

Calendar No. 651

113TH CONGRESS
2^D SESSION

S. 2922

To reinstate reporting requirements related to United States-Hong Kong relations.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 13, 2014

Mr. BROWN (for himself, Mr. CARDIN, Mr. RUBIO, Mr. WICKER, Mrs. FEINSTEIN, and Mr. MERKLEY) introduced the following bill; which was read twice and referred to the Committee on Foreign Relations

DECEMBER 11, 2014

Reported by Mr. MENENDEZ, with an amendment
[Omit the part struck through and insert the part printed in *italic*]

A BILL

To reinstate reporting requirements related to United States-Hong Kong relations.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Hong Kong Human
5 Rights and Democracy Act”.

1 **SEC. 2. FINDINGS.**

2 Congress makes the following findings:

3 (1) The Joint Declaration of the Government of
4 the United Kingdom of Great Britain and Northern
5 Ireland and the Government of the People's Repub-
6 lic of China on the Question of Hong Kong, done at
7 Beijing December 19, 1984 (in this Act referred to
8 as the "Joint Declaration")—

9 (A) provided that the People's Republic of
10 China resumed sovereignty over Hong Kong on
11 July 1, 1997; and

12 (B) established a "high degree of auton-
13 omy" for Hong Kong except in matters of for-
14 eign affairs and defense.

15 (2) The Basic Law of the Hong Kong Special
16 Administrative Region of the People's Republic of
17 China (in this Act referred to as "Basic Law")—

18 (A) guarantees Hong Kong a "high degree
19 of autonomy" and separate executive, legisla-
20 tive, and independent judicial powers;

21 (B) generally prohibits the central Govern-
22 ment of the People's Republic of China from
23 interfering in the affairs that Hong Kong ad-
24 ministers on its own according to the Basic
25 Law;

1 (C) protects the rights to free speech,
2 press, assembly, and religion;

3 (D) provides that the socialist system and
4 policies shall not be practiced in Hong Kong
5 and that Hong Kong's capitalist system and
6 way of life shall remain unchanged for 50 years
7 (the principle of "one country, two systems");

8 (E) affirms the continuing applicability of
9 the International Covenant on Civil and Polit-
10 ical Rights to Hong Kong;

11 (F) provides that the head of the Hong
12 Kong Special Administrative Region shall be
13 the Chief Executive;

14 (G) provides that "the ultimate aim is the
15 selection of the Chief Executive by universal
16 suffrage upon nomination by a broadly rep-
17 resentative nominating committee in accordance
18 with democratic procedures";

19 (H) provides that the legislature of the
20 Hong Kong Special Administrative Region shall
21 be the Legislative Council; and

22 (I) provides that "the ultimate aim is the
23 election of all the members of the Legislative
24 Council by universal suffrage".

1 (3) The National People’s Congress Standing
2 Committee (NPCSC) determined on December 29,
3 2007, that Hong Kong could elect the Chief Execu-
4 tive by universal suffrage beginning in 2017, and
5 that Hong Kong could thereafter elect the Legisla-
6 tive Council by universal suffrage beginning in 2020.

7 (4) The Chief Executive is currently selected by
8 an Election Committee consisting of 1,200 members.
9 In order to run, candidates for Chief Executive must
10 currently receive the support of one-eighth of the
11 members of the Election Committee, the majority of
12 whom reportedly support or have ties to the Chinese
13 Communist Party.

14 (5) On August 31, 2014, the NPCSC deter-
15 mined that the 2017 election for the Chief Executive
16 could be held by universal suffrage but that Hong
17 Kong voters could only choose from two to three
18 candidates, each of whom is to be chosen by a ma-
19 jority of a nominating committee similar to the cur-
20 rent Election Committee that is heavily controlled by
21 pro-Beijing members.

22 (6) International standards for elections, in-
23 cluding Article 21 of the Universal Declaration of
24 Human Rights and Article 25 of the International
25 Covenant on Civil and Political Rights, guarantee

1 citizens the right to vote and to be elected in gen-
2 uine periodic elections by universal and equal suf-
3 frage without unreasonable restrictions.

4 (7) Hundreds of thousands of Hong Kong resi-
5 dents have consistently and peacefully expressed
6 their dissatisfaction with the electoral reform plans
7 of the Hong Kong government and the Government
8 of the People's Republic of China, including the Au-
9 gust 2014 NPCSC decision, and have called for a
10 genuine choice in elections that meet international
11 standards. Their peaceful and orderly protests have
12 set an example for other democratic movements
13 around the world, including those in mainland China
14 who continue to fight for their fundamental free-
15 doms.

16 (8) Media reports indicate that Hong Kong po-
17 lice used tear gas and pepper spray against dem-
18 onstrators on September 28, 2014, and that police
19 allegedly failed to adequately protect demonstrators
20 from mobs of counter-protestors, some of whom had
21 affiliations with gangs known as "triads", who beat
22 students and forcibly tried to remove them from
23 their places of protest. There have also been several
24 accusations of excessive use of force by the Hong
25 Kong Police which are under investigation.

