



HOUSE COMMITTEE ON
NATURAL RESOURCES
CHAIRMAN BRUCE WESTERMAN

To: House Committee on Natural Resources Republican Members
From: Indian and Insular Affairs Subcommittee staff: Ken Degenfelder
(Ken.Degenfelder@mail.house.gov) and Justin Rhee
(Justin.Rhee@mail.house.gov) x6-9725
Date: Thursday, January 18, 2024
Subject: Legislative Hearing on two bills: H.R. 6062 and H.R. 6273

The Subcommittee on Indian and Insular Affairs will hold a legislative hearing on H.R. 6062 (Rep. Radewagen), To restore the ability of the people of American Samoa to approve amendments to the territorial constitution based on majority rule in a democratic act of self-determination, as authorized pursuant to an Act of Congress delegating administration of Federal territorial law in the territory to the President, and to the Secretary of the Interior under Executive Order 10264, dated June 29, 1951, under which the Constitution of American Samoa was approved and may be amended without requirement for further congressional action, subject to the authority of Congress under the Territorial Clause in article IV, section 3, clause 2 of the United States Constitution; and H.R. 6273 (Rep. Moylan), “*Guam Host Community Compensation Act*” on **Thursday, January 18, 2024, at 2:00 p.m. in Room 1324 Longworth House Office Building.**

Member offices are requested to notify Ransom Fox (Ransom.Fox@mail.house.gov) by 4:30 p.m. on Wednesday, January 17, 2024, if their member intends to participate in the hearing.

I. KEY MESSAGES

- H.R. 6062 would repeal Section 12 of P.L. 98-213 (48 U.S.C. §1662a), which requires any amendments or modifications to American Samoa’s constitution, as approved by the Secretary of the Interior, to be made only by an Act of Congress. H.R. 6062 would revert American Samoa’s constitutional amendment process to only require approval from the Secretary of the Interior.
- H.R. 6273 would extend annual Compact Impact grant funding provided under the 2003 Compacts of Free Association (COFA or COFAs) through FY 2043 for American Samoa, the Commonwealth of the Northern Mariana Islands (CNMI), and Guam. Furthermore, H.R. 6273 would require the Secretary of the Interior to enter into one or more memorandums of understanding (MOU or MOUs) with state and territory governments to ensure that individuals from the Freely Associated States (FAS) who are convicted of a felony in the U.S. are incarcerated solely in federal correctional facilities. The bill requires reimbursement associated with pre-conviction incarceration and incarceration in non-federal facilities when the MOUs are not in effect. H.R. 6273 would also prevent FAS migrants from residing in Guam unless they provide proof of

employment or academic admission, and a residential address.

II. WITNESSES

- **Mr. Keone Nakoa**, Deputy Assistant Secretary, Office of Insular and International Affairs, U.S. Department of the Interior, Washington, D.C.
- **The Hon. Talauega Eleasalo Vaalele Ale**, Lieutenant Governor, American Samoa, Pago Pago, AS
- **The Hon. Alexander Eli Jennings**, Swains Island Delegate, American Samoa House of Representatives, Pago Pago, AS
- **The Hon. Jesse Alig**, Mayor, Piti, Guam
- **The Hon. Lordes Aflague “Lou” Leon Guerrero**, Governor, Hagåtña, Guam [*Minority Witness*]

III. BACKGROUND

[H.R. 6062 \(Rep. Radewagen\), To restore the ability of the people of American Samoa to approve amendments to the territorial constitution based on majority rule in a democratic act of self-determination, as authorized pursuant to an Act of Congress delegating administration of Federal territorial law in the territory to the President, and to the Secretary of the Interior under Executive Order 10264, dated June 29, 1951, under which the Constitution of American Samoa was approved and may be amended without requirement for further congressional action, subject to the authority of Congress under the Territorial Clause in article IV, section 3, clause 2 of the United States Constitution.](#)

