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THE ORGANIC ACT OF GUAM

AND

RELATED FEDERAL LAWS  
AFFECTING THE  
GOVERNMENTAL STRUCTURE OF GUAM

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CURRENT THROUGH  
U.S.P.L. 108-378  
(October 30, 2004)

## INTRODUCTION

The Organic Act of Guam and related federal laws provide the framework for the government of Guam.

This publication's purpose is to present the fundamental laws creating the government of Guam. Similarly, while there have been many cases interpreting various aspects of the Organic Act, this publication will include only appellate ones. A more complete case listing can be found in both Title 48 of the U.S. Code Annotated (48 U.S.C.A.) and in Title 48 of the U.S. Code Service (48 U.S.C.S.) and their respective supplements.

**Note:** In this publication of the Organic Act, the sections are numbered according to the 1987 republication of Title 48 U.S.C.A. The original Organic Act section numbers are indicated under the "Legislative History".

This publication contains all amendments made through December 31, 2004.

## **SUMMARY OF LAWS**

The Organic Act of Guam and related subchapters of Title 48 U.S.C.A.

Guam's Delegate to Congress

Submerged Land and Concurrent Jurisdiction

Constitution Authorization Act

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## **THE ORGANIC ACT OF GUAM**

(Act of Aug. 1, 1950, as amended, 64 Stat. 384 [48 U.S.C. 1421, et seq.])

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## SUBCHAPTER 1 GENERAL PROVISIONS

### §[1] Short Title.

This Act may be cited as the *Organic Act of Guam*.

**SOURCE:** "This Act" is the Act of August 1, 1950, 64 Stat. 384, codified as 48 U.S.C. 1421-1425, as amended.

### §1421. Name and Territory Encompassed.

The territory ceded to the United States in accordance with the provisions of the Treaty of Peace between the United States and Spain, signed at Paris, December 10, 1898, and proclaimed April 11, 1899, and known as the island of Guam in the Marianas Islands, shall continue to be known as Guam.

**SOURCE:** §2 of Act of Aug. 1, 1950; 48 U.S.C. 1421.

**NOTE:** The numbering of this (1992) **entire** publication of the Organic Act and Related Federal Laws is that found in Title 48 of the U.S. Code Annotated.

### §1421a. Unincorporated Territory -- Government.

Guam is hereby declared to be an unincorporated territory of the United States and the capital and seat of government thereof shall be located at the city of Agana, Guam. The government of Guam shall have the powers set forth in this Act, shall have power to sue by such name, and, with the consent of the legislature evidenced by enacted law, may be sued upon any contract entered into with respect to, or any tort committed incident to, the exercise by the government of Guam of any of its lawful powers.<sup>1</sup> The government of Guam shall consist of three branches, executive, legislative and judicial, and its relations with the Federal Government in all matters not the program responsibility of another Federal department or agency, shall be under the general administrative supervision of the Secretary of Interior.<sup>2</sup>

**SOURCE:** §3 of Act of Aug. 1, 1950, 48 U.S.C. §1421a; <sup>1</sup>added by Act of Sept. 21, 1959; <sup>2</sup>adopted by amendment of Sept. 11, 1968, P.L. 90-497, 12(a), 82 Stat. 847.

**COURT DECISIONS:** Regardless of its source, Guam possesses sovereign immunity from suit without its consent pursuant to the Organic Act as it was written before the 1959 amendment. *Crain v. Government of Guam*, (C.A.9 (Guam) 1952) 195 F.2d 414,

Since Guam is an unincorporated territory, its government has only those powers conferred upon it by Congress. *Rodriguez v. Gaylord*, [1977 DC Hawaii] 429 F. Supp. 797.

Because the Organic Act did not specifically permit such action, the Guam Legislature could not enact a law which took from the District Court all appellate jurisdiction. *Territory of Guam v. Olsen*, 451 U.S. 195. (1977).

Because the Organic Act (22) did not specifically provide for "diversity" jurisdiction in the District Court, no such jurisdiction exists. *Chase Manhattan Bank (Nat. Assn.) v. South Acres Dev. Co.*, [1978 U.S.] 98 S.Ct. 544.

The Organic Act provides for a stricter separation of powers than found in the U.S. Constitution in that this Act specifies that there shall be "three branches" of government. *People v. Camacho*, Sup.Ct.Guam, 1 Guam R. 501 (1975). Followed in *Attorney General of Guam v. Superior Court (Flores, Real Party)*, D.C.Guam, Civ. Case #79-153 (1980).

Guam has not waived its statutory immunity, granted by §3 of the Organic Act, and so is not liable for damages arising from intentional torts. The statutory limited waiver of immunity (Government Claims Act - §6500 et seq. of the Government Code) is constitutional. *Munoz and Munoz v. Govt. of Guam & Aguon*, (1980 CA9) 625 F.2d 257.

Because of the doctrine of "separation of powers", the Legislature may not hire an attorney to represent the government of Guam in the institution of a suit by and on behalf of the territory. Such an act is the prerogative of the executive branch, as an act "executing the laws" applicable to Guam. *Government of Guam v. United States*, D.C.Guam 1982, Civ. No. 82-0001.

The doctrine of "separation of powers" does not permit the Legislature to enact a law by which the Judiciary appoints a person to undertake a purely executive branch function, namely, the prosecution of criminal cases. *People v. Camacho*, 1 Guam Rep. 501.

Guam's sovereign immunity is immunity against the government only and not against officers of the government acting in their individual capacities. *Ngiraingas v. Sanchez, et al.*, (C.A. Guam 1988) 858 F.2d 1368.

1. Territories have an "inherent sovereign immunity", though not deriving it from the same source as that of the states.

2. While a sovereign may waive its immunity by unequivocally expressing its consent to the court's jurisdiction, a motion to dismiss for lack of jurisdiction (because of such immunity) is not a consent to the court's jurisdiction, even when motion is

accompanied by a request for court marshal to release items in his custody. *Marx v. Government of Guam*, (C.A.9 Guam 1989) 866 F.2d 294.

The immunity granted under this section does not provide immunity to police officers in their individual capacities in §1983 suits. *Ngiraingas v. Sanchez*, C.A.9 (Guam) 1988, 849 F.2d 372, 959 F.2d 1368. *Aff'd* U.S. Sup.Ct (1989).

" . the Superior Court's Order placing Appellee Taisipic into the PREPARA Program is inconsistent with the Organic Act in that it impermissibly encroaches upon the powers of the Territorial Parole Board to grant or deny parole. Furthermore, the Order usurps the power of the Guam Legislature, which vested authority over parole determinations in the Parole Board and not in the courts. *Taisipic v. Marion, et al* [Parole Board members], 6 Guam 7, 33 (*Supreme Court of Guam*)

"Therefore, because we find no disruption of the charging function of the executive [in the Family Violence Act], the second prong of the inquiry need not be addressed and we hold that the instant statute does not violate the Separation of Powers Doctrine." *People v. Perez*, 1999 Guam 2, 19 Supreme Court of Guam.

#### **§1421b. Bill of Rights.**

(a) No law shall be enacted in Guam respecting an establishment of religion or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition the government for a redress of their grievances.

(b) No soldier shall, in time of peace, be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

(c) The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrant for arrest or search shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or things to be seized.

(d) No person shall be subject for the same offense to be twice put in jeopardy of punishment; nor shall he be compelled in any criminal case to be a witness against himself.

(e) No person shall be deprived of life, liberty, or property without due process of law.

(f) Private property shall not be taken for public use without just compensation.

(g) In all criminal prosecutions the accused shall have the right to a speedy and public trial; to be informed of the nature and cause of the accusation and to have a copy thereof; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defense.

(h) Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

(i) Neither slavery nor involuntary servitude, except as punishment for a crime whereof the party shall have been duly convicted, shall exist in Guam.

(j) No bill of attainder, ex post facto law, or law impairing the obligation of contracts shall be enacted.

(k) No person shall be imprisoned for debt.

(l) The privilege of the writ of habeas corpus shall not be suspended, unless, when in cases of rebellion or invasion or imminent danger thereof, the public safety shall require it.

(m) No qualification with respect to property, income, political opinion, or any other matter apart from citizenship, civil capacity, and residence shall be imposed upon any voter.

(n) No discrimination shall be made in Guam against any person on account of race, language, or religion, nor shall the equal protection of the laws be denied.

(o) No person shall be convicted of treason against the United States unless on the testimony of two witnesses to the same overt act, or on confession in open court.

(p) No public money or property shall ever be appropriated, supplied, donated, or used, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, sectarian institution, or association, or system of religion, or for the use, benefit, or support of any priest, preacher, minister, or other religious teacher or dignitary as such.



(q) The employment of children under the age of fourteen years in any occupation injurious to health or morals or hazardous to life or limb is hereby prohibited.

(r) There shall be compulsory education for all children, between the ages of six and sixteen years.

(s) No religious test shall ever be required as a qualification to any office or public trust under the government of Guam.

(t) No person who advocates, or who aids or belongs to any party, organization, or association which advocates the overthrow by force or violence of the government of Guam or of the United States shall be qualified to hold any public office or trust or profit under the government of Guam.

(u) The following provisions of and amendments to the Constitution of the United States are hereby extended to Guam to the extent that they have not been previously extended to that Territory and shall have the same force and effect there as in the United States or in any State of the United States: article I, section 9, clauses 2 and 3; article IV, section 1 and section 2, clause 1; the first to ninth amendments inclusive; the thirteenth amendment; the second sentence of section 1 of the fourteenth amendment; and the fifteenth and nineteenth amendments.

All laws enacted by Congress with respect to Guam and all laws enacted by the territorial legislature of Guam which are inconsistent with the provisions of this subsection are repealed to the extent of such inconsistency.

**SOURCE:** §5 of Act of Aug. 1, 1950 (Organic Act, as amended), codified as 48 U.S.C. 1421b. Subsection (u) added by Public Law 90-497, 10. 82 Stat. 847 [Elective Governor Act].

**COURT DECISIONS:** Local law prohibiting voter who has signed partisan candidate's petition from signing a petition for independent candidate for the same office is not unconstitutional or contrary to this Section. *Webster v. Mesa*, [1977 CA9] 521 F.2d 442.

Public Law 14-8 and P.L. 15-66:25, giving certain incentives to government of Guam contractors who hire a stated percentage of local workers is contrary to the 14th Amendment of the U.S. Constitution. *Hawaiian Dredging & Construction Co. v. Guam Airport Authority*, (1980 Superior Ct.) Civ. #815-79.

A person charged with 'drunk driving' has no (U.S. Constitution) 6th Amendment right to counsel at the time of arrest. *People v. Eclavea*, (1981 Superior Ct.) Crim. #647-80.

Amendments to Govt. Code 21003, 21503(4) and 21553, making special, lower charges for utilities furnished to nonprofit activities, churches, hospitals, which, in net effect place the burden of supporting one-half of the utilities used by these entities on the ordinary, consumer, arbitrarily and capriciously discriminates against the ordinary consumers. This is in violation of the Bill of Rights, (this Section) which provides that no discrimination shall be made in Guam on account of ... religion. *Guam Power Authority v. Bishop of Guam*, (1974 DC Guam) 383 F.Supp. 476.

"This court . . . holds that the Department of Public Safety's Miranda rights form is not defective." *People v. McGravey, et al.*, (1983 Super. Guam) Cr. #100F-82.

Guam will follow the federal and majority state rule, not the California rule in *Hawkins*. Therefore, 8 GCA 1.15 which allows either an indictment or information in criminal cases is constitutional. *People v. McGravey, et al.*, (1983 Super.Guam) Cr. #100F-82.

In the context of juvenile certification proceedings, due process requirements of right to counsel, adequate notice and a statement of reasons at a hearing were met in this case. Failure to investigate motives for alleged criminal act do not constitute a violation of due process rights. *People v. Kingsbury*, (CA9 1981) 549 F.2d 740.

The Government of Guam could continue its customs searches of persons and goods arriving from foreign countries and the Northern Marianas; issue of searches of persons and goods coming from Hawaii remanded for fact finding. *Barusch v. Calvo*, (CA9 1982) 685 F.2d 1199.

A juvenile is not subject to double jeopardy in violation of this section by certification proceedings in juvenile court, since, by the terms of the statute, the certification hearing is only to determine the forum for the proceedings, not for determining the fact of guilt, innocence or delinquency. *People v. Fejeran*, (CA9 1982) 687 F.2d 302.

P.L. 13-115, the Malpractice Claims Mandatory Screening and Mandatory Arbitration Act, violates the due process clause of [5] of the Organic Act and the 14th Amendment of the U.S. Constitution because it is "incomprehensibly vague and impossible to apply". *Hammonds v. Boonprakong & Awa v. GMHA*, (D.C. Guam, App. Div 1983) Civ. #81-003A & #81-048A; aff'd. as *Awa v. GMH*, 726 F.2d 594.

P.L. 14-151, requiring that the Parole Board determines eligibility for an inmate leaving the Guam Penitentiary for any reason, is in violation of the 14th Amendment of the U.S. Constitution (through 5(u) of the Organic Act) because it fails to set forth proper guidelines to be followed. *Mendiola v. Parole Board*, (Super.Guam 1981) SP #185-81.

Civil Code §537(2), permitting pre-judgment attachments against nonresidents of Guam, violated the due process clause of the Constitution (through 5(u) of the Organic Act) because no opportunity for a hearing is given the defendants and because the attachment must issue upon the filing of an ex parte affidavit. *Holmes & Narver, Inc. v. Udui*, (Super.Guam 1982) Civ. #726-81.

A former police officer fighting in court to regain his position is a "public figure" under the 1st Amendment to the Constitution (here 5(a)) and, therefore must meet the appropriate burden in his attempt to prove libel against a newspaper. *Camacho v. Udick*, (D.C.Guam App. Div. 1983) Civ. #81-0103A.

"The waiver of juvenile court jurisdiction is a 'critically important' proceedings which 'must measure up to the essential of due process and fair treatment.'" [Applied to Guam through 5(u)]. *People in the interest of Manglona*, (D.C.Guam App. Div. 1983) Cr. #02-0011A.

Only an amendment to the United States Constitution can give to the people of Guam the right to vote for President and Vice President. There is no existing constitutional right requiring such a vote. *Attorney General of Guam v. United States*, C.A.9 1984, No. 83-1890, 738 F.2d 1017.

Because Guam is an unincorporated territory having only powers given it by Congress, "it is in essence an instrumentality of the federal government." As such, the negative implications of the commerce clause of the U.S. Constitution do not apply to Guam. *Sakamoto v. Duty Free Shoppers, Ltd.*, D.C.Guam 1983, 613 F.Supp. 381, aff'd. 764 F.2d 1285, cert. den. 106 S.Ct. 1457, 89 L.Ed.2d 715.

Under the circumstances, bail of \$1,000,000 did not violate the Eighth Amendment prohibiting excessive bail. *People v. Bruneman*, 1996 Guam 3, Supreme Court of Guam.

Double Jeopardy, as to sentencing, has occurred when the Defendant is sentenced on four charges (two charges-in-chief and two enhancements) which are in reality only differing theories of the one offense of murder – only one person was murdered. *People v. James E. Reyes*, 1998 Guam 32, 23, Supreme Court of Guam.

A police officer, in order to make a traffic stop, must have more than "the anonymous informant's tip alone, which contained no predictive facts to be corroborated" in order to meet the requirements of the 4<sup>th</sup> Amendment. *People v. Johnson*, 1997 Guam 9, 9 Guam Supreme Court.

Under the Due Process Clause of the 14<sup>th</sup> Amendment, the courts of Guam have jurisdiction over a commercial dispute between two companies, one of which, though located in Hawaii, had sufficient contacts with Guam to be subject to jurisdiction in Guam. *PCI Communications, Inc. v. GST Pacwest Telecom Hawaii*, 1999 Guam 17, 29-32, Supreme Court of Guam.

#### **§1421c. Continuation of Laws in Force; Modification or repeal of laws.**

(a) The laws of Guam in force on August 1, 1950, except as amended by this chapter, are hereby continued in force, subject to modification or repeal by the Congress of the United States or the Legislature of Guam, and all laws of Guam inconsistent with the provisions of this chapter are hereby repealed to the extent of such inconsistency.

(b) Applicability of Federal Laws to Guam. (Repealed)

**SOURCE:** §25 of Act of Aug. 1, 1950 (Organic Act); amended by Act of Sept. 11, 1968, Public Law 90-497, §7, 82 Stat. 847 (Elective Governor Act). Codified as 48 U.S.C. 1421c. Amendment repealed requirement that, in order to affect Guam, "Guam" or "possession" be specifically stated in the law; and repealed reference to Commission to study applicability of federal laws to Guam. This latter Commission had already issued its report.

#### **§1421d. Salaries and Travel Allowances of officers and employees.**

The salaries and travel allowances of the Governor, Lieutenant Governor, the heads of the executive departments, other officers and employees of the government of Guam, and the members of the Legislature, shall be paid by the government of Guam at rates prescribed by the laws of Guam.

**SOURCE:** §26 of Act of Aug. 1, 1950 (Organic Act); amended Aug. 1, 1956, c.852, §21, 70 Stat. 911; July 30, 1965, Public Law 89-100, 79 Stat. 424; Sept. 11, 1968, Public Law 90-497, §9(a), (b), 82 Stat. 847 (Elective Governor Act). Codified as 48 U.S.C. 1421d.

#### **§1421e. Duty on articles.**

All articles coming into the United States from Guam shall be subject to or exempt from duty as provided for in section 1301a of Title 19 [U.S.C.].

**SOURCE:** §27 of Act of Aug. 1, 1950 (Organic Act); amended Sept. 1, 1954, c. 1213, Title IV, §402(b), 68 Stat. 1140. Codified as 48 U.S.C. §1421e. The underlying 19 U.S.C.A. §1301a has been repealed and now Guam's customs status is found in 19 U.S.C.A. §1202, Headnote 3.

#### **COURT DECISIONS;**

The Court of Appeals held that: (1) the allocation rules had a substantial relation to traditional customs purposes, and thus jurisdiction of challenge to the rules was exclusively vested in the Customs Court, although rules also had concurrent purpose of promoting insular economic development, and (2) plaintiffs had an adequate remedy in Customs Court of importing more than

duty-free quota allocation, paying duties assessed, and then suing for refund, despite contention that it was financially impossible for them to do so. *Jerlian Watch Co. v. U.S. Dept. of Commerce & U.S. Dept. of the Interior*, C.A.9 (Guam) 1979, 597 F.2d 687.

#### **§1421f. Title to Property Transferred.**

(a) The title to all property, real and personal, owned by the United States and employed by the naval government of Guam in the administration of civil affairs of the inhabitants of Guam, including automotive and other equipment, tools and machinery, water and sewerage facilities, bus lines and other utilities, hospitals, schools, and other buildings, shall be transferred to the government of Guam within ninety days after the date of enactment of this Act [Organic Act].

