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Resident Commissioner from Puerto Rico

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March 11, 2008

Abstract. Since 1902, Congress has authorized Puerto Rico to be represented in Washington, D.C., by a Resident Commissioner. Although the office of territorial Delegate in Congress dates from the Congress of the Articles of Confederation, the office of Resident Commissioner was not established until after the Spanish-American War to provide representation for Puerto Rico and the Philippines. This report surveys the evolution of the office of Resident Commissioner, the expansion in the authority provided to the Resident Commissioner, and the various approaches the Resident Commissioner takes in fulfilling the responsibilities of the office.

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Resident Commissioner from Puerto Rico

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Summary

Since 1902, Congress has authorized Puerto Rico to be represented in Washington, DC, by a Resident Commissioner. Although the office of territorial Delegate in Congress dates from the Congress of the Articles of Confederation, the office of Resident Commissioner was not established until after the Spanish-American War to provide representation for Puerto Rico and the Philippines.

This report, which will be updated at the conclusion of the 111th Congress, or sooner as warranted, surveys the evolution of the office of Resident Commissioner, the expansion in the authority provided to the Resident Commissioner, and the various approaches the Resident Commissioner takes in fulfilling the responsibilities of the office.

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The Resident Commissioner from Puerto Rico holds an office specifically differentiated from that of territorial Delegate in Congress. The office of territorial Delegate has been recognized in law since before the adoption of the federal Constitution. The Northwest Ordinance of 1787, a measure enacted by Congress under the Articles of Confederation, provided for a territorial Delegate to represent the territory northwest of the Ohio River. When the Constitution was ratified and the new Congress assembled, the Northwest Ordinance was re-enacted, providing for the organization of a government in the territory. Under the act, the territorial legislature (once formed) was authorized to elect a “Delegate to Congress, who shall have a seat in Congress, with a right of debating, but not of voting, during this temporary Government.”¹ The first territorial Delegate was seated in 1794.

Subsequently, the territorial Delegates served as transitional figures during the period in which various territorial governments moved gradually toward admission as states. This was the traditional practice for territories created during the westward continental expansion, regardless of whether a territory had been a part of the original land area claimed by the 13 former British colonies, or whether the territory had been acquired by purchase or conquest. Through the treaty ending the Spanish-American War of 1898, the United States acquired a number of overseas territories. The legal status of the inhabitants of these territories was a matter of controversy.²

What emerged was a new legal concept, that of an unincorporated territory. Earlier, incorporated territories were considered integral parts of the United States, to which all relevant provisions of the Constitution applied. It was generally understood that such territories were bound for eventual statehood. The overseas territories acquired through the peace treaty ending the War of 1898 were considered “unincorporated” territories, however, and only the “fundamental” part of the Constitution applied to these lands.³

In the case of Puerto Rico and the Philippines, Congress granted by law a new form of territorial representation. These two territories were to be represented in Washington, DC, by Resident Commissioners. The term was new to American legal usage, but was widely used in the British Empire to indicate a crown representative sent to a territory to manage the affairs of the home government. In American usage, the Resident Commissioner was an agent of the local government and citizenry sent to represent their interests at the national capital.

The office of Resident Commissioner was clearly different from that of congressional Delegate. Delegates (like Members of the House) were chosen for two-year terms. The Resident Commissioners were chosen initially for two-year, but later for four-year, terms. Delegates were legislators, while the statutes creating the posts of Resident Commissioner gave these officials legislative duties and executive responsibilities as well.

¹ Act of Aug. 7, 1789, ch. 8, 1 Stat. 50. This law, incorporating provisions from the earlier ordinances of the Articles of Confederation Congress, was necessary to fit the territorial structure in the old Northwest into the new constitutional framework.

² One of the foremost constitutional scholars in American history, Max Farrand, commented extensively on the varieties of government established in U.S. possessions during the 18th and 19th centuries. See his article “Territory and District,” *American Historical Review*, vol. 5, no. 4, July 1900, pp. 676-681. See also his book-length treatment *Legislation of Congress for the Government of the Organized Territories of the United States, 1789-1895* (Newark, NJ: Baker Printers, 1896).