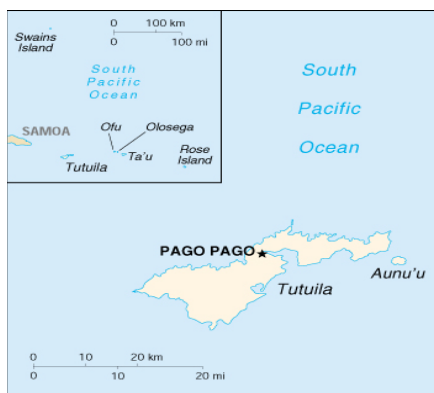


Figure A: Map of American Samoa.
Source: PEACESAT

American Samoa is an unorganized and unincorporated territory of the United States comprising islands of the eastern Samoan archipelago.¹ American Samoa is in the Polynesian region of the south-central Pacific Ocean and includes the six eastern Samoan islands of Tutuila, Tau, Olosega, Ofu, and Aunu'u, as well as the Swains Island and the uninhabited Rose Atoll. The capital is Pago Pago, on Tutuila, which is the main port and commercial center of American Samoa. The elected and traditional leaders seek to preserve a customary way of life as “nationals but not citizens,” based on allegiance to the U.S. reflected in strong patriotism and a high rate of U.S. military service.²

¹ A territory’s “organizational” status generally concerns its degree of self-government. Congress has not enacted an “organic act” establishing a territorial government in American Samoa, generally indicating its “unorganized” status. A territory’s “unincorporated” status refers to a distinction drawn in a line of early 1900s U.S. Supreme Court decisions known as the Insular Cases. For additional discussion, see CRS Legal Sidebar LSB10737, [Equal Protection Does Not Mean Equal SSI Benefits for Puerto Rico Residents, Says Supreme Court](#), by Mainon A. Schwartz.

² For more information on American Samoa see “American Samoa.” Encyclopedia Britannica. Accessed May 10, 2023. <https://www.britannica.com/place/American-Samoa>.

Following U.S. acquisition, American Samoa was placed under the U.S. Navy’s administrative authority until 1951 when the authority was transferred to the Department of the Interior (DOI) in 1956 through Executive Order 10264.³ The Department of the Interior’s Office of Insular Affairs (OIA) coordinates political relations with American Samoa and other U.S. territories (except Puerto Rico, which falls under the Executive Office of the President).⁴ American Samoa has a local (territorial) constitution, however Congress has not enacted an Organic Act for the territory. American Samoa’s constitution is unique in that it seeks to preserve Samoan cultural identity and way of life, particularly on land ownership, Samoa’s “Maitai” social hierarchy, and immigration.⁵ Furthermore, American Samoa does not have an Organic Act due to concerns within American Samoa that it would erode the Samoan way of life.⁶ The Secretary of the Interior retains broad administrative authority over American Samoa, including over its constitutional amendment process.

The Territorial Clause of the U.S. Constitution grants Congress broad authority over U.S. territories. Specifically, Article IV, Section 3 of the Constitution states, in part, that “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.”⁷

In 1983, at the request of American Samoa Delegate Fofó Iosefa Sunia, Congress amended Section 12 of Public Law 98-213, to provide that any changes to the American Samoan Constitution may be made only by an Act of Congress.⁸ Previously, only the approval of the Secretary of the Interior was required for constitutional amendments.⁹ The legislative history concerning Section 12 suggests that a personnel dispute embodying self-government concerns motivated Congress to enact the provision. There were concerns within American Samoa about the then-Assistant Secretary of the Interior, acting on behalf of the Secretary of the Interior, making a unilateral decision to remove the incumbent Attorney General of American Samoa.¹⁰ Changing federal law ensured that the Secretary of the Interior could not make unilateral appointments of American Samoa’s cabinet and removed the possibility of unilateral amendment to the Constitution by the Secretary of the Interior.¹¹

³ E.O. 10264. <https://www.archives.gov/federal-register/codification/executive-order/10264.html>

⁴ Memorandum for the Heads of Executive Departments and Agencies. 57 Fed. Reg. 57093.

⁵ For more information on American Samoa’s culture and relationship with the U.S. Constitution, refer to *Defining Status—A Comprehensive Analysis of U.S. Territorial Policy*. Arnold H. Leibowitz. 2013.

⁶ Id.