(b) All other property, real and personal, owned by the United States in Guam, not reserved by the President of the United States within ninety days after the date of enactment of this Act [Organic Act], is hereby placed under the control of the government of Guam, to be administered for the benefit of the people of Guam, and the legislature shall have the authority, subject to such limitations as may be imposed upon its acts by this Act [Organic Act] or subsequent acts of the Congress, to legislate with respect to such property, real and personal, in such manner as it may deem desirable.

(c) All property owned by the United States in Guam, the title to which is not transferred to the government of Guam by subsection (a) hereof, or which is not placed under the control of the government of Guam by subsection (b) hereof, is transferred to the administrative supervision of the Secretary of the Interior, except as the President may from time to time otherwise prescribe: Provided, That the Secretary of the Interior shall be authorized to lease or to sell, on such terms as he may deem in the public interest, any property, real and personal, of the United States under his administrative supervision in Guam not needed for public purposes.

**SOURCE:** §28 of Act of Aug. 1, 1950 (Organic Act); amended by Elective Governor Act, Public Law 90-497 by designating the administrative control of subsection (c) to be in the Secretary of the Interior. Codified as 48 U.S.C. §1421f.

**NOTE:** Pursuant to subsection (b), the President of the United States issued the following Executive Order reserving certain lands for use by the United States:

Executive Order No. 10178  
Oct. 30, 1950, 15 F.R. 7313

#### **RESERVATION OF PROPERTY IN GUAM FOR USE OF THE UNITED STATES**

WHEREAS, section 28 of the Organic Act of Guam, approved August 1, 1950 (Public Law 630, 81st Congress), reads: "(a) The title to all property, real and personal, owned by the United States and employed by the naval government of Guam in the administration of the civil affairs of the inhabitants of Guam, including automotive and other equipment, tools and machinery, water and sewerage facilities, bus lines and other utilities, hospitals, schools, and other buildings, shall be transferred to the government of Guam within 90 days after the date of enactment of this Act.

(b) All other property, real and personal, owned by the United States in Guam, not reserved by the President of the United States within ninety days after the date of enactment of this Act, is hereby placed under the control of the government of Guam, to be administered for the benefit of the people of Guam, and the Legislature shall have authority, subject to such limitations as may be imposed upon its acts by this Act or subsequent acts of Congress, to legislate with respect to such property, real and person, in such manner as it may deem desirable.

(c) All property owned by the United States in Guam, the title to which is not transferred to the government of Guam by subsection (a) hereof, or which is not placed under the control of the government of Guam by subsection (b) hereof, is transferred to the administrative supervision of the head of the department or agency designated by the President under section 3 of this Act [Dept. of the Interior], except as the President may from time to time otherwise prescribe; *Provided*, That the head of such department or agency shall be authorized to lease or sell, on such terms as he may deem in the public interest, any property, real or personal, of the United States under his administrative supervision in Guam not needed for public purposes.

WHEREAS, certain hereinafter described real and personal property of the United States in Guam is required for the respective uses of the Department of the Army, the Department of the Navy, the Department of the Air Force, and the Coast Guard, and it has been mutually agreed that the Department of the Navy shall act on behalf of the Department of the Army, the Department of the Air Force, and the Coast Guard with respect to their requirements as to such property;

WHEREAS, certain other hereinafter described real property of the United States in Guam has been selected by the Secretary of the Navy for transfer or sale pursuant to the act of November 15, 1945, 59 Stat. 584, to persons in replacement of lands acquired for

military or naval purposes in Guam, and such property should remain available for disposition by the Secretary of the Interior in his discretion under section 28(c) of the said Organic Act of Guam; and

WHEREAS, certain other hereinafter described personal property of the United States in Guam should remain available for the respective needs of the Department of the Army, Department of the Navy, Department of the Air Force, the Coast Guard and other agencies of the United States:

NOW, THEREFORE, by virtue of the authority vested in me by the said section 28 of the Organic Act of Guam, and as President of the United States, it is ordered as follows:

1. The following described real and personal property of the United States in Guam is hereby reserved to the United States and placed under the control and jurisdiction of the Secretary of the Navy: Provided, that the secretary of the Navy shall transfer such portions of such property to the Department of the Army, the Department of the Air Force, and the Coast Guard as may be required for their respective purposes:

(a) All of that real property in Guam situated within the perimeter areas defined in the following designated condemnation proceedings in the Superior Court of Guam, being the same property quitclaimed by the Naval Government of Guam to the United States of America by deed dated July 31, 1950, and filed for record with the Land registrar of Guam on August 4, 1950 (Presentation No. 22063):

Civil No.	Facility	Area (Acres)
2-48	North Field	4,566.757
5-48	Mt. Santa Rosa Water Reservoir and supply lines	9.372
6-48	Mt. Santa Rosa-Marbo Water Lines	5.990
7-48	Tumon Maui Well Site	5.990
2-49	Naval Ammunition Depot	4,803.000
3-49	Primary Transmission Line	44.651
4-49	Mt. Santa Rosa-Marbo Water Line Easement	12.169
5-49	Apra Harbor Reservation	6,332.000
2-50	Acecorp Tunnel	6.450
3-50	Camp Dealy	35.391
4-50	Tumon Bay Rec. Area Utility Lines	0.637
5-50	Agana Springs	24.914
6-50	Asan Point Tank Farm	41.300
7-50	Asan Point Housing	85.032
8-50	Medical Center	137.393
9-50	Agafa Gumas	45.630
10-50	Naval Communications Station	4,798.682
11-50	Nimitz Beach	11.726
12-60	Command Center	800.443
13-50	Tarague Natural Wells	4,901.100
14-50	Agana Diesel Elec. Generating Plant	5.945
15-50	Mt. Santa Rosa Haul Road, Water Reservoir and Supply Lines, VHF Relay Station, Mt. Santa Rosa Marine Water Line	23.708
16-50	Northwest Air Force Base	4,562.107
18-50	Marbo Base Command Area-Sewage Disposal	60.480
19-50	Loran Station Cocos Island	21.695
20-50	Av-Gas Tank Farm # 12	15.322
21-50	Proposed Boundary of NAS Agana, Housing Area #7	1,820.148
22-50	C.A.A [FAA] Site (Area #90)	37.519
23-50	Tumon Maui Well (Water Tunnel)	3.575
24-50	Tumon Bay Rec. Area (Road & AV-Gas Fuel Line Parcel #1	49.277
25-50	Utility easement from Rt. #1 to Rt. #6 (Coontz Junction)	0.208
26-50	Tumon Bay Rec. Area (Area #78)	65.300
27-50	Marbo Base Command	2,497.400
28-50	Mt. Tenjo VHF Station Site	0.918
29-50	Sasa Valley Tank Farm (Area #26)	285.237
30-50	Sub Transmission System Piti Steam Plant to Command Center	17.793
31-50	Route #1 (Marine Drive) (Portion)	28.888
32-50	Sub Transmission System (34 KV Line) Piti Steam Plant to Agana Diesel Plant and POL System Sasa Valley Tank Farm to NAS Agana	94.000
33-50	Harmon Air Force Base	953.000
34-50	Radio Barrigada	2,922.000

35-50	AACS Radio Range (Area #30)	25.000
36-50	Water Line Apra Heights Reservoir to Fena	
	Pump Station & AV-Gas Fuel System	37.000
37-50	Fena River Reservoir	2,185.000

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(b) The road system and utilities systems described in the said deed between the Naval Government of Guam and the United States of America dated July 31, 1950.

(c) The following described areas: Mount Lam Lam Light; Rear Range Light; Mount Alutom Light; Area Number 35 culverts; Mount Santa Rosa Light; 36 acres of Camp Witek; Adelup Reservoir; Tripartite Seismograph Station Site, Land Unite M. Section 2, Land Square 20; the Power sub-station located on Lot 266, Municipality of Agat, adjacent to Erskine Drive, City of Agat.

(d) Lots 2285-5 and 2206-1 in Barrigada.

(e) All personal property relating to or used in connection with any of the above-described real property.

2. The following described real property of the United States in Guam is hereby reserved to the United States and transferred to the administrative supervision of the Secretary of the Interior, and shall be available for disposition by the secretary of the Interior in his discretion under §28(c) of the said Organic Act of Guam [subsection (c) of this section]:

All of those lands which have been selected by the Secretary of the Navy for transfer or sale pursuant to the Act of November 15, 1945, 59 Stat. 584, to persons in replacement of lands acquired for military or naval purposes in Guam, a list and description of such lands being on file in the Department of the Navy.

3. In addition to the personal property described in paragraph 1(e) hereof, there is hereby reserved to the United States all personal property of the United States in Guam, except that which is transferred to the Government of Guam by or pursuant to Section 28(a) of the Organic Act of Guam [subsection n(a) of this section], which on the date of this order, Oct. 31, 1950, is in the custody or control of the Department of the Army, the Department of the Air Force, the Coast Guard, or any other department or agency of the United States; and all such personal property shall remain in the custody and control of the department or agency having custody and control thereof on the date of this order (Oct. 31, 1950).-

**COURT DECISIONS:** The Guam Legislature is a part of the 'government of Guam' within the meaning of this Section (48 USCA 1421f) and, as such, may make appropriate lawful conditions, including approval by the Legislature, on the sale, lease or disposition of any lands transferred by the U.S. to Guam. *Bordallo v. Camacho*, (1973 CA9) 475 F.2d 712.

Subsections (a) and (b) provided for a complete action by the United States within 90 days of passage. These sections have **no** continuing effect into the present day (2000). *Govt. of Guam v. USA*, (CA9, Guam) No. 97-17140 (08/12/99), *cert. den.* \_\_\_\_ U.S. \_\_\_\_, March 21, 2000, U.S. Supreme Court.

If there is any aboriginal title it exists in the native inhabitants (persons) of Guam, not in the Government of Guam. If any government is trustee of these titles, it is the United States Government. *Govt. of Guam v. USA*, (CA9, Guam) No. 97-17140 (08/12/99), *cert. den.* \_\_\_\_ U.S. \_\_\_\_, March 21, 2000, U.S. Supreme Court.

### **§1421f-1. Acknowledgment of Deeds.**

Deeds and other instruments affecting land situated in the District of Columbia or any Territory of the United States may be acknowledged in the islands of Guam and Samoa or in the Canal Zone before any notary public or judge, appointed therein by proper authority, or by any officer therein who has ex officio the powers of a notary public: Provided, That the certificate by such notary in Guam, Samoa, or the Canal Zone, as the case may be, shall be accompanied by the certificate of the Governor or acting governor of such place to the effect that the notary taking said acknowledgment was in fact the officer he purported to be; and any deeds or other instruments affecting lands so situate, so acknowledged since the 1st day of January, 1905, and accompanied by such certificate shall have the same effect as such deeds or other instruments hereafter so acknowledged and certified.

**SOURCE:** Codified as 48 U.S.C. 1421f-1. Act of June 28, 1908, ch. 3585, 34 Stat. 552. Not in Organic Act.

### **§1421g. Establishment and maintenance of public bodies and offices.**

(a) **Public Health Services.** Subject to the laws of Guam, the Governor shall establish, maintain, and operate public health services in Guam, including hospitals, dispensaries, and quarantine stations, at such places in Guam as may be necessary, and he shall promulgate quarantine and sanitary regulations for the protection of Guam against the importation and spread of disease.

**(b) Public Education System.** The Government of Guam shall provide an adequate public educational system of Guam, and to that end shall establish, maintain, and operate public schools according to the laws of Guam.

**(c) Office of Public Prosecutor; Office of Public Auditor.** The Government of Guam may by law establish an Office of Public Prosecutor and an Office of Public Auditor. The Public Prosecutor and Public Auditor may be removed as provided by the laws of Guam.

**(d)(1) Attorney General of Guam.** The Attorney General of Guam shall be the Chief Legal Officer of the Government of Guam. At such time as the Office of the Attorney General of Guam shall next become vacant, the Attorney General of Guam shall be appointed by the Governor of Guam with the advice and consent of the legislature, and shall serve at the pleasure of the Governor of Guam.

(2) Instead of an appointed Attorney General, the legislature may, by law, provide for the election of the Attorney General of Guam by the qualified voters of Guam in general elections after 1998 in which the Governor of Guam is elected. The term of an elected Attorney General shall be 4 years. The Attorney General may be removed by the people of Guam according to the procedures specified in section 9-A of this Act or may be removed for cause in accordance with procedures established by the legislature in law. A vacancy in the office of an elected Attorney General shall be filled—

(A) by appointment by the Governor of Guam if such vacancy occurs less than 6 months before a general election for the Office of Attorney General of Guam; or

(B) by a special election held no sooner than 3 months after such vacancy occurs and no later than 6 months before a general election for Attorney General of Guam, and by appointment by the Governor of Guam pending a special election under this subparagraph.

**SOURCE:** §29 of Act of Aug. 1, 1950 (Organic Act). Codified as 48 U.S.C. §1421g. Subsection (b) amended by 5 and 13(a)(1) of Pub. Law 99-396, Act of Aug. 27, 1986. Subsection (c) added by 13(a)(2) of Pub. Law 99-396, Act of Aug. 27, 1986. Subsection (d) added by "The Guam Organic Act Amendments of 1998", HR 2370, enacted Oct. 1998, sec. 2.

**COURT DECISIONS:** The supervision of all departments of the Government of Guam, including the Department of Education, rests with the Governor of Guam. Therefore, a 1972 collective bargaining agreement exceeds the authority given to the signatories where that agreement requires the prior approval of the union before any changes, or complete termination thereof, may be made after the termination date of the agreement. *People v. Guam Federation of Teachers Local 1581, Conrad Stinson, President, et al.* [DC Guam App. Div. 1978] 2 Guam Rep. 203.

Because (Organic Act) 29(a) gives supervision over health facilities in Guam to the Governor, the Legislature has no power to enact a law which, by determining that certain private groups would choose persons the Governor *must* appoint to the Hospital Board of Trustees, effectively insulates the Governor from effective control of the Hospital. *Bordallo v. Baldwin*, [1980 CA9] 624 F.2d 932.

The phrase in subsection (a), "subject to the laws of Guam," applies equally to both subsections (a) and (b). Therefore, the Governor of Guam is not free to ignore the laws of Guam as they operate with regard to establishing rules and regulations dealing with dismissal of personnel within the government. *Brown v. Civil Service Commission*, (C.A.9 Guam 1987) 818 F.2d 706,

Govt. Code §5105, coupled with P.L. 14-1, creating an elected school board, violate 29(b) of the Organic Act as of the time of the enactment of P.L. 14-1 by removing from the Governor the powers given him by this section. The amendments made to this section in 1986 are not retroactive. Therefore, the elected school board is null and void, and the Governor has the power to fire the Director and Deputy Director of Education. *Nelson & Wolf v. Ada, et al.*, Superior Court Case No. S.P. 192-87 (11/6/87); *aff'd*, 878 F.2d 277 (CA9, 1989).

#### **§1421h. Duties, taxes and fees; proceeds collected to constitute fund for benefit of Guam; prerequisites, amount remitted prior to commencement of next fiscal year.**

All customs duties and Federal income taxes derived from Guam, the proceeds of all taxes collected under the internal revenue laws of the United States on articles produced in Guam and transported to the United States, its Territories, or possessions, or consumed in Guam, and the proceeds of any other taxes which may be levied by the Congress on the inhabitants of Guam (including, but not limited to, compensation paid to members of the Armed Forces and pensions paid to retired civilians and military employees of the United States, or their survivors, who are residents of, or who are domiciled in, Guam), and all quarantine, passport, immigration, and naturalization fees collected in Guam shall be covered into the treasury of Guam and held

in account for the government of Guam and shall be expended for the benefit and government of Guam in accordance with the annual budgets; except that nothing in this chapter shall be construed to apply to any tax imposed by chapter 2 or 21 of Title 26. Beginning as soon as the government of Guam enacts legislation establishing a fiscal year commencing on October 1 and ending on September 30, the Secretary of the Treasury, prior to the commencement of any fiscal year, shall remit to the government of Guam the amount of duties, taxes and fees which the Governor of Guam, with the concurrence of the government comptroller of Guam, has estimated will be collected in or derived from Guam under this section during the next fiscal year, except for those sums covered directly upon collection into the Treasury of Guam. The Secretary of the Treasury shall deduct from or add to the amounts so remitted the difference between the amount of duties, taxes and fees actually collected during the prior fiscal year and the amount of such duties, taxes and fees as estimated and remitted at the beginning of that prior fiscal year, including any deductions which may be required as a result of the operation of Public Law 94-395 (90 Stat. 1199) or Public Law 88-170, as amended (82 Stat. 863).

**SOURCE:** §30 of Act of Aug. 1, 1950 (Organic Act); amended Sept. 13, 1960, Public Law 86-778, Title I, §103(u), 74 Stat. 941 by adding clause beginning "except that nothing. . ."; further amended by Public Law 95-348, Act of Aug. 18, 1978. Amended by §601 of Act of October 5, 1984, P.L. 98-454 relative to return of taxes paid by certain federal employees, retirees and their spouses. Codified as 48 U.S.C. §1421h.

Guam implemented the federal fiscal year by P.L. 14-132:V:13, adding 1 GCA § 1611. The new fiscal year commenced on October 1, 1978.

**NOTE:** The Omnibus Territories Act of 1986 incorporates the following language relative to the receipt by Guam of money under 30 (the above section). The purpose of the new language is to exempt Guam (and the other territories) from the effects of the Gramm-Rudman (Deficit Reduction) Law and similar laws.

§19(b). Pursuant to the terms of the Organic Act of Guam (64 Stat. 384), as amended; . . . , and an Act to authorize appropriations for certain insular areas of the United States, and for other purposes (92 Stat. 487, as amended; there shall be paid into the treasury[y] of Guam, . . . , the full amounts which are to be covered into the treasuries of said islands or paid pursuant to said laws as amended and supplemented and such amounts shall not be reduced, notwithstanding Public Law 99-177, Public Law 99-366, or any other provisions of law.

**COURT DECISIONS:** Under this Act [Organic Act] Congress intended employees who earn income for personal services in Guam to pay income tax imposed by provisions of Act into the territorial treasury to sustain the local government of the island. *Lamkin v. Brown & Root, Inc.*, C.A.Guam 1956, 233 F.2d 320.

Where corporate employer of taxpayer in Guam withheld income tax payments and paid them to Acting Treasurer of Guam under this section, providing that federal income taxes derived from Guam shall be covered into the treasury of Guam and held on account of that government, and 1421i of this title, providing that income tax laws in force in the United States and those which hereafter may be enacted shall be in force in Guam, and the U.S. construed these sections as establishing territorial tax to be administered by officials of Guam, taxpayer could not be heard to say that tax should be returned to him in order that it be paid to United States and returned to Guam treasury from which it was taken. *Laguana v. Ansell*, D.C.Guam 1952, 102 F.Supp. 919; aff'd 212 F.2d 207; cert. den. 75 S.Ct. 51, 348 U.S. 830, 99 L.Ed. 654.