³ The concept of unincorporated territories was first enunciated by Chief Justice Edward D. White in a concurring opinion in *Downes v. Bidwell*, 182 US 244, 45 L Ed 1088, 21 S Ct 770 (1901). The distinction between incorporated and unincorporated territories was first endorsed by a majority of the Supreme Court in *Dorr v. United States*, 195 US 138, 49 L Ed 128, 24 S Ct 808 (1904).

Establishing the Office of Resident Commissioner

Although the House passed a bill in 1900 providing for the selection of a Delegate from Puerto Rico, the Senate amended the measure to establish instead an office of Resident Commissioner. The Senate action was predicated on opposition to a potential for statehood that was implicit in establishing the post of Delegate. As Senator John Coit Spooner, chairman of the Senate Rules Committee, stated:

There is no difference between a Delegate in Congress and a member except in the matter of a vote. It has always been considered a pledge of statehood. No Congress gives a delegate to a people except upon the theory that the time is to come when they shall be admitted to statehood and entitled to participate as one of the States of the Union. I know not how time may change my own view on that subject, but I am frank to say, with a heart full of kindness for that people, I am not yet ready, nor are we called upon now, to give that quasi pledge of statehood, or to imply that they will ever reach a condition where it shall be either for their interests, or certainly for ours, to let them become one of the members of this Union.⁴

At first, the Resident Commissioners were not fully welcome in the House of Representatives. The act creating the office set the salary of the Resident Commissioner at \$5,000 per annum, the same as that for Members of Congress, but did not specify his responsibilities in the House of Representatives, if any. As one scholar has noted, the Resident Commissioner was “given neither voice nor vote in congressional deliberations; in fact, he was not even allowed on the floor of the House. His only contacts with the Members were at their private quarters or in committee rooms.”⁵

The House took incremental steps to grant more privileges to the Resident Commissioner from Puerto Rico. On June 28, 1902, the House agreed to H.Res. 169, introduced by Representative Henry Allen Cooper (R-WI), the Chairman of the House Insular Affairs Committee, to amend House Rules to give floor privileges to the Resident Commissioner. With the adoption of the resolution, the Commissioner was put on a par with the clerks of House committees, heads of executive departments, foreign ministers, and the Librarian of Congress in having access to the House chamber. However, the Resident Commissioner was still not allowed to speak on the House floor.

It was not until 1904 that the House granted to the Resident Commissioner the same right to speak on the floor and to serve on committees as was accorded to territorial Delegates. The issue of granting more parliamentary rights to the Resident Commissioner was directly connected to efforts by Representative Cooper and others to amend the organic act for Puerto Rico to provide for the election of a territorial Delegate instead of a resident commissioner. The House Rules Committee reported a resolution (H.Res. 197, 58th Congress) amending House Rule XII to grant the Commissioner the same “powers and privileges as to committee service and in the House as are possessed by Delegates.” Representative John Sharp Williams, the ranking minority member of the Rules Committee, sought to recommit the resolution to the Rules Committee with instructions that the Resident Commissioner receive the same rights and privileges as Delegates, and that the House begin consideration within two weeks of a bill (H.R. 3540, sponsored by

⁴ Sen. John Coit Spooner, remarks in the Senate, *Congressional Record*, Apr. 2, 1900, vol. 33, p. 3632.

⁵ William R. Tansill, “The Resident Commissioner to the United States from Puerto Rico,” *Revista Juridica de la Universidad de Puerto Rico*, vol. 47, nos. 1-2, 1978, p. 72.

Representative Cooper) to provide Puerto Rico with a Delegate. On a point of order raised by Representative John Dalzell, the Rules Committee floor manager, the Speaker ruled Williams's motion to recommit out of order. The House agreed to H. Res. 197 by voice vote. Thereupon, Speaker Joseph G. Cannon named the Resident Commissioner, Federico Degetau, to the Committee on Insular Affairs.⁶

Initially, the Resident Commissioner was limited to service on the Insular Affairs Committee, but the House slowly took actions to assign the Commissioner to other panels. In 1933, in the 76th Congress, Resident Commissioner Santiago Iglesias became the first Commissioner to serve on additional committees, being named to the Agriculture, Labor, and Territories Committees, in addition to the Committee on Insular Affairs. Thereafter, no Resident Commissioner served only on the Insular Affairs Committee, or the current Committee on Resources, which has assumed jurisdiction over territorial affairs legislation.

