (3) Enhanced Commonwealth.

8 For the purpose of these negotiations it is understood that the initial position of the  
9 People of the Commonwealth of Puerto Rico and of the Congress of the United  
10 States is that the terms shall be as follows;

11 (b) **INITIAL DEFINITIONS.**—

- 12 (1) Statehood:  
13  
14 (2) Independence:

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16 (3) **ENHANCED COMMONWEALTH:**

17 **SUBPART 1. STATEMENT OF PURPOSES.**

18 In 1952 the Congress of the United States, fully recognizing the principle of  
19 government by consent, and the People of Puerto Rico, in the exercise of their  
20 right to self-determination, entered upon a compact which established a  
21 Commonwealth relationship between Puerto Rico and the United States.

22 Under the compact the People of Puerto Rico adopted in their own  
23 sovereign right their own Constitution and formed an autonomous political  
24 community in permanent union with the United States of America based on the  
25 irreversible bond of American citizenship.

1 In 1953 the General Assembly of the United Nations recognized the  
2 creation of the Commonwealth and removed Puerto Rico from the list of non-  
3 self-governing territories.

4 This association has enabled the People of Puerto Rico to advance their  
5 economic and social development and to preserve their distinct historical  
6 heritage and cultural personality.

7 As inherent in all political relationships freely entered upon, it was based  
8 on the understanding that it would evolve and develop within its particular  
9 political nature upon mutually agreeable terms.

10 It is the purpose of Section 2(b)(3) to provide for the enhancement of the  
11 Commonwealth relationship by enlarging the scope of self-government of the  
12 Puerto Rican people upon the approval of a proposition to that effect by a  
13 majority of the eligible voters of the Commonwealth of Puerto Rico.

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15 **SUBPART 2. REFERENDUM PROPOSITION: COMMONWEALTH**

16 The referendum proposition regarding Commonwealth, to be presented  
17 to, and voted upon, by the People of Puerto Rico shall be as follows:

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19 "The Commonwealth association with the United States shall be enhanced to  
20 enable the People of Puerto Rico to accelerate their economic and social  
21 development and attain maximum cultural and political autonomy within  
22 permanent union with the United States based on the irreversible bond of  
23 American citizenship, a common defense, a common market, and a common  
24 currency. "

25  
26 The proposition will appear in the ballot, in Spanish, as follows:

27  
28 "El Estado Libre Asociado se fortalecerá para acelerar el desarrollo económico y  
29 social y alcanzar la máxima autonomía cultural y política del pueblo de Puerto Rico

1 en su unión permanente con los Estados Unidos sobre los pilares de común  
2 defensa, común mercado, común moneda, y el vínculo indisoluble de la  
3 ciudadanía americana."  
4

### 5 SUBPART 3. PRINCIPLES OF COMMONWEALTH

6 When the Governor certifies to the President and to the Congress of the  
7 United States in accordance with Section 2(d) that the decision of the People of  
8 Puerto Rico which received the majority of the votes cast favors the proposition  
9 of enhanced Commonwealth in permanent union with the United States, as set  
10 forth in subpart 2, above, Section 1 of the Puerto Rico Federal Relations Act, 39  
11 Stat. 954, as amended, 48 U.S.C. Section 731, shall be repealed, and replaced by the  
12 following:  
13

14 "(1) The provisions of this Act shall apply to the Commonwealth of Puerto  
15 Rico, an autonomous body politic joined in permanent union with the United  
16 States on the basis of common citizenship, common defense, common market and  
17 common currency.

18 (2) The policy of the United States shall be to enhance the Commonwealth  
19 relationship enjoyed by the Commonwealth of Puerto Rico and the United States to  
20 enable the People of Puerto Rico to accelerate their economic and social  
21 development and attain maximum cultural and political autonomy within  
22 permanent union with the United States, to secure more equitable participation for  
23 the People of the Commonwealth of Puerto Rico in all federal programs that  
24 provide grants or services to citizens of the United States as individuals, to secure  
25 increased participation by the People of Puerto Rico in U.S. governmental decisions  
26 affecting them, to safeguard the distinct cultural identity of the People of Puerto  
27 Rico, and to protect the bilateral nature of the relationship between the  
28 Commonwealth of Puerto Rico and the United States. "  
29

### 30 SUBPART 4. IMPLEMENTATION OF FEDERAL POLICY

31 When the new federal policy is established in accordance with subpart 3,  
32 then Section 9 of the Federal Relations Act, 39 Stat. 954, as amended, 48 U.S.C.