## **1421i. Income Tax.**

**(a) Applicability of federal laws; separate tax.** The income tax laws in force in the United States of America and those which may hereafter be enacted shall be held to be likewise in force in Guam: Provided, That notwithstanding any other provision of law, the Legislature of Guam may levy a separate tax on all taxpayers in an amount not to exceed 10 per centum of their annual income tax obligation to the government of Guam.

**(b) Guam Territorial Income Tax.** The income tax laws in force in Guam pursuant to subsection (a) of this section shall be deemed to impose a separate Territorial Income Tax, payable to the government of Guam, which tax is designated the "Guam Territorial Income Tax".

**(c) Enforcement of Tax.** The administration and enforcement of the Guam Territorial Income Tax shall be performed by or under the supervision of the Governor. Any function needful to the administration and enforcement of the income tax laws in force in Guam pursuant to subsection (a) of this section shall be performed by any officer or employee of the government of Guam duly authorized by the Governor (either directly, or indirectly by one or more redelegations of authority) to perform such function.

**(d) “Income tax laws” defined; administration and enforcement; rules and regulations.** (1) The income tax laws in force in Guam pursuant to subsection (a) of this section include but are not limited to the following provisions of the Internal Revenue Code of 1954, where not manifestly inapplicable or incompatible with the intent of this section: Subtitle A [26 U.S.C.A. §1 et seq.] (not including chapter 2 [26 U.S.C.A. §1401 et seq.] and section 931 (26 U.S.C.A. §931); chapters 24 and 25 of subtitle C [26 U.S.C.A. §3401 et seq. and §3501 et seq.], with reference to the collection of income tax at source on wages; and all provisions of subtitle F [26 U.S.C.A. §6001 et seq.] which apply to the income tax, including provisions as to crimes, other offenses, and forfeitures contained in chapter 75 [26 U.S.C.A. §7201 et seq.]. For the period after 1950 and prior to the effective date of the repeal of any provision of the Internal Revenue Code of 1939 which corresponds to one or more of those provisions of the Internal Revenue Code of 1954 which are included in the income tax laws in force in Guam pursuant to subsection (a) of this section, such income tax laws include but are not limited to such provisions of the Internal Revenue Code of 1939.

(2) The Governor or his delegate shall have the same administrative and enforcement powers and remedies with regard to the Guam Territorial Income Tax as the Secretary of the Treasury, and other United States officials of the executive branch, have with respect to the United States income tax. Needful rules and regulations not inconsistent with the regulations prescribed under section 7654(e) of the Internal Revenue Code of 1954 [26 U.S.C. §7654(e)] for enforcement of the Guam Territorial Income Tax shall be prescribed by the Governor. The Governor or his delegate shall have the authority to issue, from time to time, in whole or in part, the text of the income tax laws in force in Guam pursuant to subsection (a) of this section.<sup>2</sup>

**(e) Substitution of Terms.** In applying as the Guam Territorial Income Tax the income tax laws in force in Guam pursuant to subsection (a) of this section, except where it is manifestly otherwise required, the applicable provisions of the Internal Revenue Codes of 1954 and 1939, shall be read so as to substitute “Guam” for “United States”, “Governor or his delegate” for “Secretary or his delegate”, “Governor or his delegate” for “Commissioner of Internal Revenue” and “Collector of Internal Revenue”, “District Court of Guam” for “district court” and with other changes in nomenclature and other language, including the omission of inapplicable language, where necessary to effect the intent of this section.

**(f) Criminal offenses; prosecution.** Any act or failure to act with respect to the Guam Territorial Income Tax which constitutes a criminal offense under chapter 75 of subtitle F of the Internal Revenue Code of 1954 [26 U.S.C.A. §7201 et seq.], or the corresponding provisions of the Internal Revenue Code of 1939, as included in the income tax laws in force in Guam pursuant to subsection (a) of this section, shall be an offense against the government of Guam and may be prosecuted in the name of the government of Guam by the appropriate officers thereof.

**(g) Liens.** The Government of Guam shall have a lien with respect to the Guam Territorial Income Tax in the same manner and with the same effect, and subject to the same conditions, as the United States has a lien with respect to the United States Income Tax. Such lien in respect of the Guam Territorial Income Tax shall be enforceable in the name of and by the government of Guam. Where filing of a notice of lien is prescribed by the income tax laws in force in Guam pursuant to subsection (a) of this section, such notice shall be filed in the Office of the Clerk of the District Court of Guam.

**(h) Jurisdiction of District Court; suits for recovery or collection of taxes; payment of judgment.**

(1) Notwithstanding any provision of Section 22 of this Act [section 1424 of Title 48] or any other provisions of law to the contrary, the District Court of Guam shall have exclusive original jurisdiction over all judicial proceedings in Guam, both criminal and civil, regardless of the degree of the offense or of the amount involved, with respect to the Guam Territorial Income Tax.

(2) Suits for the recovery of any Guam Territorial Income Tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, under the income tax laws in force in Guam, pursuant to subsection (a) of this section, may, regardless of the amount of the claim, be maintained against the government of Guam subject to the same statutory requirements as are



applicable to suits for the recovery of such amounts maintained against the United States in the United States district courts with respect to the United States Income Tax. When any judgment against the government of Guam under this paragraph has become final, the Governor shall order the payment of such judgments out of any unencumbered funds in the treasury of Guam.

(3) Execution shall not issue against the Governor or any officer or employee of the government of Guam on a final judgment in any proceeding against him for any acts or for the recovery of money exacted by or paid to him and subsequently paid into the treasury of Guam, in performing his official duties under the income tax laws in force in Guam pursuant to subsection (a) of this section, if the court certifies that --

(A) probable cause existed; or

(B) such officer or employee acted under the directions of the Governor or his delegate.

When such certificate has been issued, the Governor shall order the payment of such judgment out of any unencumbered funds in the treasury of Guam.

(4) A civil action for the collection of the Guam Territorial Income Tax, together with fines, penalties and forfeitures, or for the recovery of any erroneous refund of such tax, may be brought in the name of and by the government of Guam in the District Court of Guam or in any district court of the United States or in any court having the jurisdiction of a district court of the United States.

(5) The jurisdiction conferred upon the District Court of Guam by this subsection shall not be subject to transfer to any other court by the legislature, notwithstanding section 1424(a) of this title. [Organic Act]

**SOURCE:** §31, containing only subsection (a), of Act of Aug. 1, 1950 (Organic Act); amended Aug. 20, 1958, Public Law 85-688, §1, 72 Stat. 681 - added subsections (b) - (h); [1] Oct. 15, 1977, Public Law 95-134, Title II, 203(c), 91 Stat. 1162. Public Law 92-606, §1(d), 86 Stat. 1497, Oct. 31, 1972. Codified as 48 U.S.C. §1424i.

**NOTE:** There are many decisions, both in the District Court and the Ninth Circuit Court of Appeals, dealing with specific sections of the Internal Revenue Code as applied to Guam. These are not annotated here as they do not deal with this Section as an Organic Act section. However, see notes to 48 USC §1421i in USCA and USCS for further information.

**CROSS-REFERENCE:** Section 204 of the Act of October 5, 1984, P.L. 98-454, added the following regarding specific authority under the Internal Revenue Code:

"Section 204. (a) The Governor of any possession of the United States may for calendar years 1984 and 1985 proclaim a formula (different from that provided by §103A(g) of the Internal Revenue Code of 1954) for allocating the State ceiling under such section among the governmental units in such possession having authority to issue qualified mortgage bonds (as defined in 103A(c) of such Code).

(b) The authority provided by subsection (a) shall not apply after the effective date of any legislation with respect to the allocation of the State ceiling enacted by the legislature of the possession after the date of enactment of this Act.. [Oct. 5, 1984]

**COURT DECISIONS:** Even though Guam taxpayers had, on January 20, 1958, no right anywhere to review without payment of income tax, they were nevertheless entitled to same notice before assessment as if they had right to Tax Court or Tax Court type of review, and assessment made simultaneously with announcement of deficiency was void. *Bromberg v. Ingling*, C.A.9 (Guam) 1962, 300 F.2d 859.

An order, in a tax case, denying a Motion to Dismiss and to Quash Service of Summons is not appealable because it is an interlocutory order. *Shaheen v. Govt. of Guam*, C.A.9 (Guam) 1955, 223 F.2d 773.

The Court of Appeals, Byrne, District Judge, held that the statute created a separate territorial income tax in Guam and that the Government thereof was authorized to enforce it. *Wilson v. Kennedy*, C.A.9 (Guam) 1956, 232 F.2d 153.

Action by citizens of Guam to recover income taxes assertedly illegally collected, and permanently to restrain enforcement of income tax laws. The District Court of Guam, Territory of Guam, Paul D. Shriver, J., dismissed action for want of jurisdiction of subject matter, and plaintiffs appealed from prior order refusing preliminary injunction and from dismissal. The Court of Appeals, Byrne, District Judge, held that complaint was insufficient, in view of Organic Act of Guam, which imposes a separate territorial income tax to be enforced by the proper officials of the government of Guam, but that the basis of dismissal should have been insufficiency of complaint to state claim for relief, rather than want of jurisdiction. *Phelan v. Taitano*, (C.A.9 (Guam) 1956) 233 F.2d 117.

The Court of Appeals held that Guam income tax assessment made simultaneously with announcement of deficiency was invalid since 90-day notice of assessment had not been given. *Jones v. Ingling*, C.A.9 (Guam) 1962, 303 F.2d 438.

Under Business Privilege Tax of Guam entitling government housing contractor, in computing gross income subject to tax, to deduct expenditures for direct labor and materials, deduction for direct labor and materials included all labor and material costs of contractor directly and solely incurred in connection with housing project and was not restricted to physical labor at construction

site and to materials becoming permanent part of the complete job. *Maddox v. Black, Raber-Kief (a joint venture)*, C.A.9 (Guam) 1962, 303 F.2d 910.

The United States Commissioner of Internal Revenue may not prescribe any regulations which are not consistent with the federal tax statutes or which add a restriction to a statute which is not justified by the statutory language or the intent of Congress. *Smith v. Commissioner of Internal Revenue*, 9 Cir., 332 F.2d 671, 673. Except to overcome manifest inapplicability, or incompatibility with the general intent of section 31 of the Organic Act, as amended, Guam tax officials are similarly limited. *Government of Guam v. Koster*, C.A.9 (Guam) 1966, 652 F.2d 648.

California parent corporation was not a foreign corporation, for purpose of Guam corporate income tax laws, which were adaptations of federal tax laws, and Guam subsidiary was not liable for withholding tax on dividends paid to parent. *Atkins-Ktoll (Guam) Ltd. v. Govt. of Guam*, C.A.9 (Guam) 1966, 367 F.2d 127. [[Several Definitions, notably the definition of *Domestic* have been altered since the promulgation of this Opinion. The result would be the same, but with more restrictions added by the IRC. -- Compiler of Laws]

Section 31 of the Organic Act was enacted by the Congress primarily to relieve the US Treasury of making direct appropriations to the Government of Guam. Although Congress delegated collection and enforcement function of the income tax to the Government of Guam, the Government of Guam is powerless to vary the terms of the Internal Revenue Code as applied to Guam, except as permitted by Congress. *Bank of America v. Chaco*, C.A.Guam 1976, 539 F.2d 1226.

Guam's rebate and abatement provisions (GEDA law) did not violate provisions of this section since Congress failed to annul the tax rebate provisions within the one-year period and, thus, impliedly approved the same. [That provision of 48 U.S.C.A. §1423i which gave Congressional approval of Guam laws if not annulled by Congress within one year was repealed after the passage of the tax rebate laws.] *Ramsey v. Chaco*, C.A.9 (Guam) 1977, 549 F.2d 1335.

The Court of Appeals, Browning, Circuit Judge, held that interest and commissions received by Hawaii corporation from a Guam sole proprietorship whose payments were deductible business expenses were subject to the 30% Tax imposed by Internal Revenue Code on gross income received from sources within United States by a foreign corporation. *Sayre & Co. v. Riddell*, C.A.9 (Guam) 1968, 395 F.2d 407.

The District Court of Guam has jurisdiction, by virtue of Guam Government Code 19700, to redetermine deficiencies assessed under the income tax laws of the territory of Guam. *Forbes v. Maddox*, C.A.9 (Guam) 1964, 339 F.2d 387 reversing 212 F.Supp. 662.

... , the Guamanian Government has denied Jose Flores the benefit of certain deductions and filing privileges, which has resulted in additional tax liability, based upon the **mistaken** belief that a 'mirrored' version of section 932 is applicable and controlling. *Flores v. Govt. of Guam*. C.A. 9 (Guam) 1971, 444 F.2d 484.

The Court of Appeals held that taxpayers, who were citizens of United States and nonresidents of Guam, could not be denied right to file a joint return and right to a standard deduction with regard to transactions having their taxable locus in Guam and further held that with regard to transactions having their taxable locus in Guam, corporation, which had among its shareholders at least three nonresidents of Guam, could not properly be denied the right to a subchapter S election. *Manning v. Blaz*, C.A.9 (Guam) 1973, 479 F.2d 333.

The Guam territorial income tax, enacted by Congress as part of the Organic Act of Guam, is not a tax imposed by Guam for purposes of statute which allows a local government to tax the net income of a national bank but once, and thus the imposition by Guam of the business privilege tax does not violate said statute. *Bank of America v. Blaz*, C.A.9 (Guam) 1976, 539 F.2d 1226.

Because the CNMI Covenant provided that, where pertinent, the Internal Revenue Code should substitute "CNMI" for "Guam" and also for "United States", this language, being a federal public law, affected the mirror image tax code made applicable to Guam by this section. *Holmes v. Dir. of Rev. & Taxation*, C.A.Guam 1987, 827 F.2d 1243.

## **§1421j. Appropriations Authorized.**

There are hereby authorized to be appropriated annually by the Congress of the United States such sums as may be necessary and appropriate to carry out the provisions of this chapter.

**SOURCE:** §32 of Act of Aug. 1, 1950 (Organic Act). Codified as 48 U.S.C. §1421j.

## **§1421k. Naval and Military Reservations.**

Nothing contained in this chapter shall be construed as limiting the authority of the President to designate parts of Guam as naval or military reservations, nor to restrict his authority to treat Guam as a closed port with respect to the vessels and aircraft of foreign nations.

**SOURCE:** §33 of Act of Aug. 1, 1950 (Organic Act). Codified as 48 U.S.C. §1421k.

**COURT DECISIONS:** This chapter, providing government for Guam, did not by implication repeal Ex.Ord. No. 8683 reserving territorial waters between extreme high-water marks and three-mile boundaries surrounding Guam as naval defensive sea area and providing that no person, unless on public vessel of the United States, shall enter area. *U.S. v. Angcog*, D.C.Guam 1961, 190 F.Supp. 696.

**NOTE:** Section 34 of the Organic Act provided for the effective date of the act and gave the President some leeway in putting its provisions into effect. The effective date of the Organic Act was August 1, 1950.

#### **§1421k-1. Expenses for Guam's Delegate to Congress.**

Notwithstanding any other provision of law, the clerk hire allowance and the transportation expenses subject to reimbursement under Federal law of the Delegate from Guam to the United States House of Representatives shall each be the same as allowed for Members of the United States House of Representatives.

**SOURCE:** §35 of the Organic Act, as added by Act of May 27, 1975, Public Law 94-26, §1, 89 Stat. 94. Codified as 48 U.S.C. §1421k-1. See also 48 U.S.C. §1715.

#### **§1421l. Citizenship of Persons living in and born in Guam. [REPEALED]**

**SOURCE:** Organic Act §4. Repealed by Act of June 27, 1952, c. 477, Title IV, §403(a)(42), 66 Stat. 280. This Section, with changes, was re-enacted as part of the Immigration and Nationality Act of 1952, 8 U.S.C. §1407.

#### **§1421m. Marihuana prohibited. [REPEALED]**

**SOURCE:** Added by Act of Aug. 1, 1956, c. 852, §15, 70 Stat. 910. Not part of Organic Act. Repealed by Act of Oct. 27, 1970, Pub.L. 91-513, Title III, Part B, §1101(a)(8), 84 Stat. 1292 - Federal Controlled Substances Act.

#### **§1421n. Copyrights.**

The laws of the United States relating to copyrights, and to the enforcement of rights arising thereunder, shall have the same force and effect in Guam as in the continental United States.

**SOURCE:** Codified as 48 U.S.C. §1421n. Act of Aug. 1, 1956, c. 852, §24, 70 Stat. 911. For present copyright law, see Copyright Act, 17 U.S.C. §101 et seq. (Pub.L. 94-553, 90 Stat. 2541). Not in Organic Act.

#### **§1421o. Federal Assistance for Fire Control, Watershed Protection and Reforestation.**

The Secretary of Agriculture is authorized to provide financial and technical assistance to Guam for improving fire control, watershed protection and reforestation, consistent with existing laws, administered by the Secretary of Agriculture, which are applicable to the continental United States. The program authorized by this section shall be developed in cooperation with the territorial government of Guam and shall be covered by a memorandum or understanding agreed to by the territorial government and the Department. The Secretary may also utilize the agencies, facilities, and employees of the Department, and may cooperate with other public agencies and with private organizations and individuals in Guam and elsewhere.

**SOURCE:** Act of Sept. 19, 1974, Public Law 93-421, 1, 88 Stat. 1154. Codified as 48 U.S.C. 1421o. Not in Organic Act.

#### **§1421p. Appropriations Authorized.**

There are hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of section 1421o of this title [48 U.S.C.]. Sums appropriated in pursuance of sections §1421o and §1421p of this title [48 U.S.C.] may be allocated to such agencies of the Department as are concerned with the administration of the program in Guam.

**SOURCE:** Added by Public Law 93-421, 2, Sept. 19, 1974, 88 Stat. 1154. Codified as 48 U.S.C. 1421p. Not in Organic Act.

#### **§1421q. Applicability of Federal Laws.**

The laws of the United States which are made applicable to the Northern Mariana Islands by the provisions of section 502(a)(1) of H.J. Res. 549 [Pub.L. 92-241], as approved by the House of

Representatives and the Senate, except for Section 228 of Title II [42 U.S.C.A. 428] and Title XVI of the Social Security Act [42 U.S.C.A. 1381 et seq.] as it applies to the several States and the Micronesian Claims Act [50 App. U.S.C.A. 2018 et seq.] as it applies to the Trust Territory of the Pacific Islands, shall be made applicable to Guam on the same terms and conditions as such laws are applied to the Northern Mariana Islands.

