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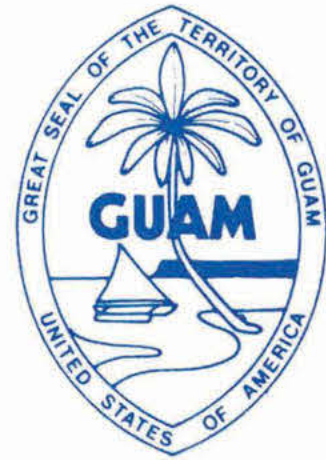
GUAM'S QUEST FOR COMMONWEALTH

THE DRAFT GUAM COMMONWEALTH ACT

OFFICIAL ANNOUNCEMENT BY THE GUAM
COMMISSION ON SELF-DETERMINATION



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MICRONESIAN AREA RESEARCH CENTER
UNIVERSITY OF GUAM



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JUNE 11, 1986

OFFICIAL ANNOUNCEMENT BY THE GUAM COMMISSION ON SELF-DETERMINATION

The members of the Commission on Self-Determination are pleased to announce to the people of Guam the completion of the final text of the draft Guam Commonwealth Act. The final text is printed in full in the following pages.

In the draft Act the numbered sections that would become law, if approved by the voters of Guam and the U.S. Congress, are printed in bold letters. The "Legislative History," which follows each section and is printed in small letters, will not be part of the law, but is included as explanatory legal notes.

It is the belief of the Commission members that this draft Act expresses the consensual aspirations of the people of Guam to change the island's political status from that of an unincorporated territory to that of a self-governing Commonwealth, recognizing the sovereignty of the United States of America. The text of the Act in its totality defines the new Commonwealth status for Guam.

The Eighteenth Guam Legislature by law has set a date of the third Saturday in April 1987 for a referendum by all registered voters of Guam to approve or disapprove the draft Act article by article. Those articles approved by the voters will be transmitted to the U.S. Congress as a Bill for enactment into federal law to establish the Commonwealth of Guam.

The members of the Commission on Self-Determination invite the public's continuing interest, support, and participation in Guam's quest for Commonwealth status. Please keep this text for reference, study it thoroughly, and discuss it with your family and friends so that you will be well prepared to vote on the draft Act in the April 1987 referendum. If you wish further information on the draft Commonwealth Act, call 472-6841 or visit the office of the Commission on Self-Determination, 7th Floor, PDN Building, 238 O'Hara Street, Agana, Guam 96910.

Respectfully,

Governor Ricardo J. Bordallo, Chair
Senator Frank R. Santos, Vice Chair
Senator Carl T.C. Gutierrez, Member
Senator Marilyn A. Manibusan, Member

Mr. Rudy G. Sablan, Member
Mr. Paul Bordallo, Member
Commissioner Frank Lizama, Member
Mr. Perry Taitano, Member

DRAFT GUAM COMMONWEALTH ACT

PREAMBLE

In recognition of the long-cherished aspiration of the people of Guam to direct the course of their own destiny, and with the belief that mutual respect, understanding, and compromise among people form a more perfect Union, the people of the United States of America, nurtured in the ideals of liberty and democracy, conscious of their obligations under the Treaty of Paris of 1898 and the Charter of the United Nations, do hereby embrace the establishment of the Commonwealth of Guam, ever mindful that the right of self-determination and the heritage of the Chamorro people of Guam shall be protected.

This act reflects the will of the people of Guam to attain a greater measure of self-government in concert with the United States of America, and reaffirms the principle that governments derive their just powers only from the consent of the governed.

To this end, the Senate and House of Representatives of the United States of America in Congress assembled, now adopt this act.

Legislative History

This Preamble reaffirms the principle of self-determination and the importance of local self-government in the United States federal structure. It recognizes the need to protect the Chamorro culture on the Island of Guam as essential to a healthy, continuously developing society of Guam.

The Preamble also recognizes the effort undertaken over more than a decade to develop a political status reflective of the unique needs of the people of Guam. The statute was developed by the Guam Commission on Self-Determination composed of the Governor of Guam, the Speaker of the Guam Legislature, the Chairman and the ranking minority member of the Guam Legislative Committee on Federal, Foreign and Legal Affairs, two members of the public appointed by the Governor of Guam, a representative of the local village Commissioner's Council, and a representative of the Guam Judiciary.