1 Section 734, is amended by inserting at the beginning thereof the term "(a)" and  
2 by adding at the end thereof the following:

3  
4 "(b) A federal statutory law, or provision of such law, is locally inapplicable  
5 unless it is consistent with the policy established under subpart 3 and unless such  
6 federal statutory law has proper regard for the economic, cultural, ecological,  
7 geographic, demographic and other local conditions of the Commonwealth of  
8 Puerto Rico. This subsection shall not apply to:

9 (i) any federal statutory law in which the Congress makes a specific  
10 finding that there is an overriding national interest that such law should apply to  
11 the Commonwealth of Puerto Rico, or

12 (ii) any federal statutory law, or provision thereof, establishing directly  
13 or indirectly grants and/or services to citizens of the United States as individuals,  
14 or

15 (iii) any federal statutory law or provision thereof relating to citizenship,  
16 or

17 (iv) any federal statutory law or provision thereof pertaining to the  
18 foreign relations, defense or national security of the United States that requires  
19 uniform applicability throughout the United States, including the Commonwealth  
20 of Puerto Rico, to achieve its intended purposes.

21 (c) In addition to judicial determinations of the inapplicability of federal laws  
22 under subsection (b), the Governor of the Commonwealth of Puerto Rico may  
23 certify from time to time to the Speaker of the House of Representatives, the  
24 President of the Senate, and the President of the United States, that a federal  
25 statutory law or provision thereof, other than one excluded from the operation of  
26 subsection (b), is inconsistent with a Puerto Rican statute and the policy established  
27 under subsection (b). Unless, within 60 days of the receipt of such certification, a  
28 statute is enacted embodying the finding required under subsection (b)(i), the  
29 President shall issue a proclamation that such federal statutory law or provision  
30 thereof identified in the Governor's certification is not applicable in Puerto Rico.

31 (d)(i) The Commonwealth of Puerto Rico may continue to enter in its own  
32 name into international cultural, commercial, educational and sports agreements,  
33 and other agreements of like nature.

34 (ii) In addition, the Governor of the Commonwealth of Puerto Rico may take  
35 any official action to promote the international interests of Puerto Rico that

1 requires the consent of the United States Government and is not expressly  
2 prohibited by law. The Governor of the Commonwealth of Puerto Rico shall  
3 provide written notice to the President of the United States of any official action he  
4 contemplates taking pursuant to the authorization of this part of this subsection  
5 and not pursuant to any other authorization or consent. The President may, within  
6 30 days of his receipt of such notice, sign and transmit to the Governor of the  
7 Commonwealth of Puerto Rico a document expressing his determination that the  
8 contemplated official action would imperil the foreign relations or national defense  
9 of the United States, in which case the authorization hereby granted shall be  
10 withdrawn as regards such contemplated official action.

11 (e) All departments and agencies of the Government of the United States shall  
12 be guided by the policy established in subpart 3 when carrying out their duties  
13 under federal statutory laws and federal regulations applicable in or affecting the  
14 Commonwealth of Puerto Rico. Every such department or agency shall, before  
15 taking any major federal action applicable in or affecting the Commonwealth of  
16 Puerto Rico, separately evaluate the consistency of such action with such policy and  
17 shall state, in a document accompanying the major federal action, the extent,  
18 nature and result of its consideration.

19 (f) Any rule, as defined in 5 U.S.C. sec. 551(4), issued by an agency, as defined in  
20 5 U.S.C. sec. 551(1), shall apply in the Commonwealth of Puerto Rico only to the  
21 extent that it is consistent with the policy set forth in subsection (b). After the  
22 effective date of this amendment, when any such rule, other than a rule issued  
23 after notice and hearing required by statute, that does not in terms provide that it is  
24 inapplicable in the Commonwealth of Puerto Rico is published in the Federal  
25 Register, the Governor of the Commonwealth of Puerto Rico may submit to the  
26 agency within 30 days in writing (or such longer period as the agency may have  
27 prescribed as the period between publication of the rule and its effectiveness) the  
28 Governor's determination that such rule is inconsistent with the policy established  
29 in subsection (b). Thereupon, the agency shall reconsider the question of  
30 consistency of the rule with the policy established in subsection (b) and shall,  
31 within 45 days of its receipt of the Governor's determination, publish in the Federal  
32 Register its finding either that there is an overriding national interest that the rule  
33 be applicable in the Commonwealth of Puerto Rico, in which case the rule, whether  
34 or not previously applicable in the Commonwealth of Puerto Rico, shall thereafter  
35 be so applicable, or that the rule is not compatible with such policy, in which event