**SOURCE:** Act of April 1, 1976, Public Law 94-255, §2, 90 Stat. 300. Codified as 48 U.S.C. §1421q. Not in Organic Act.

## **SUBCHAPTER 2 EXECUTIVE BRANCH**

### **§1422. Governor; Lieutenant Governor: Powers, duties.**

The executive power of Guam shall be vested in an executive officer whose official title shall be the "Governor of Guam". The Governor of Guam, together with the Lieutenant Governor, shall be elected by a majority of the votes cast by the people who are qualified to vote for the members of the Legislature of Guam. The Governor and Lieutenant Governor shall be chosen jointly, by the casting by each voter of a single vote applicable to both offices. If no candidate receives a majority of the votes cast in any election, on the fourteenth day thereafter a runoff election shall be held between the candidates for Governor and Lieutenant Governor receiving the highest and second highest number of votes cast. The first election for Governor and Lieutenant Governor shall be held on November 3, 1970. Thereafter, beginning with the year 1974, the Governor and Lieutenant Governor shall be elected every four years at the general election. The Governor and Lieutenant Governor shall hold office for a term of four years and until their successors are elected and qualified.

No person who has been elected Governor for two full successive terms shall again be eligible to hold that office until one full term has intervened.

The term of the elected Governor and Lieutenant Governor shall commence on the first Monday in January following the date of election.

No person shall be eligible for election to the office of Governor or Lieutenant Governor unless he is an eligible voter and has been for five consecutive years immediately preceding the election a citizen of the United States and a bona fide resident of Guam and will be, at the time of taking office, at least thirty years of age. The Governor shall maintain his official residence in Guam during his incumbency.

The Governor shall have general supervision and control of all the departments, bureaus, agencies, and other instrumentalities of the executive branch of the government of Guam. He may grant pardons and reprieves and remit fines and forfeitures for offenses against local laws. He may veto any legislation as provided in this chapter. He shall appoint, and may remove, all officers and employees of the executive branch of the government of Guam, except as otherwise provided in this or any other Act of Congress, or under the laws of Guam, and shall commission all officers he may be authorized to appoint. He shall be responsible for the faithful execution of the laws of Guam and the laws of the United States applicable in Guam. Whenever it becomes necessary, in case of disaster, invasion, insurrection, or rebellion, or imminent danger thereof, or to prevent or suppress lawless violence, he may summon the posse comitatus or call out the militia or request the assistance of the senior military or naval commander of the Armed Forces of the United States in Guam, which may be given at the discretion of such commander if not disruptive of, or inconsistent with, his federal responsibilities. He may, in case of rebellion or invasion, or imminent danger thereof, when the public safety requires it, proclaim the island, insofar as it is under the jurisdiction of the government of Guam, to be under martial law. The members of the Legislature shall meet forthwith on their own initiative and may, by two-thirds vote, revoke such proclamation.

The Governor shall prepare, publish, and submit to the Congress and the Secretary of the Interior a comprehensive annual financial report in conformance with the standards of the National Council on Governmental Accounting within one hundred and twenty days after the close of the fiscal year. The comprehensive annual financial report shall include statistical data as set forth in the standards of the National Council on Governmental Accounting relating to the physical, economic, social and political characteristics of the government, and any other information required by Congress. The Governor shall transmit the comprehensive annual financial report to the Inspector General of the Department of the Interior who shall audit it and report his findings to Congress. The Governor shall also make such other reports at such other times as may be required by the Congress or under applicable Federal law. He shall also submit to the Congress, the Secretary of the Interior, and the cognizant Federal auditors a written statement of actions taken

or contemplated on Federal audit recommendations within sixty days after the issuance date of the audit report. He shall have the power to issue executive orders and regulations not in conflict with any applicable law. He may recommend bills to the Legislature and give expression to his views on any matter before that body.

There is hereby established the office of Lieutenant Governor of Guam. The Lieutenant Governor shall have such executive powers and perform such duties as may be assigned to him by the Governor or prescribed by this chapter or under the laws of Guam.

**SOURCE:** Act of Aug. 1, 1950, c. 512, §6, codified as 48 U.S.C. 1422; amended by Public Law 90-497, §1, 82 Stat. 842 (Elective Governor Act); Public Law 97-357, §104, 96 Stat. 1706 (Omnibus Territories Act - 10/19/82).

**COURT DECISIONS:** This Section did not authorize the Governor of Guam to issue an executive order establishing curfew regulations during the aftermath of Typhoon Pamela (1976). *Gayle v Government of Guam*, [1976 DC Guam] 414 F. Supp. 636.

The Governor of Guam, pursuant to his authority to enforce federal laws applicable to Guam, has the residual authority, in the absence of the appropriate federal enforcement office on Guam, to deport an alien who has overstayed his permit. *Ex parte Rogers*, [1952 DC Guam] 104 F. Supp. 393.

Section 6 of the Organic Act does not permit the Legislature to take from the Governor all discretion in appointing members of the Guam Memorial Hospital Board of Trustees and, therefore, P.L. 14-9 is void as contrary to the Organic Act. *Bordallo v. Baldwin*, (C.A.9 1980) 624 F.2d 932.

P.L. 16-72, by limiting the reasons for removing the Territorial Prosecutor to certain, specific reasons, violates 6 of the Organic Act because, by so doing, the Governor "lacks substantial power to supervise and control the office." *People v. Perez, et al.*, (1982 Super.Guam) Cr. Case #59F-82; rehearing 9/82, decision sustained. *Aff'd.*, D.C.Guam App.Div. Case No. 82-0215 (1983).

"... the Governor is authorized to exercise his executive prerogative in administering the expenditure of appropriated funds." Once a sum has been appropriated, the Legislature cannot administer it. *Santos v. Calvo*, (D.C. Guam, App. Div. 1982) Civ. #80-223A.

Section 6 does not permit the Governor to act by Executive Order, where such act is in direct conflict with law -- Authorizing the Guam Memorial Hospital Authority to continue control over GMHP -- when the law divested the Authority of such power. *GMHA v. Health Management Int'l., et al.*, (Super.Guam 1982) Civ. #640-82.

"It seems reasonable to assume that if the Governor has authority to execute federal laws applicable in Guam, then execution of such laws becomes a 'subject of local application' which the Guam Legislature is empowered under the Organic Act to legislate in such matters to assist the Governor in the enforcement of his duties." *People v. Salas*, (Super.Guam 1982) Cr. #47F-82.

The supervision of all departments of the Government of Guam, including the Department of Education, rests with the Governor of Guam. Therefore, a 1972 collective bargaining agreement exceeds the authority given to the signatories where that agreement requires the prior approval of the union before any changes, or complete termination thereof, may be made after the termination date of the agreement. *People v. Guam Federation of Teachers Local 1581, Conrad Stinson, President, et al.* [DC Guam App. Div. 1978] 2 Guam Rep. 203.

Govt. Code §5105, coupled with P.L. 14-1, creating an elected school board, violate §29(b) of the Organic Act as of the time of the enactment of P.L. 14-1 by removing from the Governor the powers given him by this section. The amendments made to this section in 1986 are not retroactive. Therefore, the elected school board is null and void, and the Governor has the power to fire the Director and Deputy Director of Education. *Nelson & Wolf v. Ada, et al.*, Superior Court Case No. S.P. 192-87 (11/6/87); *aff'd*, 878 F.2d 277 (CA9, 1989).

When counting the total number of votes to determine whether a gubernatorial slate has received a majority of those case, only votes cast for the gubernatorial slates will be counted – blank ballots will be ignored. "[A]ny election,' therefore may be read to make it clear that the runoff requirement applies equally to the initial election and to those periodically scheduled in the future. That may not be very heavy work for the phrase to perform, but a job is a job, and enough to bar the rule against redundancy from disqualifying an otherwise sensible reading. *Gutierrez et al. V. Ada et al.*, No. 99-51, Jan. 19, 2000, U.S. Supreme Court.

## **§1422a. Initiative, Referendum and Removal.**

(a) The people of Guam shall have the right of initiative and referendum, to be exercised under conditions and procedures specified in the laws of Guam.

(b) Any Governor, Lieutenant Governor, or member of the Legislature of Guam may be removed from office by a referendum election in which at least two-thirds of the number of persons voting for such official in the last preceding general election at which such official was elected vote in favor of a recall and in which those so voting constitute a majority of all those participating in the referendum election. The referendum election shall be initiated by the Legislature of Guam following (a) a two-thirds vote of the members of the

Legislature in favor of a referendum, or (b) a petition for such a referendum to the Legislature by registered voters equal in number to at least 50 per centum of the whole number of votes cast at the last general election at which such official was elected preceding the filing of the petition.

**SOURCE:** §7 of the Act of Aug. 1, 1950 (Organic Act), codified as 48 U.S.C. 1422a; amended by Public Law 90- 497, §2, 82 Stat. 844 (Elective Governor Act); Public Law 97-357, §101, 96 Stat. 1705 (Omnibus Territories Act - 10/19/82).

**§1422b. Vacancy in Office of Governor or Lieutenant Governor; Temporary Disability, or Temporary Absence of Governor.**

**(a) Temporary disability or temporary absence of Governor.** In case of the temporary disability or temporary absence of the Governor, the Lieutenant Governor shall have the powers of the Governor.

**(b) Permanent vacancy in office of Governor.** In case of a permanent vacancy in the office of Governor, arising by reason of the death, resignation, removal by recall, or permanent disability of a Governor-elect, or for any other reason, the Lieutenant Governor, or Lieutenant Governor-elect shall become the Governor, to hold office for the unexpired term and until he or his successor shall have been duly elected and qualified at the next regular election for Governor.

**(c) Temporary disability or temporary absence of Lieutenant Governor.** In case of the temporary disability or temporary absence of the Lieutenant Governor, or during any period when the Lieutenant Governor is acting as Governor, the Speaker of the Guam Legislature shall act as Lieutenant Governor.

**(d) Permanent vacancy in office of Lieutenant Governor.** In case of a permanent vacancy in the office of Lieutenant Governor, arising by reason of the death, resignation, or permanent disability of the Lieutenant Governor, or because the Lieutenant Governor or Lieutenant Governor- elect has succeeded to the office of Governor, the Governor shall appoint a new Lieutenant Governor, with the advice and consent of the legislature, to hold office for the unexpired term and until he or his successor shall have been duly elected and qualified at the next regular election for Lieutenant Governor.

**(e) Temporary disability of temporary absence of both Governor and Lieutenant Governor.** In case of the temporary disability or temporary absence of both the Governor and the Lieutenant Governor, the powers of the Governor shall be exercised, as Acting Governor, by such person as the laws of Guam may prescribe. In case of a permanent vacancy in the offices of both the Governor and Lieutenant Governor, the office of Governor shall be filled for the unexpired term in the manner prescribed by the laws of Guam.

**(f) Additional compensation.** No additional compensation shall be paid to any person acting as Governor or Lieutenant Governor who does not also assume the office of Governor or Lieutenant Governor under the provisions of this chapter.

**SOURCE:** §8 of Act of Aug. 1, 1950 (Organic Act), codified as 48 U.S.C. §1422b; amended by Public Law 87-419, §1, 76 Stat. 34 (Mar. 16, 1962); Public Law 90-497, §3, 82 Stat. 844 (Sept. 11, 1968) (Elective Governor Act). For implementation see 5 GCA §1101, et seq.

**§1422c. Executive agencies and instrumentalities. (a) Appointment of heads; merit system.**

The Governor shall, except as otherwise provided in this chapter or the laws of Guam, appoint, by and with the advice and consent of the legislature, all heads of executive agencies and instrumentalities. The legislature shall establish a merit system and, as far as practicable, appointments and promotions shall be made in accordance with such merit system. The Government of Guam may by law establish a Civil Service Commission to administer the merit system. Members of the Commission may be removed as provided by the laws of Guam.

**(b) Powers and duties of officers.** All officers shall have such powers and duties as may be conferred or imposed upon them by law or by executive regulation of the Governor not inconsistent with any law.

**(c) Reorganization.** The Governor shall, from time to time, examine the organization of the executive branch of the government of Guam, and shall determine and carry out such changes therein as are necessary to promote effective management and to execute faithfully the purposes of this chapter and the laws of Guam.

**(d) Continuation in office of incumbents.** All persons holding office in Guam on August 1, 1950 may, except as otherwise provided in this chapter, continue to hold their respective offices until their successors are appointed and qualified.

**SOURCE:** §9 of Act of Aug. 1, 1950 (Organic Act, as amended), codified as 48 U.S.C. §1422c; amended by Elective Governor Act, Pub.L. 90-947, §4, 82 Stat. 845. §9(a) amended by Pub.L. 99-396, sec. 18, Act of Aug. 27, 1986.

**COURT DECISIONS:** The power to reorganize the executive branch does not extend to creation, by Executive Order, new agencies of the government. Creation of new agencies is the prerogative of the Legislature. *Laguana v. Guam Visitors Bureau*, D.C.Guam 1983, Civ. No. 83-0008. Aff'd. C.A.9., 725 F.2d 519 (1984). See also *Bordallo v. Reyes, et al.*, 610 F.Supp. 1128; aff'd 763 F.2d 1098 (1985).

Because of the doctrine of "separation of powers", the Legislature may not hire an attorney to represent the government of Guam in the institution of a suit by and on behalf of the territory. Such an act is the prerogative of the executive branch, as an act "executing the laws" applicable to Guam. *Government of Guam v. United States*, D.C.Guam 1982, Civ. No. 82-0001.

The doctrine of "separation of powers" does not permit the Legislature to enact a law by which the Judiciary appoints a person to undertake a purely executive branch function, namely, the prosecution of criminal cases. *People v. Camacho*, 1 Guam Rep. 501.

Governor's Memorandum 33-52, authorizing inspection of *persons* entering Guam is not inconsistent with, but properly supplements customs law which refers only to the inspection of a person's baggage. *People v. Sugiyama*, (C.A. Guam 1988) 846 F.2d 570.

#### **§1422d. Inspector General: Functions; Duties.**

**(a) Functions, powers, duties transferred.** The following functions, powers, and duties heretofore vested in the government comptroller for Guam are hereby transferred to the Inspector General, Department of Interior, for the purpose of establishing an organization which will maintain a satisfactory level of independent audit oversight of the government of Guam:

(1) The authority to audit all accounts pertaining to the revenue and receipts of the government of Guam, and of funds derived from bond issues, and the authority to audit, in accordance with law and administrative regulations, all expenditures of funds and property pertaining to the government of Guam including those pertaining to trust funds held by the government of Guam.

(2) The authority to report to the Secretary of the Interior and the Governor of Guam all failures to collect amounts due the government, and expenditures of funds or uses of property which are irregular or not pursuant to law.

**(b) Scope of authority transferred.** The authority granted in paragraph (a) shall extend to all activities of the government of Guam, and shall be in addition to the authority conferred upon the Inspector General by the Inspector General Act of 1978 (92 Stat. 1101), as amended.

**(c) Transfer of Office of Comptroller General's Office, etc.** In order to carry out the provisions of this section, the personnel, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available or to be made available, of the office of the government comptroller for Guam related to its audit function are hereby transferred to the Office of Inspector General, Department of the Interior.

**SOURCE:** Added by Public Law 90-497, (Elective Governor Act), §5, 82 Stat. 845 Sept. 11, 1968; amended by Public Law 95-134, Title II, §203(a), Oct. 15, 1977, 91 Stat. 1161. Repealed and re-enacted in its present form by Public Law 97-357, §104 (Omnibus Territories Act - 10/19/82), 96 Stat. 1706. Codified as 48 U.S.C. §1422d.



## SUBCHAPTER 3 THE LEGISLATURE

### §1423. Legislature of Guam.

(a) **Unicameral nature; Powers.** The legislative power and authority of Guam shall be vested in a legislature, consisting of a single house, to be designated the “Legislature of Guam”, herein referred to as the legislature.

(b) **Size; Election At-large or by Districts; Limitations.** The legislature shall be composed of not to exceed twenty-one members, to be known as senators, elected at large, or elected from legislative districts, or elected in part at large and in part from legislative districts, as the laws of Guam may direct: Provided, That any districting and any apportionment pursuant to this authorization and provided for by the laws of Guam shall not deny to any person in Guam the equal protection of the laws; And provided further, That in any elections to the legislature, every elector shall be permitted to vote for the whole number of at-large candidates to be elected, and every elector residing in a legislative district shall be permitted to vote for the whole number of candidates to be elected within that district.

(c) **Reapportionment; Federal Census Base.** Any districting and related apportionment pursuant to this section shall be based upon the then most recent Federal population census of Guam, and any such districting and apportionment shall be reexamined following each successive Federal population census of Guam and shall be modified, if necessary, to be consistent with that census.

(d) **Timing of Biennial Elections.** General elections to the legislature shall be held on the Tuesday next after the first Monday in November, biennially in even-numbered years. The legislature in all respects shall be organized and shall sit according to the laws of Guam.

**SOURCE:** §10 of Act of Aug. 1, 1950 (Organic Act); amended by Public Law 89-552, §1, Sept. 2, 1966, 80 Stat. 375. Codified as 48 U.S.C. §1423. The districting of the Guam Legislature has been implemented by Guam P.L. 13-152, but later nullified by court action and not revived.

P.L. 98-213, §29(b), Act of Dec. 8, 1983, 97 Stat. 1459, §1460, amended Subsection (c) by deleting the first clause of the former section which limited the power of the Guam Legislature to make changes in the manner of selection no more often than every ten years.

**COURT DECISIONS:** While the Legislature had not violated the Organic Act (§10) by failing to reapportion because final population data was unavailable, nevertheless the existing apportionment scheme violated this Section (§10) because the preliminary data did indicate that the population had shifted from its original pattern. *Ramsey v. Guam Election Commission*, (D.C.Guam 1982) Civ. #82-0185.

Delegation by Legislature to Governor of the power to amend statutory schedules under the Controlled Substances Act does not violate section vesting legislative power in the Legislature. *People v. Fegurgur*, C.A.9 (Guam) 1986, 800 F.2d 1470, cert. den. 107 S.Ct. 1570, 94 L.Ed.2s 762.