The Commission deliberated from January 1984 to May 1986 and conducted over 100 public sessions. It commissioned papers by outside consultants on economic and legal issues to assist it in its deliberations. This statute was the subject of extensive public hearings and discussions on the Island of Guam and in Washington D.C. with federal officials. The statute was duly adopted by the Commission in May 1986 as a draft to be submitted to the people of Guam in a referendum after which, if approved, it will be transmitted to the Congress of the United States for enactment into federal law.

ARTICLE 1. POLITICAL RELATIONSHIP

§101. SHORT TITLE.

This act may be cited as the "Guam Commonwealth Act."

Legislative History

This section emphasizes the importance given both the Congress and the people of Guam to the new political status of Commonwealth.

§102. CREATION OF THE COMMONWEALTH.

The Island of Guam, and its adjacent islands and waters shall upon the enactment of this act become a self-governing Commonwealth known as the "Commonwealth of Guam." This act, the provisions of the United States Constitution, treaties, and laws of the United States applicable to Guam, and the Constitution of Guam shall be the supreme law of the Commonwealth.

Legislative History

This section emphasizes the importance accorded the Commonwealth Act and underscores the fact that a substantial change in status has been effected from an unincorporated territory to a Commonwealth in accordance with the desires of both Guam and the United States. This section generally follows Sections 101 and 102 of the Covenant with the Commonwealth of the Northern Mariana Islands (CNMI), P.L. 94-241, March 24, 1976.

§ 103. SOVEREIGNTY AND CITIZENSHIP.

(a) The Congress recognizes that the indigenous Chamorro people of Guam, who are all those born on Guam before August 1, 1950, and their descendants, accept Commonwealth under United States sovereignty. The Congress further recognizes that Commonwealth does not limit the pursuit by the Chamorro people of any ultimate status which they may seek in their progress toward fulfillment of their inherent right of self-determination as expressed in Article 73 of the Charter of the United Nations and in United Nations Resolution 1514.

(b) The Congress recognizes that the residents of Guam, as may be defined by the Constitution of Guam, are citizens of the Commonwealth of Guam and shall be entitled to any and all rights accorded to them under such Constitution.

(c) Nothing in this act or in the Constitution of the Commonwealth of Guam

shall impair the U.S. citizenship of the residents of Guam or their descendants, nor limit their entitlement to the rights and privileges accorded the citizens of the United States under the first sentence of the Fourteenth Amendment of the U.S. Constitution.

(d) Notwithstanding any other provisions of law or of this act, the Commonwealth of Guam, may:

(i) Establish a trust, to be known as the "Chamorro Land Trust," for the benefit of the indigenous Chamorro people of Guam, and composed of certain lands returned by the United States before and after the effective date of this act to the Commonwealth of Guam. Nothing in this section shall inhibit or prevent the direct return of lands to the original owners, or the establishment of leasehold arrangements with them, by the government of the Commonwealth of Guam.

(ii) As an integral part of its economic incentives programs require the training and employment of the indigenous Chamorro people of Guam in the ranks of both skilled workers and management in businesses on Guam.

(iii) Restrict eligibility to participate in programs sponsored or funded, in whole or in part, by the government of the Commonwealth of Guam to persons who have resided in the Commonwealth for a minimum period of time not to exceed five years.

(iv) Restrict the right to vote in Commonwealth elections or to hold any elective office established by the Constitution of Guam to persons who have resided in the Commonwealth for a minimum period of time not to exceed five years.

Legislative History

In subsections (a), (b), and (c) of this section Congress recognizes the Chamorro people as the indigenous inhabitants of Guam and the importance of Commonwealth status to foster the heritage of the Chamorro people.

Subsection (a) acknowledges that the people of Guam may seek to change the status of Commonwealth in the future.

Subsections (b) and (c) afford the citizens of Guam equal rights with the citizens of the States of the Union and local citizenship similar to the States, while protecting the rights of U.S. citizens.