1 such rule, whether or not previously applicable in the Commonwealth of Puerto  
2 Rico, shall not be so applicable. Unless the agency for good cause finds that a rule  
3 that is the subject of such determination by the Governor of Puerto Rico as is  
4 described in this subsection shall be applicable to the Commonwealth of Puerto  
5 Rico pending its consideration of such determination, and publishes such finding  
6 in the Federal Register, such rule, whether or not previously applicable in the  
7 Commonwealth of Puerto Rico, shall not be so applicable pending such  
8 consideration. An agency's decision to make a rule applicable or inapplicable in  
9 Puerto Rico shall be subject to judicial review.

10 (g) The laws, rules and regulations of the United States applicable in the  
11 Commonwealth of Puerto Rico when the new federal policy is established in  
12 accordance with subpart 3 shall continue in effect except to the extent repealed or  
13 modified by this Act, or inconsistent with it, and except as hereafter modified,  
14 suspended or repealed in accordance with law."

## 15 16 17 **SUBPART 5. SUBSTANTIVE AREAS OF ENHANCEMENT**

18 In the event the status option of enhanced Commonwealth in permanent  
19 union with the United States receives a majority of the votes cast in the  
20 referendum, the negotiations contemplated in Section 3 hereof shall develop  
21 implementing legislation to enhance the Commonwealth relationship in the  
22 following areas, as hereafter established:

### 23 24 **I. AVIATION**

25 Amend the Federal Aviation Act to authorize the Commonwealth of  
26 Puerto Rico to seek on its own behalf bilateral air transportation agreements  
27 governing the operation of air services by United States and foreign air carriers  
28 between the Commonwealth and foreign points, and between the  
29 Commonwealth and the United States for foreign air carriers.

1 2. DEVELOPMENT OF TOURISM.

2 Amend the Coastal Barrier Resource Act to clarify congressional intent to  
3 exclude the Commonwealth of Puerto Rico from the application of this federal  
4 statute that never was intended to apply to a Caribbean island, thus enhancing  
5 the autonomy of the Commonwealth to decide for itself how best to develop its  
6 coastal zone, including the promotion of tourism that is so important to the  
7 economic well-being of Puerto Rico.

8  
9 3. INTERNATIONAL TRADE.

10 (a) Tariff Authority. Enable the Commonwealth of Puerto Rico to impose  
11 tariff duties on foreign origin products imported into Puerto Rico to the extent it  
12 can do so consistent with the international obligations of the United States.

13 (b) Generalized System of Trade Preferences. Secure enactment of a policy  
14 statement by the United States encouraging other countries to consider Puerto  
15 Rico as a developing territory for purposes of their respective general or regional  
16 systems of trade preferences.

17 (c) Consultation role in the negotiation of trade agreements. Establish  
18 arrangements to assure that the President consults with the Governor of the  
19 Commonwealth of Puerto Rico concerning the potential impact of any proposed  
20 tariff rate changes on the economy of Puerto Rico before the President concludes  
21 any such trade agreements under Section 1102 of the Omnibus Trade and  
22 Competitiveness Act of 1988. Arrangements shall also be sought to provide for  
23 appropriate participation by the Commonwealth of Puerto Rico, at its request, in  
24 the negotiations of trade agreements affecting it.

1 4. MARITIME.

2 Enable the Commonwealth of Puerto Rico to establish its own maritime  
3 authority, which will exercise exclusive jurisdiction to establish and enforce  
4 uniform and non-discriminatory rates for trade between ports in the United  
5 States and ports in Puerto Rico to assure Puerto Rico the lowest possible rates.

6

7 5. MARITIME RESOURCES

8 Amend federal law to enable the Commonwealth of Puerto Rico to  
9 acquire jurisdiction over the waters, seabed and submerged lands surrounding  
10 Puerto Rico and presently under the jurisdiction of the United States. Amend  
11 federal law to exclude the Commonwealth from the coverage of the Magnuson  
12 Fisheries Conservation and Management Act and permit the Commonwealth to  
13 receive financial benefits from countries other than the United States for  
14 maritime resources to which the Commonwealth may lay claim.