### §1423a. Scope of Legislative Authority: Bonding: Guam Power Authority Refinancing.

The legislative power of Guam shall extend to all **rightful** subjects of **legislation** not inconsistent with the provisions of this chapter and the laws of the United States applicable to Guam. Taxes and assessments on property, internal revenues, sales, license fees, and royalties for franchises, privileges, and concessions may be imposed for the purposes of the government of Guam as may be uniformly provided by the Legislature of Guam, and when necessary to anticipate taxes and revenues, bonds and other obligations may be issued by the government of Guam: Provided, however, That no public indebtedness of Guam shall be authorized or allowed in excess of 10 per centum of the aggregate tax valuation of the property in Guam. Bonds or other obligations of the government of Guam payable solely from revenues derived from any public improvement or undertaking shall not be considered public indebtedness of Guam within the meaning of this section. All bonds issued by the government of Guam or by its authority shall be exempt, as to principal and interest, from taxation by the Government of the United States or by the government of Guam, or by any State or Territory or any political subdivision thereof, or by the District of Columbia. The Secretary of the Interior (hereinafter in this section referred to as “Secretary”) is authorized to guarantee for purchase by the Federal Financing Bank bonds or other obligations of the Guam Power Authority maturing on or before December 31, 1978,

which shall be issued in order to refinance short-term notes due or existing on June 1, 1976 and other indebtedness not evidenced by bonds or notes in an aggregate amount of not more than \$36 million, and such bank, in addition to its other powers, is authorized to purchase, receive or otherwise acquire these same. The interest rate on obligations purchased by the Federal Financing Bank shall be not less than a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities, adjusted to the nearest one-eighth of 1 per centum, plus 1 per centum per annum. The Secretary, with the concurrence of the Secretary of the Treasury, may extend the guarantee provision of the previous sentence until December 30, 1980. The Secretary, upon determining that the Guam Power Authority is unable to refinance on reasonable terms the obligations purchased by the Federal Financing Bank under the fifth sentence of this section by December 31, 1980, may, with the concurrence of the Secretary of the Treasury, guarantee for purchase by the Federal Financing Bank; and such bank is authorized to purchase, obligations of the Guam Power Authority issued to refinance the principal amount of the obligations guaranteed under the fifth sentence of this section. The obligations that refinance such principal amount shall mature not later than December 31, 1990, and shall bear interest at a rate determined in accordance with section 2285 of Title 12. At the request of the Board of Directors of the Guam Power Authority for a second refinancing agreement and conditioned on the approval of the Government of Guam pursuant to the law of Guam, and conditioned on the establishment of an independent rate-making authority by the Government of Guam, the Secretary may guarantee for purchase by the Federal Financing Bank, on or before December 31, 1984, according to an agreement that shall provide for ---

(a) substantially equal semiannual installments of principal and interest;

(b) maturity of obligations no later than December 31, 2004;

(c) authority for the secretary, should there be a violation of a provision of this legislation, or covenants or stipulations contained in the refinancing document and after giving sixty days notice of such violation to the Guam Power Authority and the Governor of Guam, to dismiss members of the Board of Directors or the general manager of the Guam Power Authority, and (1) appoint in their place members or a general manager who shall serve at the pleasure of the Secretary, or (2) contract for the management of the Guam Power Authority; and

(d) an annual simple interest rate of seven per centum; and the Federal Financing Bank shall purchase such Guam Power Authority obligations if such Guam Power Authority obligations are issued to refinance the principal amount scheduled to mature on December 31, 1990. Should such second refinancing occur, (1) the independent rate-making authority to be established by the Government of Guam, or in its absence, the Board of Directors of the Guam Power Authority, shall establish rates sufficient to satisfy all financial obligations and future capital investment needs of the Guam Power Authority that shall be consistent with generally accepted rate-making practices of public utilities, and (2) the Government of Guam shall not modify the requirements of such refinancing agreement without agreement of the Secretary. There are authorized to be appropriated to the Secretary of the Interior for payment to the Federal Financing Bank such sums as are necessary to pay (1) the repurchase payment required under the fifth paragraph of the December 31, 1980, note from the Guam Power Authority to the Federal Financing Bank and any subsequent repurchase payments required under the second refinancing agreement, and (2) the interest rate differential between the seven per centum to be paid by the Guam Power Authority and the second refinancing agreement and the interest rate that would be otherwise be determined in accordance with the above cited section 2285 of Title 12. Should the Guam Power Authority fail to pay in full any installment of interest or principal when due on the bonds or other obligations guaranteed under this section, the Secretary of the Treasury, upon notice from the Secretary shall deduct and pay to the Federal Financing Bank or the Secretary, according to their respective interests, such unpaid amounts from sums collected and payable pursuant to section 1421h of this chapter. Notwithstanding any other provision of law, Acts making appropriations may provide for the withholding of any payments from the United States to the government of Guam which may be or may

become due pursuant to any law and offset the amount of such withheld payments against any claim the United States may have against the government of Guam or the Guam Power Authority pursuant to this guarantee. For the purpose of this chapter, under §3713(a) of Title 31 the term 'person' includes the government of Guam and the Guam Power Authority. The Secretary may place such stipulations as he deems appropriate on the bonds or other obligations he guarantees.

**SOURCE:** §11 of Act of Aug. 1, 1950 (Organic Act); amended by Public Law 94-395, §1, Sept. 3, 1976, 90 Stat. 1199; amended by Public Law 96-205, §303, March 12, 1980. The 1980 amendment changes all after "December 31, 1980" to enable the Secretary to extend the GPA loan guarantee. Amended further by §203 of the Act of Oct. 5, 1984, Pub.L. 98-454, to provide for a second refinancing by the Federal Financing Bank. First sentence amended by *The Organic Amendments of 1998*, HR 2370 (Oct. 1998) § 4. Amendment consisted of enlarging the powers of legislation to "all **rightful** subjects of **legislation**" from "legislation . . . of local application". Codified as 48 U.S.C. §1423a.

**CROSS-REFERENCE:** Guam's ability to issue tax-free bonds has been circumscribed by the Tax Reform Act of 1986.

**COURT DECISIONS:** Guam's rebate and abatement tax provisions [GEDA law] designed to encourage business and industry by providing various tax assistance favoring qualifying corporations did not violate provisions of this section requiring that taxes be uniformly applicable. *Ramsey v Chaco*, [1977 CA9] 549 F.2d 1335.

Law of Guam imposing a gross tax upon persons engaged in the business of selling tangible personal property, including that sold in foreign commerce, was invalid as posing a burden on foreign commerce and was also discriminatory. *Ambrose, Inc. v. Maddox*, [DC Guam] 203 F. Supp. 934.

Issuance of revenue bonds by Guam Telephone Authority with contingent backing by the government of Guam has contemplated in P.L. 13-110 would constitute "public indebtedness" within the meaning of this Section. *Guam Telephone Authority v. Rivera*, [1976 DC Guam] 416 F. Supp. 283.

"It seems reasonable to assume that if the Governor has authority to execute federal laws applicable in Guam, then execution of such laws becomes a 'subject of local application' which the Guam Legislature is empowered under the Organic Act to legislate in such matters to assist the Governor in the enforcement of his duties." *People v. Salas*, (Super.Guam 1982) Cr. #47F-82.

"The appointment of private counsel to institute and prosecute actions for and in the name of the Government of Guam cannot be construed as a legislative or judicial function. It is clearly an executive function." Therefore, P.L. 16-53:10 is invalid as it attempts to authorize the Legislature to hire counsel to prosecute actions on behalf of the Government of Guam. *Government of Guam v. U.S.A.*, (D.C.Guam 1982) Civ. #82-0001.

The Legislature's power to legislate is prescribed and limited by this chapter, by other acts of Congress, and by provisions of the U.S. Constitution. *U.S. v. Borja*, D.C.Guam 1961, 191 F.Supp. 563.

The Legislature may pass appropriations with retroactive effect, and, in the interim, emergency payments may be provided. *13th Guam legislature v. Bordallo*, 430 F.Supp. 405, aff'd 588 F.2d 265.

The Commerce Clause of the U.S. Constitution has not been extended to Guam. *Sakamoto v. Duty Free Shoppers, Ltd.*, D.C.Guam 1983, 613 F.Supp. 381, aff'd. 764 F.2d 1285, cert. den. 106 S.Ct. 1457, 89 L.Ed.2d 715.

The Legislature has power to prescribe local customs law and enforcement for territory of Guam. *People v. Sugiyama*, (C.A. Guam 1988) 846 F.2d 570.

The test for whether a territorial law is preempted by a federal law is the same as the test for preemption by federal law of a state law under the Supremacy Clause of the U.S. Constitution. *Guam Fresh, Inc. v. Governor of Guam*, (C.A. Guam 1988) 849 F.2d 436.

### **§1423b. Selection and Qualification of Members; Officers; Rules; Quorum.**

The legislature shall be the judge of the selection and qualification of its own members. It shall choose from its members its own officers, determine its rules and procedure, not inconsistent with this chapter, and keep a journal. The quorum of the legislature shall consist of **a simple majority** of its members. No bill shall become a law unless it shall have been passed at a meeting, at which a quorum was present, by the affirmative vote of a majority of the members present and voting, which vote shall be by yeas and nays.

**SOURCE:** §12 of Act of Aug. 1, 1950 (Organic Act); amended by Public Law 90-497, §6(b), Sept. 11, 1968, 82 Stat. 846. (Elective Governor Act). Codified as 48 U.S.C. §1423b. Quorum requirements were amended to "a simple majority" from "eleven" by *The Organic Act Amendments of 1998*, HR 2370, §3 (Oct. 1998) in response to the local reduction of the Legislature from 21 members to 15.

### **§1423c. Privileges of Members.**

(a) The members of the legislature shall, in all cases except treason, felony, or breach of the peace, be privileged from arrest during their attendance at the legislature and in going to and returning from the same.

(b) No member of the legislature shall be held to answer before any tribunal other than the legislature itself for any speech or debate in the Legislature.

**SOURCE:** §13 of Act of Aug. 1, 1950 (Organic Act). Codified as 48 U.S.C. §1423c.

**COURT DECISIONS:** The “speech and debate” clause (subsection (b) of Organic Act §13) protects a senator from a deposition in which the information sought is that which was “acquired” by the senator in the course of her official duties; therefore, a writ of mandate will issue forbidding the deposition of the senator to be taken. *Wilkinson, et al. v. O’Neil*, (D.C. Guam App. Div. 1983) Civ. App. #81-0100A.

“Although the Senator’s actions are disturbing and cause us concern, the broad interpretation of the Speech or Debate Clause, coupled with the specific factual circumstances of this case, lead us to the conclusion that the playing of the tape was a legitimate legislative act protected by the Speech or Debate Clause; therefore, the Senator’s actions were privileged.” *Hamlet v. Charfauros*, 1999 Guam 19, Supreme Court of Guam.

#### **§1423d. Oaths of Office.**

Every member of the legislature and all officers of the government of Guam shall take the following oath or affirmation:

“I solemnly swear (or affirm) in the presence of Almighty God that I will well and faithfully support the Constitution of the United States, the laws of the United States applicable to Guam and the laws of Guam, and that I will conscientiously and impartially discharge my duties as a member of the Guam Legislature (or as an officer of the government of Guam).”

**SOURCE:** §14 of Act of Aug. 1, 1950 (Organic Act). Codified as 48 U.S.C. §1423d.

#### **§1423e. Prohibition against accepting certain appointments and salary increases.**

No member of the legislature shall, during the term for which he was elected or during the year following the expiration of such term, be appointed to any office which has been created, or the salary or emoluments of which have been increased during such term.

**SOURCE:** §15 of Act of Aug. 1, 1950 (Organic Act). Codified as 48 U.S.C. §1423e.

#### **§1423f. Qualifications of Legislators.**

No person shall sit in the legislature who is not a citizen of the United States, who has not attained the age of twenty-five years and who has not been domiciled in Guam for at least five years immediately preceding the sitting of the legislature in which he seeks to qualify as a member, or who has been convicted of a felony or of a crime involving moral turpitude and has not received a pardon restoring his civil rights.

**SOURCE:** §16 of Act of Aug. 1, 1950 (Organic Act). Codified as 48 U.S.C. §1423f.

#### **§1423g. Vacancies.**

Vacancies occurring in the legislature shall be filled as the legislature shall provide, except that no person filling a vacancy shall hold office longer than for the remainder of the term for which his predecessor was elected.

**SOURCE:** §17 of Act of Aug. 1, 1950 (Organic Act). Codified as 48 U.S.C. §1423g.

#### **§1423h. Regular and Special Sessions.**

Regular sessions of the legislature shall be held annually, commencing on the second Monday in January (unless the legislature shall by law fix a different date), and shall continue for such term as the legislature may provide. The Governor may call special sessions of the legislature at any time when, in his opinion, the public interest may require it. No legislation shall be considered at any special session other than that specified in the call therefor or in any special message by the Governor to the legislature while in such session. All sessions of the legislature shall be open to the public.

**SOURCE:** §18 of Act of Aug. 1, 1950 (Organic Act); amended by Public Law 90-497, §6(a), Sept. 11, 1968, 82 Stat. 846 (Elective Governor Act). Codified as 48 U.S.C. §1423h. This amended section is implemented by Guam P.L. 13-152:3.

### **§1423i. Approval of Bills.**

Every bill passed by the legislature shall, before it becomes a law, be entered upon the journal and presented to the Governor. If he approves it, he shall sign it, but if not he shall, except as hereinafter provided, return it, with his objections, to the legislature within ten days (Sundays excepted) after it shall have been presented to him. If he does not return it within such period, it shall be a law in like manner as if he had signed it, unless the legislature by adjournment prevents its return, in which case it shall be a law if signed by the Governor within thirty days after it shall have been presented to him; otherwise it shall not be a law. When a bill is returned by the Governor to the legislature with his objections, the legislature shall enter his objections at large on its journal and, upon motion of a member of the legislature, proceed to reconsider the bill. If, after such reconsideration, two-thirds of all the members of the legislature pass the bill, it shall be a law. If any bill presented to the Governor contains several items of appropriation of money, he may object to one or more of such items, or any part or parts, portion or portions thereof, while approving the other items, parts, or portions of the bill. In such a case he shall append to the bill at the time of signing it, a statement of the items, or parts or portions thereof, to which he objects, and the items, or parts or portions thereof, so objected to shall not take effect. All laws enacted by the legislature shall be reported by the Governor to the head of the department of agency designated by the President under section 1421a of this chapter. The Congress of the United States reserves the power and authority to annul the same.

**SOURCE:** §19 of Act of Aug. 1, 1950 (Organic Act); amended by P.L. 90-947, §8(b), Sept. 11, 1968, 82 Stat. 847 (Elective Governor Act); and Public Law 93-608, §1(14), Jan. 2, 1975, 88 Stat. 1969. Codified as 48 U.S.C. §1423i.

**COURT DECISIONS:** Under this Section, the Legislature could override items vetoed by the Governor in the same manner as it can override the Governor's general veto. *13th Guam Legislature v. Bordallo*, [1977 DC Guam] 430 F. Supp. 405. Affirmed, 588 F.2d 265.

Governor properly exercised his pocket veto by failing to sign a bill delivered to him during a legislative recess where the Legislature was in recess for a period longer than 10 days after it has presented the bill to him, and where the Legislature provided no officer of its own to receive communications from the Governor during this recess. *Bordallo v Camacho*, [1975 CA 9] 520 F.2d 763.

Duty of the Governor to report laws to the Secretary of Interior is a nondiscretionary ministerial duty, the performance of which can be mandated by a court. *Bordallo v Camacho*, [1975 CA9] 520 F.2d 763.

Neither the Government of Guam nor the Guam Police Department were "persons" under the federal Civil Rights Act, 28 U.S.C.A. 1983. *Ngiraingas v. Sanchez, et al.*, (C.A. Guam 1988) 858 F.2d 1368.

The Legislature cannot, by choosing to adjourn such that it is absent at the end of that time, exert pressure on the Governor to consider too hastily the legislation before him. Instead of forcing the Governor to return a bill before the Legislature adjourns, he has thirty days within which he may consider the legislation and sign if approved. Likewise, the Legislature cannot ratify a vetoed law by mere reference to it at a later date. *Pangelinan v. Gutierrez*, 2000 Guam 11, 31, *Supreme Court of Guam*.

### **§1423j. Appropriations by the Legislature Authorized.**

(a) Appropriations, except as otherwise provided in this chapter, and except such appropriations as shall be made from time to time by the Congress of the United States, shall be made by the legislature.

(b) If at the termination of any fiscal year the legislature shall have failed to pass appropriation bills providing for payments of the necessary current expenses of the government and meeting its legal obligations for the ensuing fiscal year, then the several sums appropriated in the last appropriation bills for the objects and purposes therein specified, so far as the same may be applicable, shall be deemed to be re-appropriated, item by item.

(c) All appropriations made prior to August 1, 1950 shall be available to the government of Guam.

**SOURCE:** §20 of Act of Aug. 1, 1950 (Organic Act). Codified as 48 U.S.C. §1423j.

### **§1423k. Right of Petition.**

The legislature or any person or group of persons in Guam shall have the unrestricted right of petition. It shall be the duty of all officers of the government to receive and without delay to act upon or forward, as the case may require, any such petition.

**SOURCE:** §21 of Act of Aug. 1, 1950 (Organic Act). Codified as 48 U.S.C. §1423k.

**COURT DECISIONS:** The vote on the Draft Commonwealth Bill, held in August 1987, is permitted as a petition of the people of Guam under this section. *Shapiro v. Guerrero v. Guam National Party, Intervenor*, Superior Ct. Order of Aug. 5, 1987; appeal dismissed as moot, D.C.Guam App.Div. Civ. No. 87-52A, June 7, 1988.

### **§1423l. Purchases through GSA.**

The Territorial and local governments of Guam are authorized to make purchases through the General Services Administration.

**SOURCE:** Contained in annual appropriations to the Department of the Interior, or in Omnibus Territories' Acts, and repeated therein annually. Dec. 22, 1987, Pub.L. 100-202, 101(g) [Title 1], 101 Stat. 1329-231. Latest repetition in Pub.L. 102-154, Title I, 105 Stat. 1007 and in FY 1992 appropriation act covering the Department of the Interior. Codified as 48 U.S.C.A. §1423l.

## SUBCHAPTER 4 THE JUDICIARY

### §1424. Courts of Guam; Jurisdiction; Procedure.

(a) **District Court of Guam; local courts.** (a)(1) The judicial authority of Guam shall be vested in a court established by Congress designated as the "District Court of Guam", and a judicial branch of Guam which branch shall constitute a unified judicial system and include an appellate court designated as the "Supreme Court of Guam", a trial court designated as the "Superior Court of Guam", and such other lower local courts as may have been or shall hereafter be established by the laws of Guam.

(2) The Supreme Court of Guam may, by rules of such court, create divisions of the Superior Court of Guam and other local courts of Guam.

(3) The courts of record for Guam shall be the District Court of Guam, the Supreme Court of Guam, the Superior Court of Guam (except the Traffic and Small Claims divisions of the Superior Court of Guam) and any other local courts or

divisions of local courts that the Supreme Court of Guam shall designate.

(b) **Jurisdiction.** The District Court of Guam shall have the jurisdiction of a district court of the United States, including, but not limited to, the diversity jurisdiction provided for in 1332 of title 28, United States Code, and that of a bankruptcy court of the United States.