Committee Seniority and Voting Rights

Although the Resident Commissioner was permitted to serve on a broader range of committees, the Commissioner had no right to vote in committee, nor to acquire seniority leading to a leadership post on a subcommittee or full committee.⁷ This changed with the passage of the Legislative Reorganization Act of 1970, a measure reorganizing the operations of the House and Senate, including their committees.

Provisions in the reorganization bill then being considered by the House sought to remove obsolete provisions from House Rules. Among these provisions still in House Rules in 1970 was language specifying the committees to which the Resident Commissioner from Puerto Rico, and the Delegates from Alaska and Hawaii, were to be assigned as "additional members," despite the admission of the latter two territories to statehood a decade earlier. The House version of the bill proposed merely to delete references to Alaska and Hawaii and to continue language in Rule XII requiring the Resident Commissioner to serve as an "additional," non-voting member on the committees on which he served, without accruing seniority.

Resident Commissioner Jorge Cordova offered an amendment in the Committee of the Whole to revise the rule to read as follows:

⁶ "Resident Commissioner to the United States from Porto Rico," remarks of Rep. John Dalzell and others, *Congressional Record*, Feb. 4, 1904, vol. 38, pp. 1523-1529. The House was less direct in providing such rights to the two Resident Commissioners from the Philippines. On Feb. 4, 1908, the House agreed to a resolution reported by Rep. Dalzell granting the privileges of the floor with the right of debate to the Philippine Resident Commissioners. Because this resolution did not amend House Rules, its authority lapsed with the expiration of the 60th Cong. In the 61st Cong., on Jan. 7, 1910, Dalzell presented by unanimous consent a standing order (not a rule) authorizing the privileges of the floor with the right to debate to the two Resident Commissioners by name (Commissioners Legarda and Quezon). In the 62nd Cong., another resolution granted "the right of debate" to the two Resident Commissioners from the Philippines. Thereafter, the House did not renew these resolutions, and the Philippine Resident Commissioners were recognized for debate by unanimous consent. Unlike the Resident Commissioner from Puerto Rico, the Philippine Resident Commissioners were never assigned to committees.

⁷ The Resident Commissioner was not the only one to be denied the right to vote or accrue seniority in committees. The ban applied to all territorial Delegates as well, but after the admission of Hawaii and Alaska to statehood, the Resident Commissioner from Puerto Rico was the only non-voting Member of the House. Delegates were provided for the District of Columbia, the U.S. Virgin Islands, Guam, and American Samoa during the 1970s.

The Resident Commissioner to the United States from Puerto Rico shall be elected to serve on standing committees in the same manner as Members of the House and shall possess in committees the same powers and privileges as the other Members.

The effect of the amendment was to give the Resident Commissioner the right to vote in any committee on which he was elected to serve, to accrue seniority, and to assume a leadership post within any committee.

The amendment was opposed by the bill's floor manager, Representative B.F. Sisk, who was also a senior member of the House Rules Committee. Arguing that the office of Delegate (and, by implication, that of the Resident Commissioner) was created as a "courtesy" to the territories, Sisk claimed that just as it would be unconstitutional for a Delegate to vote in the House, it would be equally unconstitutional for a Delegate to vote in committee. "... (A) Delegate from a territory is not a Member of the House of Representatives.... Manifestly, the House could not elect to one of its standing committees a person who is not a Member of the House."

Representative Thomas S. Foley supported the amendment, arguing that giving Delegates voting rights in committee was only a matter of the internal organization of the House, and did not raise a constitutional question:

The committees of the House of Representatives are creatures of the House of Representatives. They can be extinguished at will and created at will.... The point is that the constitutional issue does not touch preliminary advisory votes which is what standing committee votes are, but only the votes which are cast in Committee of the Whole or the full House. These votes can be cast only by Members of Congress. So nothing that the Resident Commissioner could do in a committee vote could become a final decision unless a majority of the elected Members of Congress supported his position.

Representative Robert McClory, a member of the Joint Committee on the Organization of Congress which had assembled the recommendations contained in the bill, supported Foley's position. "It is true that if he [a Delegate or Resident Commissioner] acts on matters in committee that he is not going to be able to make any laws through a vote on the floor of the House with respect to such legislation.... "

Sisk responded to the statements in support of the Cordova amendment by clearly enunciating the parliamentary implications of permitting Delegates to vote in committee.