⁷ “Article 4 Section 3 Clause 2.” U.S. Constitution Annotated. <https://constitution.congress.gov/browse/article-4/section-3/clause-2/>.

⁸ Office of Rep. Eni Faleomavaega, “Faleomavaega Announces a Draft Bill to Repeal Congressional Approval for Amendments to the American Samoa Constitution,” press release, February 10, 2012, https://www.webharvest.gov/congress112th/20121215060831/http://www.house.gov/list/press/as00_faleomavaega/apealfofolaw.html.

⁹ 48 U.S.C. § 1662a.

¹⁰ U.S. Congress, Senate Committee on Energy and Natural Resources, Subcommittee on Energy Conservation and Supply, Revised Constitution of American Samoa, hearing, 98th Cong., 2nd sess., May 8, 1984, S. Hrg. 98-997 (Washington: GPO, 1984), pp. 3-4. Rep. Sunia’s written statement appears in all capital letters. The quoted material is reformatted to comport with CRS style.

¹¹ *Legal Authority Supporting DOI and Congressional Approval or Disapproval of Amendments to the Constitution of American Samoa*. Jon Van Dyke. University of Hawaii School of Law Library. Jon Van Dyke Archives Collection. <https://scholarspace.manoa.hawaii.edu/server/api/core/bitstreams/159c73b2-1b50-407a-b59e-8e757fb03ba4/content>.

Debate over Section 12 continued in 1984, both in Congress and in American Samoa, even though the provision became law in late 1983. In May 1984, the same Senate subcommittee that had overseen Section 12's development again received testimony about the provision. On that occasion, Section 12 discussions arose amid consideration of constitutional amendments proposed in 1984, after a territorial convention.¹²

Since 1984, American Samoa has made attempts to return to the pre-1983 policy where the Secretary of the Interior has the sole authority to approve changes to the American Samoan Constitution as there were no longer concerns about unilateral actions by the Department of the Interior. Concerns have been raised within American Samoa and personnel at the U.S. Department of Justice (DOJ) about whether Section 12 could adversely affect American Samoan culture. In a May 8, 1984, Senate Energy and Natural Resources hearing, the DOJ witness stated:

*I feel constrained to bring to your attention a case now pending in the Supreme Court of the United States on petition for a writ of certiorari. This case raises the seemingly paradoxical possibility that the very Congressional approval of the Samoan Constitution, in particular of those provisions which might be inconsistent with the Constitution of the United States, could facilitate scrutiny and possible invalidation of Samoan institutions by the federal courts under our own Constitution.*¹³

It is unclear whether this concern is still shared by the DOJ, but it continues to be raised by American Samoan officials.

In 2022, the American Samoa people voted yes on several technical amendments to their constitution, as well as an amendment to give the Swains Islands Delegate the right to vote in the American Samoan House of Representatives.¹⁴ Currently, these changes would have to be approved by the Secretary of the Interior and subsequently receive Congressional approval. Of the other U.S. territories with a local constitution, American Samoa is the only territory that must go through Congress to institute changes voted by their own citizens.¹⁵

On January 9, 2023, American Samoa's Governor Lemanu released a statement indicating that Assistant Secretary for Insular and International Affairs Carmen G. Cantor had acknowledged

¹² U.S. Congress, Senate Committee on Energy and Natural Resources, Subcommittee on Energy Conservation and Supply, Revised Constitution of American Samoa, hearing, 98th Cong., 2nd sess., May 8, 1984, S. Hrg. 98-997 (Washington: GPO, 1984). https://republicans-naturalresources.house.gov/UploadedFiles/Hearing_Revised_Constitution_of_American_Samoa.pdf.

¹³ U.S. Congress, Senate Committee on Energy and Natural Resources, Subcommittee on Energy Conservation and Supply, Revised Constitution of American Samoa, hearing, 98th Cong., 2nd sess., May 8, 1984, S. Hrg. 98-997 (Washington: GPO, 1984). See "Statement of Robert B. Shanks, Deputy Assistant Attorney General, Office of Legal Counsel, Department of Justice." https://republicans-naturalresources.house.gov/UploadedFiles/Hearing_Revised_Constitution_of_American_Samoa.pdf.