(c) **Original Local Jurisdiction.** In addition to the jurisdiction described in subsection (b) of this section, the District Court of Guam shall have original jurisdiction in all other causes in Guam, jurisdiction over which is not then<sup>1</sup> vested by the legislature in another court or courts established by it. In causes brought in the district court solely on the basis of this subsection, the district court shall be considered a court established by the laws of Guam for the purpose of determining the requirements of indictment by grand jury or trial by jury.

**SOURCE:** §22 of Act of Aug. 1, 1950 (Organic Act); amended by Act of Aug. 27, 1954, c. 1017, §1, 68 Stat. 882; Act of June 4, 1958, Public Law 84-444, §1, § 2, 72 Stat. 178; Act of 11/06/78, Sec. 335 (Bankruptcy Reform Act) P.L. 95-598, 92 Stat. 2594. Repealed and reenacted by §801 of the Act of October 5, 1984, Pub.L. 98-454. Codified as 48 U.S.C. 1424. Subsection (a) amended by P.L. 108-378:1(a).

**GUAM COMPILER'S COMMENT:** The 1984 amendments are two -- reference to creation of local courts and their jurisdiction in §1424-1, which was also added as part of the same amendments and <sup>1</sup>the addition of the word "then" to refer to the situation at the time the question at issue arises, not the jurisdiction in place at the time of the amendment to this Act, or at some previous time with the Legislature had removed all local jurisdiction from the District Court. The Appellate Division had ruled that, once the Legislature turned over all local jurisdiction to the local courts, it could not thereafter add any local jurisdiction to the District Court. This amendment cured such opinion by making the determination as to whether the District Court had the local jurisdiction at the time the question arose, not when the Legislature transferred all local jurisdiction to local courts (in 1974).

**COURT DECISIONS:** See Notes of Decisions following §1424 in Title 48, U.S.C.A.

The District Court of Guam has jurisdiction, by reason of Government Code §19700, [11 GCA §36101] to redetermine deficiencies assessed under the income tax laws of the territory of Guam. *Forbes v.2 Maddox*, [CA 9] 339 F.2d. 387, reversing 212 F. Supp. 662.

Removal by non-resident from the Guam Island Court to the District Court of Guam is a corollary to the existence of diversity jurisdiction in the Guam District Court. *Jones & Guerrero, Company v. Sealift Pacific*, [1977, CA 9] 554 F.2d 984. [Reversed by *Chase Manhattan Bank [National Association] v. South Acres Development Company*, (1978 US) 98 S.Ct. 544.] Result of this latter case overturned as to later cases, through amendment to §1424(b) of this chapter.

The District Court of Guam does not possess diversity jurisdiction as Congress has not granted such jurisdiction to the District Court in this Section. This section grants federal question jurisdiction to the District Court, but does not grant diversity jurisdiction since the cause of action in diversity cases arises under the laws of the state wherein the action originated, rather than under the laws of the United States through the diversity statute of 28 USC 1332. *Chase Manhattan Bank [National Association] v. South Acres Development Company*, [1978 US] 98 S.Ct. 544.

Since the Court Reorganization Act of 1974 (Guam P.L. 12-85) removed all local, original jurisdiction from the District Court, it cannot later add additional, original, local jurisdiction to that court and, thus, 8 GCA §65.17, as amended by P.L. 15-94:2, which granted certain interlocutory review powers to the "Trial Division" of the District Court was invalid as contrary to Organic Act 22(a). *Guam v. Quitugua*, (1981 DC Guam App. Div.) D.C. Crim. App. #79-75A; aff'd CA9, 654 F.2d 731.

"The Guam Legislature has the power to determine the appellate jurisdiction of the District Court. Therefore, review from decisions of §65.15(a)-(c) motions should only be by the method prescribed by the Guam Legislature." The Legislature withdrew from the District Court the jurisdiction to hear defendants' interlocutory reviews of §65.15 (a)-(c) motions and gave to the government only the right to appeal pre-trial motions suppressing evidence (P.L. 15-147). *People v. District Court of Guam (James, Real Party in Interest)*, [1981 CA9] No. 80-7352, 641 F.2d 816.

When this section (§1424) was amended in 1958, the Court will not interpret the amendment increasing the civil jurisdiction of the District Court as stripping it of already existing criminal jurisdiction, especially since there is not stated intent to such a thing. Therefore, the District Court of Guam has jurisdiction to try federal criminal cases. *U.S. v. Santos*, (1980 CA9) 623 F.2d 75.

"The assertion of a constitutional right by way of a collateral attack upon a criminal conviction is no more the assertion of a cause 'arising under' the Constitution within the meaning of this provision than would be the assertion of the same right in the course of a criminal proceeding before the Superior Court of Guam." *Pador v. Mantanane*, (CA9 1981) 653 F.2d 1277.

District Court had jurisdiction to review juvenile court's order certifying defendant to stand trial as an adult. *People v. Kingsbury*, (CA9 1981) 649 F.2d 740.

A declaratory judgment questioning the constitutionality of a local law arises 'under' that law, not 'under' the Constitution or laws of the United States; therefore, the Superior Court is the proper court in which to bring the action. *North, Attorney General v. Election Commission*, (Super.Guam 1981) Civ. #595-79. See also *Avery v. 16th Guam Legislature and the Civil Service Commission*, (D.C. Guam 1981) Order of Remand, Civ. #81-0069 & #81-0070; and *Suruhanu v. Superior Court*, (D.C. Guam 1981) Civ. #81-0104.

District Court of Guam does have jurisdiction over transitory causes of action arising outside of Guam. *Pederson v. United States*, [DC Guam] 191 F. Supp. 95.

Supreme Court of Guam could perform limited non-appellate function of hearing objection to authority of the special prosecutor appointed under the Independent Special Prosecutor Act of 1974 (Public Law 12-173). *Sanchez v. Supreme Court of Guam*, [1975 DC Guam] 416 F.Supp. 1.

#### **§1424-1. Local Courts; Appellate Court Authorized.**

(a) The Supreme Court of Guam shall be the highest court of the judicial branch of Guam (excluding the District Court of Guam) and shall

(1) have original jurisdiction over proceedings necessary to protect its appellate jurisdiction and supervisory authority and such other original jurisdiction as the laws of Guam may provide;

(2) have jurisdiction to hear appeals over any cause in Guam decided by the Superior Court of Guam or other courts established under the laws of Guam;

(3) have jurisdiction to issue all orders and writs in aid of its appellate, supervisory, and original jurisdiction, including those orders necessary for the supervision of the judicial branch of Guam;

(4) have supervisory jurisdiction over the Superior Court of Guam and all other courts of the judicial branch of Guam;

(5) hear and determine appeals by a panel of three of the justices of the Supreme Court of Guam and a concurrence of two such justices shall be necessary to a decision of the Supreme Court of Guam on the merits of an appeal;

(6) make and promulgate rules governing the administration of the judiciary and the practice and procedure in the courts of the judicial branch of Guam, including procedures for the determination of an appeal en banc; and

(7) govern attorney and judicial ethics and the practice of law in Guam, including admission to practice law and the conduct and discipline of persons admitted to practice law.

(b) The Chief Justice of the Supreme Court of Guam

(1) shall preside over the Supreme Court unless disqualified or unable to act;

(2) shall be the administrative head of, and have general supervisory power over, all departments, divisions, and other instrumentalities of the judicial branch of Guam; and

(3) may issue such administrative orders on behalf of the Supreme Court of Guam as necessary for the efficient administration of the judicial branch of Guam.



(c) The Chief Justice of the Supreme Court of Guam, or a justice sitting in place of such Chief Justice, may make any appropriate order with respect to

(1) an appeal prior to the hearing and determination of that appeal on the merits; or

(2) dismissal of an appeal for lack of jurisdiction or failure to take or prosecute the appeal in accordance with applicable laws or rules of procedure.

(d) Except as granted to the Supreme Court of Guam or otherwise provided by this Act or any other Act of Congress, the Superior Court of Guam and all other local courts established by the laws of Guam shall have such original and appellate jurisdiction over all causes in Guam as the laws of Guam provide, except that such jurisdiction shall be subject to the exclusive or concurrent jurisdiction conferred on the District Court of Guam under section 22 of this Act.

(e) The qualifications and duties of the justices and judges of the Supreme Court of Guam, the Superior Court of Guam, and all other local courts established by the laws of Guam shall be governed by the laws of Guam and the rules of such courts.

**SOURCE:** Added as §22A by 801 of Pub.L. 98-454. 10/5/84. Codified as 48 U.S.C.A. §1424-1. Amended by P.L. 108-378:1(b).

#### **§1424-2. Relations between U.S. courts and Guam courts: Ninth Circuit review: reports to Congress: rules.**

The relations between the courts established by the Constitution or laws of the United States and the local courts of Guam with respect to appeals, certiorari, removal of causes, the issuance of writs of habeas corpus, and other matters or proceedings shall be governed by the laws of the United States pertaining to the relations between the courts of the United States, including the Supreme Court of the United States, and the courts of the several States in such matters and proceedings.

**SOURCE:** §22B added by §801 of the Act of October 5, 1984. Codified as 48 U.S.C.A. §1424-2. Amended by P.L. 108-378:2.

**COURT DECISIONS:** The test for determining whether decision of the Appellate Division is final for purposes of appeal is whether U.S. Supreme Court would hear the case if it were a judgment from a state court. *Kiaaina v. Jackson*, (C.A.9 Guam 1988) 851 F.2d 287.

#### **§1424-3. Appeals Before Local Appellate Court is Created.**

(a) **Appellate Jurisdiction of District Court.** Prior to the establishment of the appellate court authorized by §1424-1(a) of this title, which is known as the Supreme Court of Guam, the District Court of Guam shall have such appellate jurisdiction over the local courts of Guam as the legislature may determine: Provided, That the legislature may not preclude the review of any judgment or order which involves the Constitution, treaties, or laws of the United States, including this chapter, or any authority exercised thereunder by an officer or agency of the Government of the United States, or the conformity of any law enacted by the legislature of Guam or of any orders or regulations issued or actions taken by the executive branch of the government of Guam with the Constitution, treaties, or laws of the United States, including this chapter, or any authority exercised thereunder by an officer or agency of the United States.

(b) **Appellate Division of the District Court; Judges; procedures; decisions.** Appeals to the District Court of Guam shall be heard and determined by an appellate division of the court consisting of three judges, of whom two shall constitute a quorum. The district judge shall be the presiding judge of the appellate division and shall preside therein unless disqualified or otherwise unable to act. The other judges who are to sit in the appellate division at any session shall be designated by the presiding judge from among the judges who are serving on, or are assigned to the district court from time to time pursuant to §1424b of this title: Provided, That no more than one of them may be a judge of a court of record of Guam. The concurrence of two judges shall be necessary to any decision of the appellate division of the district court on the merits of an appeal, but the presiding judge alone may make any appropriate orders with respect to an appeal prior to the

hearing and determination thereof on the merits and may dismiss an appeal for want of jurisdiction or failure to take or prosecute it in accordance with the applicable law or rules of procedure.

**(c) U.S. Court of Appeals for the Ninth Circuit: jurisdiction; appeals; rules.** The United States Court of Appeals for the Ninth Circuit shall have jurisdiction of appeals from all final decisions of the appellate division of the district court. The United States Court of Appeals for the Ninth Circuit shall have jurisdiction to promulgate rules necessary to carry out the provisions of this subsection.

**(d) Appeals to local appellate court; effect on District Court.** Upon the establishment of the appellate court provided for in §1424-1(a) of this title, which is known as the Supreme Court of Guam, all appeals from the decisions of the local courts not previously taken must be taken to such appellate court. The establishment of the appellate court shall not result in the loss of jurisdiction of the appellate division of the district court over any appeal then pending in it. The rulings of the appellate division of the district court on such appeals may be reviewed in the United States Court of Appeals for the Ninth Circuit and in the Supreme Court notwithstanding the establishment of the appellate court.

**SOURCE:** §22C added by §801 of the Act of October 5, 1984, HR5561. Codified as 48 U.S.C.A. Subsection (a) amended by P.L. 108-378:1(c)(1). Subsection (d) amended by P.L. 108-378:1(c)(2).

**COURT DECISIONS:** We conclude that Guam is not an agency of the federal government for purposes of the 60-day time limit on appeals in suits involving such agencies under Rule 4(a). *Blaz v. Govt. of Guam*, C.A.9 (Guam) 1991, 941 F.2d 778.

**NOTE:** Section 1003, codified as 49 U.S.C.A. §1493, of the Act of October 5, 1984, P.L. 98-454, added the following regarding the jurisdiction of the U.S. District Court for the 9th Circuit:

### **§1493. Criminal Appeals by local governments.**

The prosecution in a territory or Commonwealth is authorized -- unless precluded by local law -- to seek review or other suitable relief in the appropriate local or Federal appellate court, or where applicable, in the Supreme Court of the United States from:

(a) a decision, judgment, or order of a trial court dismissing an indictment or information as to any one or more counts, except that no review shall lie where the constitutional prohibition against double jeopardy would further prosecution;

(b) a decision or order of a trial court suppressing or excluding evidence or requiring the return of seized property in a criminal proceeding, not made after the defendant has been put in jeopardy and before the verdict or finding on an indictment or information, if the prosecution certifies to the trial court that the appeal is not taken for the purposes of delay and that the evidence is a substantial proof of a fact material in the proceeding; and

(c) an adverse decision, judgment, or order of an appellate court.”

Section 1005 of the Act of October 5, 1984, P.L. 98-454, provides, as effective dates for such Act:

“1005. Titles VII, VIII, IX and X [dealing with the judiciary] of this Act shall become effective on the ninetieth day following their enactment.”

**COURT DECISIONS:** Panel of Appellate Division was required to consider mandamus petition challenging assignment of criminal cases by presiding judge of Superior Court. Presiding Judge of Appellate Division could not unilaterally dispose of mandamus petition on the merits. *Cruz v. Abbate*, C.A.9 (Guam) 1987, 812 F.2d 571.

1. Deferential standard of review is not to be applied to the construction of local law by the Appellate Division of the District Court. Strict standard of review de novo review is applicable.

2. Courts of Guam may not rely upon unpublished decisions of the Ninth Circuit. *People v. Yang*, C.A.9 (Guam) 1988, upon rehearing en banc, 850 F.2d 507; overruling *People v. Yang*, (C.A.9 Guam 1987) (panel decision) 800 F.2d 945.

Court of Appeals must affirm decisions of the Appellate Division on matters of local law, if they are based upon a tenable theory and are not manifestly erroneous. *Hair v. Pangelinan*, C.A.9 (Guam) 1987, 816 F.2d 1341.

Guam Legislature had no authority to divest the District Court of Guam of its appellate jurisdiction, which jurisdiction was created under this section [before the 1984 amendments]. The Legislature has no power to, in effect, divest the Ninth Circuit of its review of local cases through the District Court's Appellate Division. *People v. Olsen*, [1977, US] 431 U.S. 195, 97 S.Ct. 1774.

"In reviewing a decision of a territorial court, we are required to give a high degree of deference to its determination of local law. Specifically, we may not overturn the decision of the District Court of Guam on a matter of local law, custom, or policy if the decision is based upon a tenable theory and is not inescapably wrong or manifest error. (Citations omitted) If the decision is based upon a tenable theory, we may not reverse even if we disagree with the ruling or believe that the territorial court's conclusion is the least desirable of several possible alternatives. (Citations omitted) *Schenck v. Govt. of Guam*, (1979 CA9) 609 F.2d 387.

Guam's authority to appeal from decisions of the Appellate Division of the District Court is determined by federal, not local law. Guam may not appeal a decision affirming the withdrawal of a guilty plea as such withdrawal is not a final decision under federal law. *People v. Estrebor*, (C.A.9 Guam 1988) 848 F.2d 1014. [See NOTE, above.]

Appellate Division could render a decision by quorum of two judges after the third judge had recused himself from the case. *De Vera v. Blaz*, (C.A.9 Guam 1988) 851 F.2d 294.

#### **§1424-4. Applicability of Laws & Rules.**

Where appropriate, the provisions of Part II of title 18 and title 28, and notwithstanding the provision in rule 54(a) Federal Rules of Criminal Procedure relating to the prosecution of criminal offenses on Guam by information, the rules of practice and procedure heretofore or hereafter promulgated and made effective by the Congress or the Supreme Court of the United States pursuant to titles 11, 18 and 28, shall apply to the District Court of Guam and appeals therefrom except that the terms "Attorney for the government" and "United States attorney", as used in the Federal Rules of Criminal Procedure, shall, when applicable to cases arising under the laws of Guam, including the Guam Territorial income tax, mean the Attorney General of Guam or such other person or persons as may be authorized by the laws of Guam to act therein.

**SOURCE:** Portion added by §1 of the Act of Aug. 27, 1954 (68 Stat. 882). Reenacted by §801 of the Act of Oct. 5, 1984, Pub.L. 98-454. Clause relating to trial by jury being subject to laws of Guam repealed by §803 of Act of October 5, 1984, Pub.L. 98-454. Codified as 48 U.S.C.A. §1424-4.

#### **§1424a. Appeals from District Court.**

Repealed by Act of Oct. 30, 1951, c. 655, §56(e), 65 Stat. 729. For present provisions on appeals from the District Court of Guam, see 28 U.S.C. §41, §1252, §1292 and §1294. Formerly codified as 48 U.S.C. §1424a.

#### **§1424b. District Court Judge; U.S. Attorney; Marshal; Applicability of laws.**

(a) The President shall, by and with the advice and consent of the Senate, appoint a judge for the District Court of Guam who shall hold office for the term of ten years and until his successor is chosen and qualified unless sooner removed by the President for cause. The judge shall receive a salary payable by the United States which shall be at the rate prescribed for judges of the United States district courts.

The Chief Judge of the Ninth Judicial Circuit of the United States may assign a judge of a local court of record or a judge of the High Court of the Trust Territory of the Pacific Islands or a circuit or district judge of the ninth circuit, or a recalled senior judge of the District Court of Guam or of the District Court for the Northern Mariana Islands, or the Chief Justice of the United States may assign any other United States circuit or district judge with the consent of the judge so assigned and of the chief judge of his circuit, to serve temporarily as a judge in the District Court of Guam whenever it is made to appear that such an assignment is necessary for the proper dispatch of the business of the court.

(b) The President shall appoint, by and with the advice and consent of the Senate, a United States attorney and United States marshal for Guam to whose offices the provisions of chapters 35 and 37 of Title 28, United States Code, respectively, shall apply.

**SOURCE:** §24 of Act of Aug. 1, 1950 (Organic Act); amended by Act of June 4, 1958, Public Law 85-444, §3, 72 Stat. 179; Amended by §802 of the Act of October 5, 1984, P.L. 98-454. Section codified as 48 U.S.C. §1424b.