15

16 6. INTELLECTUAL PROPERTY.

17 Looking to the future and the critical importance of information in the  
18 economic development that will occur in the next century, secure new means of  
19 encouraging such information-related economic development in Puerto Rico,  
20 including new forms of intellectual property protection for computer chip  
21 manufacturers and industrial designers.

22

23 7. FEDERAL FUNDS AND PROGRAMS.

24 (a) Consolidation of grant-in-aid programs. Amend federal law to  
25 authorize the Commonwealth of Puerto Rico to consolidate any or all federal

1 grant-in-aid programs, except those that directly or indirectly provide payments  
2 or services to persons as individuals for any fiscal year or years.

3 (b) Equitable Treatment in Social Programs. Achieve equitable allocations  
4 to Puerto Rico with the goal of achieving full parity with the states over a  
5 period no longer than four years in the following programs: Nutrition  
6 Assistance Program (NAP), Aid to Families with Dependent Children (AFDC),  
7 and Medicaid, and over a period no longer than eight years in the Supplemental  
8 Security Income Program (SSI), as is currently enjoyed with regard to other  
9 federal programs.

#### 10 11 8. PROTECTION OF WORKERS

12 Delegate to the Labor Relations Board of Puerto Rico all the functions  
13 presently exercised by the National Labor Relations Board, regarding labor  
14 relations in the Commonwealth of Puerto Rico.

15 Puerto Rico shall continue to have exclusive jurisdiction to legislate  
16 employee benefits, including but not limited to Christmas bonuses, sick and  
17 vacation pay, and workman's compensation, excluding the federal minimum  
18 wage and overtime pay legislation which shall continue to apply.

#### 19 20 9. PUERTO RICAN PARTICIPATION IN FEDERAL APPOINTMENTS.

21 Assure the participation of Puerto Rico in designating candidates for the  
22 highest ranking federal appointments serving in Puerto Rico, including  
23 Presidential appointments subject to Senate confirmation.

1 10. REPRESENTATION IN THE SENATE.

2 Secure representation of Puerto Rico's interests in the United States  
3 Senate by a second Resident Commissioner.

4

5 11. FEDERAL JUDICIARY.

6 (a) Primary jurisdiction of Puerto Rico courts. Assure that federal courts  
7 abstain from construing an unconstrued Puerto Rico statute or regulation or  
8 deciding an undecided point of substantive Puerto Rico non-statutory law  
9 without first giving the courts of Puerto Rico an opportunity to construe such  
10 statute or regulation or to rule upon such point of Puerto Rico law, which  
11 constructions shall be binding on the federal courts.

12 (b) Use of Spanish language. Enact legislation requiring the United States  
13 District Court for Puerto Rico to conduct its proceedings in the Spanish language,  
14 upon the request of any party to the proceeding.

15 (c) Enact a statutory provision for the certification to the District of  
16 Columbia U.S. Court of Appeals of any question of law arising under, and  
17 involving, the Puerto Rico Federal Relations Act, as amended by this Act, in any  
18 civil or criminal action pending, and for the transfer by the Commonwealth of  
19 Puerto Rico, its departments, agencies and instrumentalities, as well as officials  
20 and agents, in both their official and personal capacity, of any action brought  
21 against them from the U.S. District Court for Puerto Rico to the U.S. District  
22 Court for the District of Columbia.

23

24 12. PASSPORTS.

25 (a) Restoring Puerto Rico's Issuance of U.S. passports. Restore Puerto  
26 Rico's authority to issue U.S. passports.

1 (b) Special temporary visit visas. Consistent with prohibitions imposed by  
2 the President on the entry of aliens from specified countries, authorize the  
3 Government of Puerto Rico to secure Puerto Rico-only temporary visas, for a  
4 period not to exceed thirty days, for nonresident aliens invited by the  
5 Government of the Commonwealth of Puerto Rico. The District Office for  
6 Puerto Rico of the Immigration and Naturalization Service shall issue these  
7 special temporary visit visas, as well as other entry visas.