¹⁴ *DOI Acknowledges Receipt of Voter-Approved Amendments from Am Samoa*. Samoa News. 01.11.2013 <https://www.samoanews.com/local-news/doi-acknowledges-receipt-voter-approved-amendments-am-samoa>. Accessed 12.14.2023

¹⁵ Commonwealth of Northern Mariana Islands. Constitution. <https://cnmilaw.org/cons.php#gsc.tab=0> and Puerto Rico Law. <https://law.justia.com/puerto-rico/#:~:text=Article%20Seven%20provides%20the%20process,abolish%20the%20Bill%20of%20Rights>.

receipt of the proposed amendments.¹⁶ It appears that the Department of the Interior is still reviewing the proposed amendments and have not yet issued a decision, with no clear indication of when a decision would be made. As such, the 2022 proposed amendments have not been received by Congress for approval.

H.R. 6062 would repeal Section 12 of Public Law 98-213 (48 U.S.C. § 1662a), granting the President of the United States, and subsequently the Secretary of the Interior, the power to approve amendments to the American Samoan Constitution without Congressional approval.

H.R. 6273 (Rep. Moynlan), “Guam Host Community Compensation Act”

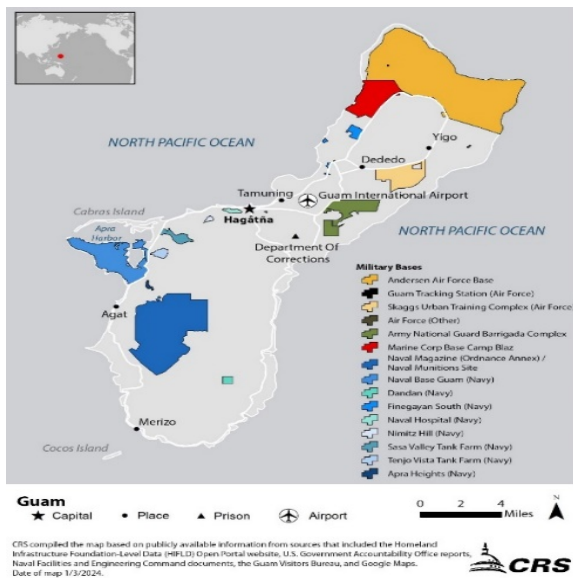


Figure B: Map of Guam.
Source: Congressional Research Service

Guam is a U.S. Territory in the northwest Pacific, which is the largest, most populous, and southernmost island of the Mariana Archipelago. It is governed under the Organic Act of Guam, passed by the U.S. Congress, and signed into law on August 1, 1950.¹⁷ The development of Guam into an important home for U.S. military bases has brought about profound changes in the island’s agricultural patterns after World War II, and Guam now imports most of its food.¹⁸ Guam has a vibrant tourism sector, drawing visitors from many Asian nations, and a robust local and regionally interconnected economy, with commerce ties to the Philippines, South Korea, and Japan. Most of Guam’s population of 170,000 are of native Chamorro heritage. Guam has been a part of the United States since the close of the Spanish-American War, and today resembles the mainland United States in terms of language, business practices, and patriotic sentiments.¹⁹

Under the Compacts of Free Association (COFAs) in 1986 and 1995, FAS citizens were authorized to travel to the U.S. as non-immigrants to work and reside in the U.S. and were eligible for Federal benefits available to legal permanent residents. This eligibility was lost for most of these benefits following the enactment of the Personal Responsibility and Work

¹⁶ Office of American Samoa Gov. Lemanu P. S. Mauga, “DOI Recognizes Lemanu-Talauage Administration for Voter-Approved Amendments to the Revised Constitution,” press release, January 9, 2023, https://www.americansamoa.gov/files/ugd/4bfff9_2258167d7b9f4c61a8b6e01ec5a6b958.pdf.

¹⁷ 48 U.S.C. 1421 et seq.

¹⁸ “Challenging Residents to Grow Produced, Reduce Imported Foods.” The Guam Daily Post, January 5, 2022. https://www.postguam.com/news/local/challenging-residents-to-grow-produced-reduce-imported-foods/article_b75ea9aa-6c63-11ec-89b4-e78919e1742d.html.