I wanted to ask the gentleman from Washington (Mr. Foley) if he wishes to or will accept him (the Resident Commissioner) as part of a quorum—in other words, will he be counted for the purpose of a quorum in committee. I do not see the gentleman on the floor at the moment. But I am curious to know if it would be interpreted that he would be entitled to vote in the Committee of the Whole House on the State of the Union, as the Committee of the Whole certainly is separate and apart from the House and in the same sense is a creature of the House in the same sense that a committee is a creature of the House.

Although Representative Foley was not present to answer the inquiry, Commissioner Cordova claimed that it was not his intention to seek voting rights in Committee of the Whole. "The amendment which I have offered refers expressly to the standing committees. I believe the Committee of the Whole House is not a standing committee." Representative Hugh Carey, a member of the Interior Committee on which Cordova also served, noted that any Delegate's decisive committee vote in support of a measure or an amendment could be overturned by a subsequent vote of the House.

Cordova's amendment was agreed to by voice vote in Committee of the Whole. No separate vote on it was demanded when the bill was considered in the House. The Rules change became effective with the start of the 92nd Congress in 1971.⁸

Committee of the Whole Voting Rights

Although Commissioner Cordova denied any interest in expanding the authority of the Resident Commissioner to vote in the Committee of the Whole House on the State of the Union, greater attention was paid to the issue in subsequent years. In the 1970s, Congress authorized the election of non-voting Delegates from the District of Columbia, Guam, the U.S. Virgin Islands, and American Samoa. Together, the non-voting Members have achieved a greater degree of influence because of their rising numbers. Suggestions were made as early as 1985 that the non-voting Members could constitutionally be permitted to vote in Committee of the Whole House on the same basis through which they were permitted to vote in House committees.

The Committee of the Whole is, in some respects, the House of Representatives meeting in another form. Every House Member (including the non-voting Members) is automatically a member of the Committee of the Whole. Unlike the House, however, the Committee of the Whole operates under different rules that permit more Members to participate in debate and provide for the expeditious consideration of amendments to bills. Actions taken by the Committee of the Whole, however, are not final. Any amendment agreed to in Committee of the Whole must also be submitted to the full House for approval. An amendment defeated in Committee of the Whole is not normally considered again in the House.

House Rules also set the quorum in Committee of the Whole at 100 Members, an unconstitutionally low number that would prohibit any final action on a measure from being taken there. Participation in Committee of the Whole is important because, if the House is going to permit amendments to be offered to a measure, the measure will almost always be considered in Committee of the Whole. Additionally, House Rules require that measures dealing with money (appropriations and revenue measures, as well as authorizing bills) be considered in Committee of the Whole.

In 1993, the House amended its Rules to permit the Resident Commissioner and the Delegates to vote in Committee of the Whole. Some Members were concerned that the votes of Delegates and the Resident Commissioner against an amendment could succeed in blocking consideration of the proposal by the full House (thereby allowing non-voting Members to determine the final outcome on a legislative item). Because granting this potential authority to them might be considered unconstitutional, the new House Rule permitted the Resident Commissioner and the Delegates to vote on amendments in Committee of the Whole, but required an immediate second vote in the House (with only Members from the states voting) if the combined votes of the Resident Commissioner and the Delegates were decisive in the outcome of the Committee of the Whole vote.

The House Republican leadership filed suit, arguing that the rule was unconstitutional. Court rulings at the U.S. district court and appeals court levels let the rule stand.⁹ At the beginning of

⁸ The complete debate on the Cordova amendment can be found in *Congressional Record*, vol. 116, Sept. 15, 1970, pp. 31847-31852.

the 104th Congress, however, under a Republican majority, House Rules were amended to once again prevent the Resident Commissioner and the Delegates from voting in Committee of the Whole.