**NOTE:** Relative to the appointment and service of the district court judge, §1002 of the Act of Oct. 5, 1984 provides:

**"1002.** (a) Any judge or former judge who is receiving, or will upon attaining the age of sixty-five years be entitled to receive, payments pursuant to §373 of title 28, United States Code, may elect to become a senior judge of the court on which he served while on active duty.

(b) The chief judge of a judicial circuit may recall any such senior judge of the circuit, with the judge's consent, to perform in the District Court of Guam, the District Court of the Virgin Islands, or the District Court for the Northern Mariana Islands such judicial duties and for such periods of time as the chief judge may specify.

(c) Any act or failure to act by a senior judge performing judicial duties pursuant to this section shall have the same force and effect as if it were the act or failure to act of a judge on active duty, but such senior judge shall not be counted as a judge of the court on which he is serving for purposes of the number of judgeships authorized for that court.

(d) Any senior judge shall be paid, while performing duties pursuant to this section, the same compensation (in lieu of payments pursuant to 373 of title 28, United States Code, and the same allowances for travel and other expenses as a judge in active service.

(e) Senior judges under subsection (a) of this section shall at all times be governed by the Code of Judicial Conduct for the United States judges, approved by the Judicial Conference of the United States.

(f) Any person who has elected to be a senior judge under subsection (a) of this section and who thereafter --

(1) accepts civil office or employment under the Government of the United States other than the performance of judicial duties pursuant to subsection (b) of this section;

(2) engages in the practice of law; or

(3) materially violated the code of judicial conduct for the United States judges, shall cease to be a senior judge and to be eligible for recall pursuant to subsection (b) of this section."

#### **§1424c. Review of Land Claims.**

**(a) Jurisdiction.** Notwithstanding any law or court decision to the contrary, the District Court of Guam is hereby granted authority and jurisdiction to review claims of persons, their heirs or legatees, from whom interests in land on Guam were acquired other than through judicial condemnation proceedings, in which the issue of compensation was adjudicated in a contested trial in the District Court of Guam, by the United States between July 21, 1944 and August 23, 1963, and to award fair compensation in those cases where it is determined that less than fair market value was paid as a result of (1) duress, unfair influence or other unconscionable actions, or (2) unfair, unjust, and inequitable actions of the United States.

**(b) Acquisitions affected through condemnation proceedings.** Land acquisitions effected through judicial condemnation proceedings in which the issue of compensation was adjudicated in a contested trial in the District Court of Guam, shall remain res judicata and shall not be subject to review hereunder.

**(c) Fair compensation.** Fair compensation for purposes of this Act [Act of Oct. 15, 1977, Public Law 95-134, 91 Stat. 1159] is defined as such additional amounts as are necessary to effect payment of fair market value at the time of acquisition, if it is determined that, as a result of duress, unfair influence, or other unconscionable actions, fair market value was not paid.

**(d) Special masters or judges.** The District Court of Guam may employ and utilize the services of such special masters or judges as are necessary to carry out the intent and purposes hereof.

**(e) Awards.** Awards made hereunder shall be judgments against the United States.

**(f) Limitation on Attorney's fees: violation; penalty.** Attorney's fees paid by claimants to counsel representing them may not exceed 5 per centum of any additional award. Any agreement to the contrary shall be unlawful and void. Whoever, in the United States or elsewhere, demands or receives any remuneration in excess of the maximum permitted by this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$5,000 or imprisoned not more than twelve months, or both. A reasonable attorney's fee may be awarded in appropriate cases.

**(g) Availability of documents, records and writing.** All agencies and departments of the United States Government shall, upon request, deliver to the court any documents, records, and writings which are pertinent to any claim under review.

**SOURCE:** Added by Act of Oct. 15, 1977, Pub.L. 95-134, Title II, §204, 91 Stat. 1162. Final sentence of subsection (c), prohibiting the payment of interest on the awards, was deleted - thus permitting interest - by Pub.L. 96-205:301, Act of March 12, 1980. Codified as 48 U.S.C. §1424c.

**COURT DECISIONS:** Under this section (1424c) the District Court of Guam has discretionary authority to grant trial by jury on the issue of just compensation. *Franquez v. United States*, (1979 CA9) 604 F.2d 1239.

Where plaintiff's predecessors in title were notified of action, but never of trial date, nor of the fact that failure to appear would mean that the action would proceed without them; and they did not in fact appear and contest the action, then such notice does not constitute a "contested trial", and the plaintiffs may proceed with their claim under this section (1424c). *Limtiaco et al. v. U.S.A.*, (CA9 1982) 675 F.2d 1069.

## SUBCHAPTER 5

### PUBLIC HOUSING & URBAN RENEWAL

#### **§1425. Mortgage insurance on housing or property: conditions and limitations. [Omitted]**

**SOURCE:** Part of the National Housing Act. Act July 14, 1952 made the overall Act applicable to Guam. See 48 U.S.C.A. §1425 for other amendments, both prior and subsequent to its applicability to Guam. Not part of the Organic Act. Omitted in 1992 U.S.C.A. Supplement to Title 48 with note to "see 12 U.S.C.A. §1715d, Banks and Banking."

#### **1425a. Guam Legislature may create housing authorities: appointment; membership.**

The Legislature of Guam may by law grant to a public corporate authority, existing or to be created by or under such law, powers to undertake urban renewal and housing activities in Guam. Such legislature may by law provide for the appointment, terms of office, or removal of the members of such authority and for the powers of such authority, including authority to accept whatever benefits the Federal Government may make available, and to do all things, to exercise any and all powers, and to assume and fulfill any and all obligations, duties, responsibilities, and requirements, including but not limited to those relating to planning or zoning, necessary or desirable for receiving such Federal assistance, except that such authority shall not be given any power of taxation, nor any power to pledge the faith and credit of the territory of Guam for any loan whatever.

**SOURCE:** Enacted by Pub.L. 88-171, §1, Nov. 4, 1963, 77 Stat. 304. Not part of the Organic Act.

#### **§1425b. Issuance of notes, bonds, and obligations.**

The Legislature of Guam may by law authorize such authority, any provisions of the Organic Act of Guam [§§1421-1424c of this Chapter], or any other Act of Congress to the contrary notwithstanding, to borrow money and to issue notes, bonds, and other obligations of such character and maturity, with such security, and in such manner as the Legislature may provide. Such notes, bonds, and other obligations shall not be a debt of the United States or of Guam other than such authority, not constitute a debt, indebtedness, or the borrowing of money within the meaning of any limitation or restriction on the issuance of notes, bonds, or other obligations contained in any laws of the United States applicable to Guam or to any agency thereof.

**SOURCE:** Pub.L. 88-171, §2, Nov. 4, 1963, 77 Stat. 304. Not part of the Organic Act.

#### **§1425c. Authorization of loans, conveyances, etc.**

The Legislature of Guam may by law assist such authority by furnishing, or authorizing the furnishing of, cash donations, loans, conveyances of real and personal property, facilities, and services, and otherwise, and may by law take other action in aid of urban renewal or housing or related activities.

**SOURCE:** Pub.L. 88-171, §3, Nov. 4, 1963, 77 Stat. 304. Not part of the Organic Act.

#### **§1425d. Ratification of prior act.**

Each and every part of Public Law 6-135, approved December 18, 1962, heretofore enacted by the Legislature of Guam dealing with any part of the subject matter of sections 1425a to 1425e of this title and not inconsistent therewith is ratified and confirmed.

**SOURCE:** Pub.L. 88-171, §4, Nov. 4, 1963, 77 Stat. 304. Not part of the Organic Act.

#### **§1424e. Additional powers.**

Powers granted herein shall be in addition to, and not in derogation of, any powers granted by other law to, or for the benefit or assistance of, any public corporate authority.

**SOURCE:** Pub.L. 88-171, §5, Nov. 4, 1963, 77 Stat. 304. Not a part of the Organic Act.

## **SUBCHAPTER 6**

### **GUAM DEVELOPMENT FUND**

#### **§1428. Authorization of Appropriation.**

(a) For the purpose of promoting economic development in the territory of Guam, there is authorized to be appropriated to the Secretary of the Interior to be paid to the Government of Guam for the purposes of this subchapter the sum of \$5,000,000.

(b) In addition to the appropriations authorized in subsection (a) of this section, \$1,000,000 is authorized to be appropriated to the Secretary of the Interior to be paid to the Government of Guam annually for five fiscal years commencing in fiscal year 1978 to carry out the purposes of this subchapter.

**SOURCE:** Pub.L. 90-601, §1, Oct. 17, 1968, 82 Stat. 1172; subsection (b) added by Pub.L. 95-134, Title II, §202, Oct. 15, 1977, 91 Stat. 1161.) None of this subchapter is a part of the Organic Act.

#### **§1428a. Submission of plan: contents; terms of loans.**

Prior to receiving any funds pursuant to this subchapter the government of Guam shall submit to the Secretary of the Interior a plan for the use of such funds which meets the requirements of this section and is approved by the Secretary. The plan shall designate an agency or agencies of such government as the agency or agencies for the administration of the plan and shall set forth the policies and procedures to be followed in furthering the economic development of Guam through a program which shall include and make provision for loans and loan guarantees to promote the development of private enterprise and private industry in Guam through a revolving fund for such purposes: Provided, That the term of any loan made pursuant to the plan shall not exceed twenty-five years; that such loans shall bear interest (exclusive of premium charges for insurance, and service charges, if any) at such rate per annum as is determined to be reasonable and as approved by the Secretary, but in no event less than a rate equal to the average yield on outstanding marketable obligations of the United States as of the last day of the month preceding the date of the loan, adjusted to the nearest one-eighth of 1 per centum, which rate shall be determined by the Secretary of the Treasury upon the request of the authorized agency or agencies of the government of Guam; and that premium charges for the insurance and guarantee of loans shall be commensurate, in the judgment of the agency or agencies administering the fund, with expenses and risks covered.

**SOURCE:** Pub.L. 90-601, §3, Oct. 17, 1968, 82 Stat. 1172. Not part of the Organic Act. The Guam Economic Development Authority (GEDA) is the agency charged by Guam with administering the programs established by this subchapter.

#### **§1428b. Prerequisites for loans and guarantees; maximum participation; reserves.**

No loan or loan guarantee shall be made under this subchapter to any applicant who does not satisfy the agency or agencies administering the plan [GEDA] that financing is otherwise unavailable on reasonable terms and conditions. The maximum participation in the funds made available under 1428 of this title shall be limited (a) so that not more than 25 per centum of the funds actually appropriated by the Congress may be devoted to any single project, (b) to 90 per centum of loan guarantee, and (c) with respect to all loans, to that degree of participation prudent under the circumstance of individual loans but directly related to the minimum essential participation necessary to accomplish the purposes of this subchapter; Provided, That, with respect to loan guarantees, the reserves maintained by the agency or agencies [GEDA] for the guarantees shall not be less than 25 per centum of the guarantee.

**SOURCE:** Pub.L. 90-601, §4, Oct. 17, 1968, 82 Stat. 1172. Not part of the Organic Act.

#### **§1428c. Accounting Procedures.**



The plan provided for in §1428a of this title shall set forth such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement, repayment, and accounting for such funds.

**SOURCE:** Pub.L. 90-601, §5, Oct. 17, 1968, 82 Stat. 1172. Not part of the Organic Act.

#### **§1428d. Report by Governor.**

The Governor of Guam shall include in the annual report to Congress required pursuant to 1422 [Organic Act] of this title a report on the administration of this subchapter.

**SOURCE:** Pub.L. 90-601, §6, Oct. 17, 1968, 82 Stat. 1173; amended by Pub.L. 96-470, Title II, §206(c), Oct. 19, 1980, 94 Stat. 2244. Not part of the Organic Act. 1980 amendment required Governor to include a report on these activities in his Annual Report.

#### **§1428e. Audits.**

The Comptroller General of the United States, or any of his duly authorized representatives, shall have access, for the purpose of audit and examination, to the books, documents, papers, and records of the agency, or agencies [GEDA], of the government of Guam administering the plan that are pertinent to the funds received under this subchapter.

**SOURCE:** Pub.L. 90-601, §7, Oct. 17, 1968, 82 Stat. 1173. Not part of the Organic Act.

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## **DELEGATE TO CONGRESS FROM GUAM**

§1711. Delegate to the House of Representatives.

§1712. Election of Delegates.

§1713. Qualifications for Delegate.

§1714. Territorial Legislature to Determine Election Procedure.

§1715. Operation of Office; House Privileges.

### **§1711. Delegate to the House of Representatives.**

The territory of Guam and the territory of the Virgin Islands each shall be represented in the United States Congress by a non-voting Delegate to the House of Representatives, elected as hereinafter provided.

**SOURCE:** Enacted by Public Law 92-271, §1, 86 Stat. 118, April 10, 1972.

### **§1712. Election of Delegates.**

(a) The Delegate shall be elected by the people qualified to vote for the members of the legislature of the territory he is to represent at the general election of 1972, and thereafter at such general election every second year thereafter. The Delegate shall be elected at large, by separate ballot and by a majority of the votes cast for the office of Delegate. If no candidate receives such majority, on the fourteenth day following such election a runoff election shall be held between the candidates receiving the highest and the second highest number of votes cast for the Office of Delegate. In case of a permanent vacancy in the office of Delegate, by reason of death, resignation, or permanent disability, the office of Delegate shall remain vacant until a successor shall have been elected and qualified.

(b) The term of the Delegate shall commence on the third day of January following the date of the election.

**SOURCE:** Enacted by Public Law 92-271, §2, 86 Stat. 119, April 10, 1972.

### **§1713. Qualifications for Delegate.**

To be eligible for the Office of Delegate a candidate must:

- (a) be at least twenty-five years of age on the date of the election;
- (b) have been a citizen of the United States for at least seven years prior to the date of the election;
- (c) be an inhabitant of the territory from which he is elected; and
- (d) not be, on the date of the election, a candidate for any other office.

**SOURCE:** Enacted by Public Law 92-271, §3, 86 Stat. 119, April 10, 1972.

### **§1714. Territorial Legislature to Determine Election Procedure.**

The legislature of each territory may determine the order of names on the ballot for election of Delegate, the method by which a special election to fill a vacancy in the Office of Delegate shall be conducted, the method by which ties between candidates for the Office of Delegate shall be resolved, and all other matters of local application pertaining to the election and the Office of Delegate not otherwise expressly provided for herein.

**SOURCE:** Enacted by Public Law 92-271, §4, 86 Stat. 119, April 10, 1972.

**§1715. Operation of Office; House Privileges; Voting in Committee; Clerk Hire and Transportation Allowance; Salary, etc.**

The Delegate from Guam and the Delegate from the Virgin Islands shall have such privileges in the House of Representatives as may be afforded him under the Rules of the House of Representatives. Until the Rules of the House of Representatives are amended to provide otherwise, the Delegate from each territory shall receive the same compensation, allowances, and benefits as a Member of the House of Representatives, and shall be entitled to whatever privileges and immunities are, or hereinafter may be, granted to the Resident Commissioner for Puerto Rico: Provided, That the right to vote in committee shall be as provided by the Rules of the House of Representatives.

**SOURCE:** Enacted by Public Law 92-271, §5, 86 Stat. 119, April 10, 1972; amended by §35 of the Organic Act (see below). "Codification: The last two provisos in text, which provided that the clerk hire allowance of each Delegate shall be a single per annum gross rate that is 60% of the clerk hire allowance of a Member and that the transportation expenses of each Delegate that are to reimbursement under 2 U.S.C.A. §43b shall not exceed the cost of four round trips each year, were omitted as superseded by 1421k-1 and 1596 of this Title." 48 U.S.C.A. 1715, codification note, 48 U.S.C.A. 1983 Cumulative Annual Pocket Part.

## **SUBMERGED LANDS AND CONCURRENT JURISDICTION**

§1704. Concurrent Jurisdiction; Exceptions.

§1705. Tidelands, etc., Conveyed to Guam.

§1706. Reserved Rights - Establishment of Defensive Sea Areas.

§1707. Payment of Rents to Local Governments.

§1708. Discrimination Prohibited.

### **§1704. Concurrent Jurisdiction; exceptions.**

(a) Except as otherwise provided by law, the governments of the Virgin Islands, Guam, and American Samoa, shall have concurrent civil and criminal jurisdiction with the United States with regard to property owned, reserved, or controlled by the United States in the Virgin Islands, Guam, and American Samoa respectively. A judgment of conviction or acquittal on the merits under the laws of Guam, the Virgin Islands, or American Samoa shall be a bar to any prosecution under the criminal laws of the United States for the same act or acts, and a judgment of conviction or acquittal on the merits under the laws of the United States shall be a bar to any prosecution under the laws of Guam, the Virgin Islands, or American Samoa for the same act or acts.

(b) Notwithstanding the provisions of subsection (a) of this section, the President may from time to time exclude from the concurrent jurisdiction of the government of Guam persons found, acts performed, and offenses committed on the property of the United States which is under the control of the Secretary of Defense to such extent and in such circumstances as he finds required in the interest of the national defense.

**SOURCE:** Enacted by Public Law 88-183, §4, 77 Stat. 339, Nov. 20, 1963; amended by Pub. L. 99-396, Act of Aug. 27, 1986.

### **§1705. Tidelands, etc. Conveyed to Guam.**

(a) Subject to valid existing rights, all right, title, and interest of the United States in lands permanently or periodically covered by tidal waters up to but not above the line of mean high tide and seaward to a line three geographical miles distant from the coastlines of the territories of Guam, the Virgin Islands, and American Samoa, as heretofore or hereafter modified by accretion, erosion, and reliction, and in artificially made, filled in, or reclaimed lands which were formerly permanently or periodically covered by tidal waters, are hereby conveyed to the governments of Guam, the Virgin Islands, and American Samoa, as the case may be, to be administered in trust for the benefit of the people thereof.

(b) There are excepted from the transfer made by subsection (a) hereof:

(i) all deposits of oil, gas, and other minerals, but the term "minerals" shall not include coral, sand and gravel;

(ii) all submerged lands adjacent to property owned by the United States above the line of mean high tide;

(iii) all submerged lands adjacent to property above the line of mean high tide acquired by the United States by eminent domain proceedings, purchase, exchange, or gift, after October 5, 1974, as required for completion of the Department of the Navy Land Acquisition Project relative to the construction of the Ammunition Pier authorized by the Military Construction Authorization Act, 1971 (64 Stat. 1204), as amended by section 201 of the Military Construction Act, 1973 (86 Stat. 1135);

(iv) all submerged lands filled in, built up, or otherwise reclaimed by the United States before October 5, 1974, for its own use;

(v) all tracts or parcels of submerged land containing on any part thereof any structures or improvements constructed by the United States;

(vi) all submerged lands that have heretofore been determined by the President or by the Congress to be of such scientific, scenic, or historic character as to warrant preservation and administration under the provisions of sections 1 and 2 to 4 of Title 16;

(vii) all submerged lands designated by the President within one hundred and twenty days after October 5, 1974;

(viii) all submerged lands that are within the administrative responsibility of any agency or department of the United States other than the Department of the Interior;

(ix) all submerged lands lawfully acquired by persons other than the United States through purchase, gift, exchange, or otherwise;

(x) [land in the Virgin Islands]; and

(xi) [land in Buck Island Reef National Monument].