¹⁹ For more information on Guam see “Guam.” Encyclopedia Britannica. Accessed May 10, 2023. <https://www.britannica.com/place/Guam>.

Opportunity Reconciliation Act (PRWORA).²⁰ Accordingly, U.S. states and territories have had to shoulder the financial costs of hosting legal permanent residents from the FAS and meeting the cost-sharing requirements of Medicaid.

To address this, the 2003 COFAs,²¹ provided American Samoa, CNMI, Guam and Hawaii \$30 million in annual grant funding, commonly referred to as Compact Impact grants.²² These grants were appropriated from FY 2004 through FY 2023 and were intended to address increased demands placed on health, educational, social, or public safety services from COFA migration; however, there were no specific requirements on how the funding could be used.

H.R. 6273 would reauthorize this authority through FY 2043 while removing Hawaii's eligibility to receive the grant funding. The total grant funding would be \$600 million over twenty years. The bill seeks to restore Compact Impact grant funds as they were not extended under the renewed 2023 COFAs proposals. When the Biden administration submitted their proposal to Congress for COFA renewal in 2023, the proposal did not include the extension of Compact Impact grants, but instead included Compact Impact Fairness provisions that included language from H.R. 1571 (118th Congress), the *Compact Impact Fairness Act*, sponsored by Representative Ed Case (D-HI).²³ The Compact Impact Fairness provisions would return Federal benefits eligibility for FAS migrants to pre-PRWORA levels and expand coverage to all U.S. states and territories. H.J. Res 96, the *Compact of Free Association Amendments Act of 2023*, also includes Compact Impact Fairness provisions.

While the Compact Impact Fairness provisions are intended to replace the Compact Impact grants, Guam officials have stated that this does not adequately address the unique needs of Guam.²⁴ The concern is that Compact Impact Fairness does not address COFA's impact on Guam's education and public safety sectors.

Concerns have been raised that restoring Compact Impact grants would be duplicative with Compact Impact Fairness provisions when it comes to funding for non-education and public safety sectors. Furthermore, a 2020 Government Accountability Office (GAO) report found that Compact Impact grant funds were misallocated due to inaccurate counts of COFA migrants, resulting in Hawaii being underfunded while, American Samoa, CNMI, and Guam being overfunded.²⁵ As this bill would remove Hawaii's eligibility, there is a concern that this bill would result in American Samoa, CNMI, and Guam receiving an excess of funds.

²⁰ Paule, A. & Weiker, A (2023, June 26). What the Compact Impact Fairness Act Means for Compact Host Governments and Migrants. East-West Center. <https://www.eastwestcenter.org/publications/what-compact-impact-fairness-act-means-compact-host-governments-and-migrants>.

²¹ P.L. 108-188.

²² *Id.*

²³ Oversight Hearing on The Biden Administration's Proposed Compact of Free Association Amendments Act of 2023." House Committee on Natural Resources, July 18, 2023. <https://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=414550>.

²⁴ "Local Officials Respond to Compact Impact Funding Cut-Off." KUAM News, April 25, 2023. <https://www.kuam.com/story/48779303/local-officials-respond-to-compact-impact-funding-cut-off>.

²⁵ Office, U.S. Government Accountability. "Compacts of Free Association: Populations in U.S. Areas Have Grown, with Varying Reported Effects." GAO, June 15, 2020. <https://www.gao.gov/products/gao-20-491>.

H.R. 6273 also seeks to remedy the burden of hosting COFA migrants on its public safety sector by requiring the Secretary of the Interior, in coordination with the Attorney General, to enter into one or more MOUs with government officials of each state, territory, and the District of Columbia, to ensure that any individual from the FAS who are in the U.S. and are convicted of a felony are imprisoned solely in a Federal correctional facility. Furthermore, it seeks reimbursement for costs associated with pre-conviction incarcerations. Concerns have been raised about the unclear cost of this provision as well as the feasibility of transferring convicted felons to federal correctional facilities.