At the beginning of the 110th Congress, under a Democratic majority, the House adopted Rules providing each Delegate and the Resident Commissioner with the same powers and privileges as Representatives in the Committee of the Whole.¹⁰

Legislative Role of the Resident Commissioner

Although the Resident Commissioner has no vote in the House, he possesses (along with the territorial Delegates) the same parliamentary rights as any Member of the House, including the right to sponsor or cosponsor bills, to offer amendments to pending measures, and to offer most other parliamentary motions.¹¹ Not only may the Resident Commissioner and the Delegates serve on committees, they also are appointed to serve on conference committees, the panels at which compromise versions of bills that have passed the House and Senate in different forms are drafted.

Table 1 and **Table 2** at the end of this report provide data on the number of House bills and resolutions sponsored or cosponsored by Resident Commissioners since the 93rd Congress, the number of these measures that have passed the House, and the number that have ultimately been adopted by Congress or ultimately enacted into law.

On average, House Members introduce between 15 and 20 measures per Congress. (There were 9,419 House bills and resolutions introduced in the 110th Congress, or about 21 per Member, including the non-voting Members.) There is much greater variation among House Members in the number of measures each endorses as a cosponsor. A partial survey of the data indicates that the Resident Commissioner and the Delegates are often more active in cosponsoring bills than is a typical voting Member of the House. It may be that the Resident Commissioner and the Delegates use cosponsorship as an implied substitute for a vote on the floor in support of a measure.

The Resident Commissioner can also have substantial impact on legislation considered by the committees on which he serves as a voting member. Although no non-voting Member has served as a standing committee chair or ranking minority member since the Delegates and Resident Commissioner were granted committee voting rights, a number of have served as subcommittee chairs or ranking members. Such subcommittee leaders play a major role in determining the agenda of their subcommittee, in determining which measures will receive action and which will not, and in allocating staff resources to conduct investigations into matters within the purview of the subcommittee.

(...continued)

⁹ *Michel v. Anderson*, 817 F. Supp. 126 (D.D.C. 1993), 14 F.3d 623 (D.C.Cir. 1994).

¹⁰ House Rule III, cl. (3)(a).

¹¹ The non-voting Members are prohibited from offering a “motion to reconsider.” That motion calls upon the House to vote again on a proposition which has already been settled. To qualify to offer the motion, the Member offering it must have voted on the winning side during the earlier vote. Since the Resident Commissioner and Delegates cannot vote in the House, they cannot have voted on the winning side and, therefore, do not qualify to offer such a motion.

As voting members of committees, the Resident Commissioner and Delegates can offer amendments or other parliamentary motions during committee consideration of bills. These can often change the pending measures substantially. For example, in the 105th Congress, H.R. 856, the United States-Puerto Rico Political Status Act, was reported from the House Natural Resources Committee after the committee had agreed to three amendments offered during the committee markup by the Resident Commissioner from Puerto Rico.¹²

The Resident Commissioner and Delegates can also use other parliamentary mechanisms to convey their specific views on pending legislation. For example, in 2002, the Resident Commissioner introduced H.R. 3955, a bill to designate certain lands in the Caribbean National Forest as wilderness areas. When the measure was reported from committee, the Commissioner took the opportunity provided by House Rules to file written supplemental views for inclusion in the committee report.¹³ Such statements help guide federal agencies in implementing bills which later become law.

The Resident Commissioner has often acted in concert with Hispanic Members of the House. In 1970, Resident Commissioner Cordova was one of the five founding members of the Congressional Hispanic Caucus. Commissioners since that time have been active members of the caucus, regardless of their political party affiliation. Acting together with others on matters of mutual concern provides some means by which the Resident Commissioner can influence action in the committees on which he does not serve. Since most of the Hispanic Caucus members are voting Members of the House, they can also work with the Resident Commissioner on matters of mutual interest. Nevertheless, there are subjects on which the Hispanic Caucus is divided, and the Resident Commissioner may not always have the support of colleagues in the caucus.