Upon request of the Governor of Guam, the Virgin Islands, or American Samoa, the Secretary of the Interior may, with or without reimbursement, and subject to the procedure specified in subsection (c) of this section convey all right, title, and interest of the United States in any of the lands described in clauses (ii), (iii), (iv), (v), (vi), (vii), or (viii) of this subsection to the government of Guam, the Virgin Islands, or American Samoa, as the case may be, with the concurrence of the agency having custody thereof.

(c) No conveyance shall be made by the Secretary pursuant to Subsection (a) or (b) of this section until the expiration of sixty calendar days (excluding days on which the House of Representatives or the Senate in not in session because of adjournment of more than three days to a day certain) from the date on which the Secretary of the Interior submits to the Committees of Interior and Insular Affairs of the House of Representatives and the Senate an explanatory statement indicating the tract proposed to be conveyed and the need therefor, unless prior to the expiration of such sixty calendar days both Committees inform the Secretary that they wish to take no action with respect to the proposed conveyance.

(d)(1) The Secretary of the Interior shall, not later than sixty (60) days after the date of enactment of this Subsection, convey to the governments of Guam, the Virgin Islands and American Samoa, as the case may be, all right, title and interest of the United States in deposits of oil, gas and other minerals in the submerged lands conveyed to the government of such territory by Subsection (a) of this Section.

(2) The conveyance of mineral deposits under Paragraph (1) of this Subsection shall be subject to any existing lease, permit or other interest granted by the United States prior to the date of such conveyance. All rentals, royalties or fees which accrue after such date of conveyance in connection with any such lease, permit or other interest shall be payable to the government of the territory to which such mineral deposits are conveyed.

**SOURCE:** Enacted by Public Law 93-435, §1, 88 Stat. 1210, Oct. 5, 1974. See Proclamation No. 4347, Feb. 1, 1975, 40 F.R. 5129 relative to lands reserved under this Section for the United States by the President. Amended by adding Subsection (d)(1) and (d)(2) in P.L. 96-205:607.

**NOTE:** Pursuant to the authority given the President to reserve certain lands from transfer under this section, the following was issued by President Ford:

PROCLAMATION NO. 4347

< Feb. 1, 1975, 40 F.R. 5129 >

RESERVING CERTAIN SUBMERGED LANDS ADJACENT TO ROSE ATOLL NATIONAL WILDLIFE REFUGE IN AMERICAN SAMOA AND CERTAIN SUBMERGED LANDS FOR DEFENSE NEEDS OF UNITED STATES IN **GUAM** AND VIRGIN ISLANDS

The submerged lands surrounding the Rose Atoll National Wildlife Refuge in American Samoa are necessary for the protection of the Atoll's marine life, including the green sea and hawksbill turtles. **The submerged lands in Apra Harbor and those adjacent to Inapsan Beach and Urano Point in Guam**, and certain submerged lands on the west coast of St. Croix, United States Virgin Islands are required for national defense purposes. These submerged lands in American Samoa, Guam and the United States Virgin Islands will be conveyed to the Government of those territories, on February 3, 1975, pursuant to Section 1(a) of Public Law 93-435 (88 Stat. 1210) [subsec. (a) of this section], unless the President, under Section 1(b)(vii) of that Act [subsec. (b)(vii) of this section], designates otherwise.

NOW, THEREFORE, I, GERALD R. FORD, President of the United States of America, by virtue of authority vested in me by Section 1(b)(vii) of Public Law 93-435 (88 Stat. 1210) [subsec. (b)(vii) of this section], do hereby proclaim that the lands hereinafter described are

excepted from the transfer to the Government of American Samoa, **the Government of Guam** and the Government of the United States Virgin Islands under Section 1(a) of Public Law 93-435 [subsec. (a) of this section].

American Samoa. The submerged lands adjacent to Rose Atoll located 78 miles east-southeast of Tau Island in the Manua Group at latitude 14 degrees 32'52" south and longitude 168 degrees 08'34" west, which lands shall be under the joint administrative jurisdiction of the Department of Commerce and the Department of the Interior.

Guam. (1) The submerged lands of inner and outer Apra Harbor; and, (2) the submerged lands adjacent to the following uplands: (a) Unsurveyed land, Municipality of Machanao, Guam, as delineated on Commander Naval Forces, Marianas Y & D Drawing Numbered 597-464, lying between the seaward boundaries of Lots Numbered 9992 through 9997 and the mean high tide, containing an undetermined area of land, (b) unsurveyed land, Municipality of Machanao, Guam, as delineated on Commander Naval Forces, Marianas Y & D Drawing Numbered 597- 464, lying between the seaward boundary of Lot Numbered 10080 and the line of mean high tide, containing an undetermined amount of land, and (c) Lot Numbered PO 4.1 in the Municipality of Machanao, Guam, as delineated on Y & D Drawing Numbered 597-464, more particularly described as surveyed land bordered on the north by Lot Numbered 10080, Machanao, east by Northwest Air Force Base, south by U.S. Naval Communication Station (Finegayan) and west by the sea containing a computed area of 125.50 acres, more or less. All of the above lands within the territory of Guam shall be under the administrative jurisdiction of the Department of the Navy.

The Virgin Islands. (1) The submerged lands as described in the Code of Federal Regulations revised as of July 1, 1974, cited as 33 CFR 207.817 areas "A" & "B", (2) the submerged lands seaward of the 100 fathom curve off the coast of St. Croix beginning at a point 17 degrees 40'30" N and ending at a point 17 degrees 46'30" North as depicted on Coast and Geodetic Survey Chart Numbered 25250, Third Edition; Title: St. Croix, Virgin Islands Underwater Range, and (3) the submerged lands seaward of the Underwater Range Operational Control Center, St. Croix, Virgin Islands presently leased to the Department of the Navy and described as Plot #18 of Estate Sprat Hall subdivision, located in northside Quarter "A", St. Croix containing 4.84 acres of land. All of the above lands within the territory of the Virgin Islands shall be under the administrative jurisdiction of the Department of the Navy.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of February, in the year of our Lord nineteen hundred seventy-five, and of the Independence of the United States of America the one hundred and ninety-ninth.

GERALD R. FORD

[**Boldface** added by Compiler to note Guam material]

**COURT DECISIONS:** Before enactment of this section, the District Court of Guam held, with respect to the submerged lands surrounding Guam adjacent to the Naval Communications Station:

In light of the above, the waters adjacent to the Naval Communications Station, and below the low water mark, like the remainder of the Guam territorial waters, must be held to be outside the exclusive jurisdiction of the United States and a proper subject of legislation by the Guam Legislature. *U.S. v. Borja, et al.*, D.C.Guam 1961, 191 F.Supp. 563, 566.

## **§1706. Reserved Rights -- Establishment of Defensive Sea Areas.**

(a) Nothing in Sections 1705 to 1708 of this Title shall affect the right of the President to establish naval defensive sea areas and naval defensive airspace reservations around and over the islands of Guam, American Samoa, and the Virgin Islands when deemed necessary for national defense.

(b) Nothing in Sections 1705 to 1708 of this Title shall effect the use, development, improvement, or control by or under the constitutional authority of the United States of lands transferred by section 1705 of this Title, and the navigable waters overlying such lands, for the purpose of navigation or flood control or the production of power, or be construed as the release or relinquishment of any rights of the United States arising under the constitutional authority of Congress to regulate or improve navigation, or to provide for flood control or the production of power.

(c) The United States retains all of its navigational servitude and rights in and powers of regulation and control of the lands conveyed by Section 1705 of this Title, and the navigable waters overlying such lands, for the constitutional purposes of commerce, navigation, national defense, and international affairs, all of which shall be paramount to, but shall not be deemed to include, proprietary rights of ownership, or the rights of management, administration, leasing, use, and development of the lands and natural resources which are specifically conveyed to the government of Guam, the Virgin Islands, or American Samoa, as the case may be, by Section 1705 of this Title.

(d) Nothing in Sections 1705 to 1708 of this Title shall affect the status of lands beyond the three-mile limit described in Section 1705 of this Title.

**SOURCE:** Enacted by Public Law 93-435, §2, 88 Stat. 1211, Oct. 5, 1974.

**§1707. Payment of Rents, to Local Governments.**

On and after October 5, 1974, all rents, royalties, or fees from leases, permits, or use rights, issued prior to October 5, 1974, by the United States with respect to the land conveyed by Sections 1705 to 1708 of this Title, or by Section 1545(b) of this Title, and rights or action for damages for trespass occupancies of such lands shall accrue and belong to the appropriate local government under whose jurisdiction the land is located.

**SOURCE:** Enacted by Public Law 93-435, §4, 88 Stat. 1212, Oct. 5, 1974.

**§1708. Discrimination Prohibited.**

No person shall be denied access to, or any of the benefits accruing from, the lands conveyed by Sections 1705 to 1708 of this Title, or by Section 1545(b) of this Title, on the basis of race, religion, creed, color, sex, national origin, or ancestry: Provided, however, that this section shall not be construed in derogation of any of the provisions of the April 17, 1900 cession of Tutuila and Aunuu or of the July 16, 1904 cession of the Manus Islands, as ratified by the Act of February 20, 1929 (45 Stat. 1253) and the Act of May 22, 1929 (46 Stat. 4).

**SOURCE:** Enacted by Public Law 93-435, §6, 88 Stat. 1212, Oct. 5, 1974.

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## FEDERAL POLICY RELATIVE TO GRANTS-IN-AID

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### NUCLEAR WASTE AND ENERGY RESOURCES

§1469a. Congressional Declaration of Policy Respecting “Insular Areas” - Consolidation of Grants and Waiver of Matching Funds

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§1469d. General Technical Assistance

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§1492 Energy Resources

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#### **§1469a. Congressional Declaration of Policy Respecting “Insular Areas”.**

In order to minimize the burden caused by existing application and reporting procedures for certain grant-in-aid programs available to the Virgin Islands, Guam, American Samoa, the Trust Territories of the Pacific Islands, and the Government of the Northern Mariana Islands (hereinafter referred to as “Insular Areas”) it is hereby declared to be the policy of Congress notwithstanding any provision of law to the contrary, that:

(a) Any department or agency of the Government of the United States which administers any Act of Congress which specifically provides for making grants to any Insular Area under which payments received may be used by such Insular Area only for certain specified purposes (other than direct payments to classes of individuals) may, acting through appropriate administrative authorities of such department or agency, consolidate any or all grants made to such area for any fiscal year or years.

(b) Any consolidated grant for any Insular Area shall not be less than the sum of all grants which such area would otherwise be entitled to receive for such year.

(c) The funds received under a consolidated grant shall be expended in furtherance of the programs and purposes authorized for any of the grants which are being consolidated, which are authorized under any of the Acts administered by the department or agency making the grant, and which would be applicable to grants for such programs and purposes in the absence of the consolidation, but the Insular Areas shall determine the proportion of the funds granted which shall be allocated to such programs and purposes.

(d) Each department or agency making grants-in-aid shall, by regulations published in the Federal Register, provide the method by which any Insular Area may submit (i) a single application for a consolidated grant for any fiscal year period, but not more than one such application for a consolidated grant shall be required by any department or agency unless notice of such requirement is transmitted to the appropriate committees of the United States Congress together with a complete explanation of the necessity for requiring such additional applications and (ii) a single report to such department or agency with respect to each such consolidated grant: Provided, That nothing in this paragraph shall preclude such department or agency from providing adequate procedures for accounting, auditing, evaluating, and reviewing any programs or activities receiving benefits from any consolidated grant. The administering authority of any department or agency, in its discretion, may (i) waive any requirement for matching funds otherwise required by law to be provided by the Insular Area involved and (ii) waive the requirement that any Insular Area submit an application or report in writing with respect to any consolidated grant.

**SOURCE:** Enacted by Public Law 95-134, Title V, §501, 91 Stat. 1164, Oct. 15, 1977; subsection (a) amended by Public Law 95-348, §9, 92 Stat. 495, August 18, 1978.



#### **§1469d. General Technical Assistance.**

(a) The Secretary of the Interior is authorized to extend to the governments of American Samoa, Guam, the Northern Mariana Islands, the Virgin Islands, and the Trust Territory of the Pacific Islands, and their agencies and instrumentalities, with or without reimbursement, technical assistance on subjects within the responsibility of the respective territorial governments. Such assistance may be provided by the Secretary of the Interior through members of his staff, reimbursements to other departments or agencies of the Federal Government under the Economy Act (31 U.S.C. §686), grants to or cooperative arrangements with such governments, agreements with the Federal agencies or agencies of State or local governments, or the employment of private individuals, partnerships, or corporations. Technical assistance may include research, planning assistance, studies, and demonstration projects.

(b) (Does not involve Guam.)

(c) The Secretary of Agriculture is authorized to extend, in his discretion, programs administered by the Department of Agriculture to Guam, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, the Virgin Islands and American Samoa (hereinafter called the territories). Notwithstanding any other provision of law, the Secretary of Agriculture is authorized to waive or modify any statutory requirements relating to the provision of assistance under such programs when he deems it necessary in order to adapt the programs to the needs of the respective territory; Provided, That not less than sixty days prior to extending any program pursuant to this section or waiving or modifying any statutory requirement pursuant to this section, the Secretary of Agriculture shall notify the Committee on Agriculture and the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources and the Committee on Agriculture, Nutrition, and Forestry of the Senate of the proposed action together with an explanation of why his action is necessary and the anticipated benefits to each territory affected. Such programs shall be carried out in cooperation with the respective governments of the territories and shall be covered by a memorandum of understanding between the respective territorial government and the Department of Agriculture. Any sums appropriated pursuant to this paragraph shall be allocated to the agencies of the Department of Agriculture concerned with the administration of programs in the territories.

(d) Effective October 1, 1981, there are authorized to be appropriated such sums as may be necessary to carry out the purposes of this section.

**SOURCE:** Added by §601 of Act of December 24, 1980, P.L. 96-597 (94 Stat. 3480).

#### **§1491. Radioactive Waste Storage.**

(a) Prior to the granting of any license, permit, or other authorization or permission by any agency or instrumentality of the United States to any person for the transportation of spent nuclear fuel or high-level radioactive waste for interim, long-term, or permanent storage to or for the storage of such fuel or waste on any territory or possession of the United States, the Secretary of the Interior is directed to transmit to the Congress a detailed report on the proposed transportation or storage plan, and no such license, permit, or other authorization or permission may be granted nor any such transportation or storage occur unless the proposed transportation or storage plan has been specifically authorized by Act of Congress: Provided, That the provisions of this Section shall not apply to the cleanup and rehabilitation of Bikini and Enewetak Atolls.

(b) For the purpose of this Section the words "territory or possession" include the Trust Territory of the Pacific Islands and any area not within the boundaries of the several States of the United States over which the United States claims or exercises sovereignty.

**SOURCE:** Enacted by Public Law 96-205, Title VI, §605, March 12, 1980, 94 Stat. 90.

### **AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF CONSTITUTIONS FOR THE VIRGIN ISLANDS AND GUAM**

Be it enacted by the Senate and House of Representatives of the United States in Congress assembled, That the Congress, recognizing the basic democratic principle of government by the consent of the governed, authorizes the peoples of the Virgin Islands and of Guam, respectively, to organize governments pursuant to constitutions of their own adoption as provided in this Act.

**§2** (a) The Legislatures of the Virgin Islands and Guam, respectively, are authorized to call constitutional conventions to draft, within the existing territorial-Federal relationship, constitutions for the local self-government of the people of the Virgin Islands and Guam.

(b) Such constitutions shall --

(1) recognize, and be consistent with, the sovereignty of the United States over the Virgin Islands and Guam, respectively, and the supremacy of the provisions of the Constitution, treaties, and laws of the United States applicable to the Virgin Islands and Guam, respectively, including, but not limited to, those provisions of the Organic Act and Revised Organic Act of the Virgin Islands and the Organic Act of Guam which do not relate to local self-government.

(2) provide for a republican form of government, consisting of three branches: executive, legislative and judicial;

(3) contain a bill of rights;

(4) deal with the subject matter of those provisions of the Revised Organic Act of the Virgin Islands of 1954, as amended, and the Organic Act of Guam, as amended, respectively, which relate to local self-government;

(5) with reference to Guam, provide that the voting franchise may be vested only in residents of Guam who are citizens of the United States;

(6) provide for a system of local courts consistent with the provisions of the Revised Organic Act of the Virgin Islands, as amended; and

(7) provide for a system of local courts the provisions of which shall become effective no sooner than upon the enactment of legislation regulating the relationship between the local courts of Guam with the Federal judicial system.

**§3** The members of the constitutional conventions shall be chosen as provided by the laws of the Virgin Islands and Guam, respectively (enacted after the date of enactment of this Act): Provided, however, That no person shall be eligible to be a member of the constitutional conventions, unless he is a citizen of the United States and qualified to vote in the Virgin Islands and Guam, respectively.

**§4** The conventions shall submit to the Governor of the Virgin Islands a proposed constitution for the Virgin Islands and to the Governor of Guam a proposed constitution for Guam which shall comply with the requirements set forth in 2(b) above. Such constitutions shall be submitted to the President of the United States by the Governors of the Virgin Islands and Guam.

**§5** Within sixty calendar days after the respective dates on which he has received each constitution, the President shall transmit such constitution together with his comments to the Congress. The constitution, in each case, shall be deemed to have been approved by the Congress within sixty legislative days (not interrupted by an adjournment sine die of the Congress) after its submission by the President, unless prior to that date the Congress has approved the constitution, or modified or amended it, in whole or in part, by joint resolution. As so approved or modified, the constitutions shall be submitted to the qualified voters of the Virgin Islands and Guam, respectively, for acceptance or rejection through islandwide referendums to be conducted as provided under the laws of the Virgin Islands and Guam, respectively, (enacted after the date of enactment of this Act). Upon approval by not less than a majority of the voters (counting only the affirmative or negative votes) participating in such referendum, the constitutions shall become effective in accordance with their terms.

**SOURCE:** Public Law 94-584, 94th Congress 90 Stat. 2899 (1976). Amended by §501, Act of Dec. 24, 1981, P.L. 96-597 (94 Stat. 3479).

**NOTE:** For a complete record of the proceedings of the Constitutional Convention of Guam, and related documents, see *Guam Constitutional Convention 1977*. The Constitution of Guam submitted to Congress was rejected by the people in a referendum held in August of 1978. No new convention has been called.

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