1 (9) The United States enjoys close economic,
2 social, and cultural ties with Hong Kong. According
3 to the Department of State, 60,000 United States
4 citizens live in Hong Kong, and 1,400 United States
5 businesses have offices there. According to the Office
6 of the United States Trade Representative, Hong
7 Kong is the United States 18th largest trade part-
8 ner and 9th largest goods export market.

9 (10) Hong Kong's unique status as an inter-
10 national finance center where the rule of law and the
11 rights and freedoms of its citizens are protected has
12 served as the foundation for Hong Kong's stability
13 and prosperity.

14 (11) Section 301 of the Hong Kong Policy Act
15 of 1992 (22 U.S.C. 5731) required the Secretary of
16 State to issue reports on conditions in Hong Kong
17 of interest to the United States, including the devel-
18 opment of democratic institutions in Hong Kong,
19 and the last report under section 301 was issued on
20 June 30, 2007.

21 (12) Failure to establish a genuine democratic
22 option to nominate and elect the Chief Executive of
23 Hong Kong by 2017 and to establish open and di-
24 rect democratic elections for all members of the
25 Hong Kong Legislative Council by 2020 would re-

1 duce confidence in the commitment of the Govern-
2 ment of the People’s Republic of China to uphold its
3 obligations under international law, and would erode
4 the ability of Hong Kong to retain a high degree of
5 autonomy.

6 (13) During an October 2014 session, the
7 United Nations Human Rights Committee, con-
8 sisting of 18 independent experts, reviewed China’s
9 compliance with the International Covenant on Civil
10 and Political Rights with respect to Hong Kong. Ac-
11 cording to the session’s chair, the Committee agreed
12 on “the need to ensure universal suffrage, which
13 means both the right to be elected as well as the
14 right to vote. The main concerns of Committee
15 members were focused on the right to stand for elec-
16 tions without unreasonable restrictions.”. Another
17 Committee member said that the “committee doesn’t
18 want candidates filtered. The problem is that Beijing
19 wants to vet candidates.”.

20 (14) The Congressional-Executive Commission
21 on China’s 2014 Annual Report found that press
22 freedom in Hong Kong is under threat, including re-
23 ports of “violent attacks on individuals associated
24 with the press, self-censorship among journalists,

1 and pressure from the Hong Kong and central gov-
2 ernments and mainland Chinese businesses.”.

3 (15) The Hong Kong Journalists Association’s
4 2014 Annual Report noted that Hong Kong journal-
5 ists rated self-censorship at 6.9 on a 10-point scale,
6 which the Association considered a “low level” of
7 press freedom.

8 (16) Hong Kong ranked 61st among 180 coun-
9 tries in Reporters Without Borders’ 2014 World
10 Press Freedom Index, down three places from the
11 previous year and a significant decline from 2002
12 when Hong Kong ranked 18th.

13 (17) By providing timely, uncensored, accurate
14 information in their native language, United States
15 international broadcast services, through the Broad-
16 casting Board of Governors, help those living in
17 countries with poor human rights records, such as
18 China, to better defend their human rights and hold
19 their government accountable.

20 **SEC. 3. STATEMENT OF POLICY.**

21 It is the policy of the United States—

22 (1) to reaffirm the principles and objectives set
23 forth in the United States-Hong Kong Policy Act of
24 1992, namely that—

1 (A) the United States has “a strong inter-
2 est in the continued vitality, prosperity, and
3 stability of Hong Kong”;

4 (B) “support for democratization is a fun-
5 damental principle of United States foreign pol-
6 icy”;

7 (C) “the human rights of the people of
8 Hong Kong are of great importance to the
9 United States and are directly relevant to
10 United States interests in Hong Kong”;

11 (D) human rights “serve as a basis for
12 Hong Kong’s continued economic prosperity”;
13 and

14 (E) Hong Kong must remain sufficiently
15 autonomous from the People’s Republic of
16 China to justify a different treatment under a
17 particular law of the United States, or any pro-
18 vision thereof, from that accorded the People’s
19 Republic of China;

20 (2) to support the democratic aspirations of the
21 people of Hong Kong, as guaranteed to them by the
22 Joint Declaration, the Basic Law, the International
23 Covenant on Civil and Political Rights, and the Uni-
24 versal Declaration of Human Rights;

1 (3) to urge the Government of the People’s Re-
2 public of China to uphold its commitments to Hong
3 Kong, including allowing the people of Hong Kong
4 to rule Hong Kong with a high degree of autonomy
5 and without undue interference, and ensuring that
6 Hong Kong voters freely enjoy the right to elect the
7 Chief Executive and all members of the Hong Kong
8 Legislative Council by universal suffrage;

9 (4) to support the establishment by 2017 of a
10 genuine democratic option to freely and fairly nomi-
11 nate and elect the Chief Executive of Hong Kong,
12 and the establishment by 2020 of open and direct
13 democratic elections for all members of the Hong
14 Kong Legislative Council; and

15 (5) to support press freedom and journalistic
16 independence, including the continuation of inter-
17 national broadcasting programming in Cantonese
18 that is readily accessible to Cantonese speaking pop-
19 ulations in China and in Hong Kong.