These factors can help the Resident Commissioner in the legislative functions assigned to the office. Notwithstanding these practices, the lack of a vote in the House has an obvious impact on the role and influence that the Resident Commissioner or any of the Delegates may have in the legislative process. As a mainland Representative commented about the role of the Resident Commissioner in seeking legislative action on a measure important to the island, “I cannot describe what life must be like at the bargaining table without a vote.”¹⁴

The Resident Commissioner can also benefit from the large presence of Puerto Rican voters in many congressional districts on the mainland. Nearly three and one-half million people of Puerto Rican origin or ancestry live in the continental United States, according to the 2000 Census, and form a significant electoral base in a number of states. Matters of concern to Puerto Ricans living outside the Commonwealth may, therefore, become matters of importance to House Members from these states. In addition, several Representatives and Senators have had first-hand experience in Puerto Rico serving as Peace Corps volunteers in the Commonwealth, or serving in Puerto Rico during their military service. As a former Resident Commissioner was quoted as saying about his interactions with colleagues, “We are American citizens, and somebody has to go

¹² U.S. Congress, House Committee on Resources, *United States-Puerto Rico Political Status Act*, report to accompany H.R. 856, 105th Cong., 1st sess., H.Rept. 105-131, pt. 1 (Washington: GPO, 1997), p. 2.

¹³ “Additional Views of Congressman Anibal Acevedo-Vila” in U.S. Congress, House Committee on Resources, *Caribbean National Forest Wilderness Act of 2002*, report to accompany H.R. 3955, 107th Cong., 2nd sess., H.Rept. 107-409 (Washington: GPO, 2002), pp. 5-6.

¹⁴ Robin Toner, “Working Profile: Jaime Fuster,” *New York Times*, May 8, 1986, p. B2.

out there [to the rest of the House of Representatives] and remind members that that is the case.... [By doing so,] I've been able to take care of my constituents' interests."¹⁵

Table 1. Measures Sponsored by Resident Commissioner, 93rd-110th Congresses

Congress	Measures Introduced ^a	Measures Passed House	Enacted ^b
93 rd (1973-1974)	12		
94 th (1975-1976)	13		
95 th (1977-1978)	30	1	1
96 th (1979-1980)	19	1	
97 th (1981-1982)	18	1	
98 th (1983-1984)	16		
99 th (1985-1986)	8		
100 th (1987-1988)	8		
101 st (1989-1990)	2	2	
102 nd (1991-1992)	5		
103 rd (1993-1994)	3	1	
104 th (1995-1996)	5		
105 th (1997-1998)	6	1	
106 th (1999-2000)	8	1	1
107 th (2001-2002)	19	3	1
108 th (2003-2004)	19	2	1
109 th (2005-2006)	17	3	3
110 th (2007-2008)	27	5	4 ^c

Source: Legislative Information System

- Includes bills, joint resolutions, concurrent resolutions and simple resolutions. See CRS Report 98-728, *Bills, Resolutions, Nominations, and Treaties: Characteristics, Requirements, and Uses*, by Richard S. Beth.
- Measures enacted into law unless otherwise noted.
- Includes three measures enacted into law and one resolution.

Table 2. Measures Cosponsored by Resident Commissioner, 93rd-110th Congresses

Congress	Measures Cosponsored	Measures Passed House	Simple Resolutions Adopted	Concurrent Resolutions Adopted	Measures Enacted ^a
93 rd (1973-1974)	57	3	0	0	3
94 th (1975-1976)	86	17	0	2	7
95 th (1977-1978)	289	12	2	2	5

¹⁵Doug J. Swanson, "Trouble in Paradise: Many Islands Chafe under Uncle Sam's Guiding Hand," *Orange County Register*, Oct. 21, 1990, p. M6.

Congress	Measures Cosponsored	Measures Passed House	Simple Resolutions Adopted	Concurrent Resolutions Adopted	Measures Enacted ^a
96 th (1979-1980)	437	61	2	2	37
97 th (1981-1982)	425	58	6	4	24
98 th (1983-1984)	517	129	8	5	69
99 th (1985-1986)	495	103	4	5	58
100 th (1987-1988)	492	132	7	12	57
101 st (1989-1990)	691	127	6	2	74
102 nd (1991-1992)	309	94	2	4	57
103 rd (1993-1994)	334	67	3	2	27
104 th (1995-1996)	164	11	1	0	5
105 th (1997-1998)	194	24	3	1	8
106 th (1999-2000)	334	59	9	4	20
107 th (2001-2002)	158	18	2	2	3
108 th (2003-2004)	307	40	4	5	13
109 th (2005-2006)	283	71	8	4	12
110 th (2007-2008)	400	128	60	3	10

Source: Legislative Information System

a. Includes bills and joint resolutions.

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