8 (c) The District Office for Puerto Rico of the Immigration and Nationality  
9 Service shall issue the special temporary visit visas, as well as other entry visas.  
10

#### 11 13. LAW ENFORCEMENT.

12 Amend federal law to authorize the Commonwealth to supplement  
13 United States efforts to patrol Puerto Rico's borders and make them secure  
14 against illegal traffic in drugs and aliens, including joint enforcement of relevant  
15 federal laws.  
16

#### 17 14. HISTORIC SITES AND CONSERVATION LANDS

18 Title to lands and properties acquired by the United States under the  
19 cession of Spain in the Treaty of Paris entered into on December 10, 1898, as well  
20 as of ownership of the Caribbean National Forest, shall be transferred to the  
21 Commonwealth of Puerto Rico. Continued use and administration by the  
22 federal government of these lands and properties may be negotiated with the  
23 Commonwealth of Puerto Rico.  
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25  
26

1 15. COMMUNITY VALUES.

2 Authorize the Governor of the Commonwealth of Puerto Rico to grant  
3 antitrust exemptions for voluntary joint efforts by broadcasters to foster local  
4 programming and to foster community and cultural values, including the  
5 possible adoption of codes limiting the violence, pornography, and substance-  
6 abuse depicted in broadcast programming.

7  
8 16. ASSUMPTION OF BUDGETARY RESPONSIBILITIES AND TRANSFER OF FEDERAL  
9 FUNCTIONS.

10 The Commonwealth of Puerto Rico shall assume the expenses inherent  
11 in all governmental authority transferred pursuant to this Act.. The  
12 Government of the United States, or any agency thereof, may from time to time  
13 delegate to the Commonwealth of Puerto Rico the total or partial performance of  
14 functions vested in the United States, including the administration of such  
15 federal laws and programs on the island, as may be mutually agreed.

16  
17 SUBPART 6. FUTURE ENHANCEMENTS

18 The enhancements to the Commonwealth relationship resulting from  
19 this Act shall form part of the Compact entered upon by the Congress and the  
20 People of Puerto Rico in 1952. It may be amended in the same manner as  
21 entered upon in order to provide for the continuing enhancement of the  
22 Commonwealth relationship.

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24  
25 (c) DATE OF REFERENDUM.—The first referendum shall occur upon the call of  
26 the Governor, and during calendar year 1991.

1 (d) RETURNS OF REFERENDUM.—The returns of the referendum held under this  
2 Act shall be made to the Governor of Puerto Rico, who shall cause them to be  
3 canvassed in the manner provided for by the electoral laws of the Commonwealth of  
4 Puerto Rico. If there is not a majority in favor of one of the three options, then  
5 there shall be, upon the call of the Governor, and during calendar year 1991, a  
6 runoff referendum between the two status options which had received the largest  
7 number of votes. The Governor shall certify to the President and to the Congress of  
8 the United States that decision of the People of Puerto Rico which received a  
9 majority of the votes cast.

10 (e) APPLICABLE ELECTION LAWS.—The election laws of the Commonwealth of  
11 Puerto Rico shall apply to any referendum held under this Act.

12  
13 **SEC. 3. NEGOTIATIONS TO DEVELOP LEGISLATION BASED ON**  
14 **REFERENDUM.**

15 (a) NEGOTIATIONS.—Following certification by the Governor as provided in  
16 section 2(d), then representatives of the principal political party representing the  
17 status option selected, shall negotiate legislation encompassed within the principles  
18 set forth in section 2(b), with the Committee on Energy and Natural Resources of  
19 the United States Senate and the Committee on Interior and Insular Affairs of the  
20 United States House of Representatives. Such legislation shall, upon enactment,  
21 authorize a further referendum of the People of Puerto Rico to approve or  
22 disapprove the selected status as defined in the legislation. A change of status shall  
23 not be effective unless or until approved in such referendum.

24 (b) TIME LIMIT —The negotiations referred to in subsection 3(a) shall be  
25 concluded as expeditiously as possible, and, in any event, within one year, and those  
26 committees to which the legislation embodying the results of these negotiations are  
27 referred shall report the contemplated legislation within sixty days of such referral.

1 The second referendum to approve or disapprove the selected status as defined in the  
2 legislation developed under this section shall occur no later than the end of the  
3 Congress which is in session on the fourth anniversary of the date of the Governor's  
4 certification provided for such under section 2(d), or as may be otherwise provided  
5 in such legislation.

6