20 **SEC. 4. REINSTATEMENT OF REPORTING REQUIREMENTS**
21 **RELATED TO UNITED STATES-HONG KONG**
22 **RELATIONS.**

23 Section 301 of the United States-Hong Kong Policy
24 Act of 1992 (22 U.S.C. 5731) is amended—

1 (1) by striking “Not later than” and all that
2 follows through “the Secretary of State” and insert-
3 ing “Not later than March 31, 2015, and annually
4 thereafter for 10 years or until such earlier date
5 that the Secretary of State certifies that Hong Kong
6 has held free and fair elections for two consecutive
7 Chief Executive and two consecutive Legislative
8 Council periods, the Secretary of State”;

9 (2) by striking “Speaker of the House of Rep-
10 resentatives” and inserting “chairman of the Com-
11 mittee on Foreign Affairs of the House of Rep-
12 resentatives”;

13 (3) in paragraph (7), by striking “; and” and
14 inserting a semicolon;

15 (4) in paragraph (8), by striking the period at
16 the end and inserting “; and”; and

17 (5) by adding at the end the following new
18 paragraph:

19 “(9) matters in which Hong Kong is given sep-
20 arate treatment under the laws of the United States
21 from that accorded to the People’s Republic of
22 China and in accordance with this Act.”.

1 **SEC. 5. TREATMENT OF HONG KONG UNDER UNITED**
2 **STATES LAW.**

3 Title II of the United States-Hong Kong Policy Act
4 of 1992 (22 U.S.C. 5721 et seq.) is amended by inserting
5 after section 202 the following new section:

6 **“SEC. 202A. TREATMENT OF HONG KONG UNDER UNITED**
7 **STATES LAW.**

8 “(a) **PRESIDENTIAL CERTIFICATION REQUIRE-**
9 **MENT.**—Hong Kong is ineligible for treatment different
10 from that accorded the People’s Republic of China under
11 United States laws, agreements, or arrangements enacted
12 or entered into after the date of the enactment of this
13 Act unless the President certifies to Congress that Hong
14 Kong is sufficiently autonomous to justify such different
15 treatment.

16 “(b) **WAIVER AUTHORITY.**—The President may
17 waive the application of subsection (a) if the President—

18 “(1) determines that such a waiver is in the na-
19 tional security interests of the United States; and

20 “(2) on or before the date on which the waiver
21 takes effect, submits to the Committee on Foreign
22 Relations of the Senate and the Committee on For-
23 eign Affairs of the House of Representatives a notice
24 of and justification for the waiver.”

1 **SEC. 5. TREATMENT OF HONG KONG UNDER UNITED**
2 **STATES LAW.**

3 *Title II of the United States-Hong Kong Policy Act*
4 *of 1992 (22 U.S.C. 5721 et seq.) is amended by inserting*
5 *after section 202 the following new section:*

6 **“SEC. 202a. TREATMENT OF HONG KONG UNDER UNITED**
7 **STATES LAW.**

8 *“(a) SECRETARY OF STATE CERTIFICATION REQUIRE-*
9 *MENT.—*

10 *“(1) IN GENERAL.—Not later than 90 days after*
11 *the date of the enactment of the Hong Kong Human*
12 *Rights and Democracy Act, and annually thereafter,*
13 *the Secretary of State shall certify to Congress wheth-*
14 *er Hong Kong is sufficiently autonomous to justify*
15 *separate treatment different from that accorded the*
16 *People’s Republic of China in any new laws, agree-*
17 *ments, treaties, or arrangements entered into between*
18 *the United States and Hong Kong after the date of*
19 *the enactment of such Act.*

20 *“(2) FACTOR FOR CONSIDERATION.—In making*
21 *a certification under paragraph (1), the Secretary of*
22 *State should consider the terms, obligations, and ex-*
23 *pectations expressed in the Joint Declaration with re-*
24 *spect to Hong Kong.*

25 *“(3) EXCEPTION.—The certification under this*
26 *subsection shall not be required with respect to any*

1 *new laws, agreements, treaties, or arrangements that*
2 *support human rights, rule of law, or democracy in*
3 *Hong Kong.*

4 “(b) *WAIVER AUTHORITY.*—*The Secretary of State*
5 *may waive the application of subsection (a) if the Sec-*
6 *retary—*

7 “(1) *determines that such a waiver is in the na-*
8 *tional interests of the United States; and*

9 “(2) *on or before the date on which the waiver*
10 *takes effect, submits to the Committee on Foreign Re-*
11 *lations of the Senate and the Committee on Foreign*
12 *Affairs of the House of Representatives a notice of*
13 *and justification for the waiver.”.*

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