Finally, H.R. 6273 seeks to bar FAS migrants from obtaining non-immigrant residency status in Guam unless they provide proof of employment from authorized employers or proof of admission from authorized educational facilities. Authorized employers and educational facilities would be determined by the Governor of Guam. Additionally, FAS migrants would need to provide proof of a residential address.

Concerns have been raised that barring COFA migrants from obtaining non-immigrant residency status would violate the terms of the COFAs. The COFAs provide citizens of the FAS the right to travel and reside in the U.S. indefinitely without visas. This right was provided in recognition of the unique and special relationship that the U.S. has with the FAS, and the extraordinary security benefits that the U.S. receives from the COFAs. While Section 104(e) of the 2003 COFA states that it is not the intent of Congress to cause any adverse consequences for an affected jurisdiction, there are questions on the legality of barring FAS migrants from obtaining residency in the U.S. and how that would adversely impact U.S.-FAS relations.

IV. MAJOR PROVISIONS & SECTION-BY-SECTION

H.R. 6062 (Rep. Radewagen), To restore the ability of the people of American Samoa to approve amendments to the territorial constitution based on majority rule in a democratic act of self-determination, as authorized pursuant to an Act of Congress delegating administration of Federal territorial law in the territory to the President, and to the Secretary of the Interior under Executive Order 10264, dated June 29, 1951, under which the Constitution of American Samoa was approved and may be amended without requirement for further congressional action, subject to the authority of Congress under the Territorial Clause in article IV, section 3, clause 2 of the United States Constitution

Section 1. *Removal of Restriction on Amendments to or Modifications of the Constitution of American Samoa.* Repeals Section 12 P.L. 98-213 (48 U.S.C. §1662a) which requires any amendments or modifications to American Samoa's constitution, as approved by the Secretary of the Interior, to be made only by an Act of Congress.

H.R. 6273 (Rep. Moylan), “Guam Host Community Compensation Act”

Section 2. *Extension of Authorization of Grants.* Amends Section 104(e) of the Compact of Free Association Amendments Act of 2003 by extending the authorization and appropriation for annual \$30 million grant funds made available to American Samoa, the CNMI, and Guam for

addressing Compact Impact grants. The section extends this authority through FY 2043 while striking Hawaii's eligibility for the grant funds.

Section 3. *Federal Incarceration of Certain Convicted Felons*. Requires the Secretary of the Interior, in coordination with the Attorney General, to enter into one or more MOU with government officials of each state, territory, and the District of Columbia, to ensure that any individual from the FAS who are in the U.S. and are convicted of a felony are imprisoned solely in a Federal correctional facility. This section requires the MOU to provide for reimbursement for the cost of pre-conviction incarceration of COFA migrants in a state, territory, or local correctional facility from the funds of the Bureau of Prisons.

This section also requires the Director of the Bureau of Prisons to reimburse, from the Bureau of Prisons' funds, the costs of incarcerating COFA migrants at a non-Federal correctional facility during the time when the MOU is not in effect.

Section 4. *Additional Requirements for Non-Immigrant Residency in Guam*. Provides a sense of Congress that the special relationship between the U.S. and the FAS ought to be enhanced by robust economic cooperation and partnership between migrants of the U.S. and the FAS, and that employing and employed entities on the island contribute to the success of the COFAs. It also states that economic stability through the bolstering of local markets on Guam is key to the U.S. and FAS partnership, and that the COFAs should include provisions for greater economic success in Guam through sure employment opportunity.

FAS migrants may not obtain non-immigrant residency status in Guam unless proof of employment from authorized employers or proof of admission to receive education from authorized educational facilities is provided. Authorized employers and educational facilities would be determined by the Governor of Guam. Furthermore, FAS migrants will also need to provide proof of a residential address.

V. CBO COST ESTIMATE

No cost estimates are available for any of the bills.

VI. ADMINISTRATIVE POSITION

No administrative positions are available for any of the bills.

VII. EFFECT ON CURRENT LAW (RAMSEYER)

[H.R. 6062 \(Rep. Radewagen\)](#)

[H.R. 6273 \(Rep. Moylan\)](#)