Subsection (d) (i) authorizes the establishment of a Chamorro Land Trust to permit land taken by the United States in the past which is being returned to Guam to be utilized for the benefit of the indigenous Chamorro inhabitants of Guam. The seized land was taken prior to 1950 and, therefore, the statute seeks to assure that the beneficiaries of the land were those who lost its use in the intermediate years. The establishment of a Chamorro Land Trust follows the precedents established in Hawaii (Hawaiian Homes Commission Act of 1920, 42 Stat. 108 (1921)); see also the 1959 Hawaii Admission Act; Alaska (Alaska Native Claims Settlement Act, 43 U.S.C.A. 1601 et seq., particularly secs. 1606 (b) (1) - (2); see also Alaska Statehood Act, 72 Stat. 339, as amended 73 Stat. 141); the Northern Mariana Islands (Sec. 805 of the Covenant with the CNMI); and American Samoa (27 Amer. Sam. Code 2044 (1973)). These trusts were approved by the Congress either as a condition of becoming a State (Hawaii and Alaska) or joining the Union as a Commonwealth (CNMI). Similar legislation previously enacted by the Guam Legislature was cited with approval by the Congress during its consideration of the Northern Marianas Covenant. S. Rep. No. 433, 94th Cong., 1st Sess. (1975), p. 88.

Subsection (d) (ii) authorizes special training programs and employment opportunities and participation in federal programs for Chamorro inhabitants of Guam in order to overcome past discrimination and assure for all U.S. citizens on Guam a stronger society.

Subsection (iv) is to assure that the electorate appreciates the political significance of their actions and to assure those voting are concerned with the long-term future of Guam. Five years, the residence requirement for holding office suggested in the text, is the most common residency requirement for Governor in the various States (e.g., Hawaii, Nebraska and New York).

§104. FULL SELF-GOVERNMENT.

(a) The people of Guam shall have the right of full self-government, which shall extend to all rightful subjects of government not inconsistent with this act and the laws of the United States applicable to Guam, and shall govern themselves in accordance with this act through a Constitution of their own adoption. Such Constitution shall:

(i) Recognize, and be consistent with, the sovereignty of the United States over Guam, and the supremacy of the provisions of the Constitution, treaties, and laws of the United States applicable to Guam;

(ii) Provide for a republican form of government; and

(iii) Provide for three branches of government; and

(iv) Contain a bill of rights.

(b) The government of the Commonwealth shall have the power to sue in its own name, and, with the consent of the Legislature, may be sued upon any contract entered into with respect to, or any tort committed incident to, the exercise by the government of the Commonwealth of Guam of any of its lawful powers.

(c) The government of the Commonwealth of Guam shall have the power to establish, maintain, and operate a public educational system to the same extent as the several States.

Legislative History

This section establishes the most significant aspect of Guam's change in status from an unincorporated territory to a Commonwealth; namely, the right of local self-government. Other sections of this act fully develop this right. The Constitution for Guam was previously authorized by federal legislation P.L. 94-984, 90 Stat. 2899, as amended by P.L. 96-597, 94 Stat. 3479. The reauthorization of the Guam Constitution by this act is because of the time that has run since the original authorization and the importance given the Guam Constitution in this act.

Subsection (b) of this section continues that portion of the 1950 Organic Act for Guam dealing with "sovereign immunity."

Subsection (c) clarifies an issue that has arisen under the 1950 Organic Act and grants to the Commonwealth of Guam the same powers to run its educational system as any of the several States.

§105. MUTUAL CONSENT.

In order to respect the grant of self-government to the Commonwealth of Guam under this act, the United States agrees to limit the exercise of its authority so that the provisions of this act may be modified only with the mutual consent of the government of the United States and the government of the Commonwealth of Guam.

Legislative History

This section is based on the precedent of Section 105 of the CNMI Covenant. It changes the political status relationship between Guam and the United States and establishes the mutually binding character of the Commonwealth relationship.

ARTICLE 2. APPLICABILITY OF FEDERAL LAW

§201. APPLICABILITY OF U.S. CONSTITUTION.

Those portions of the Constitution which apply to Guam on the effective date of this act shall, unless specifically modified by this act, continue to apply under this act. In addition, the following provisions of and amendments to the Constitution of the United States shall apply to the Commonwealth of Guam and shall have the same force and effect in Guam as in the United States or in any State of the United States: Article IV, section 2, clause 2 and section 4; the Tenth Amendment, and the first sentence of the Fourteenth Amendment.

Legislative History

This section continues all those Constitutional Amendments that now apply to Guam, including the second sentence of the Fourteenth Amendment with the due process and equal protection clauses, for all U.S. citizens on Guam.

This section also expands the number of provisions of the U.S. Constitution that apply to Guam by extending the Tenth Amendment and the first sentence of the Fourteenth Amendment.

It is the intent of this section to seek a relationship with the Federal Union that establishes maximum self-government for Guam similar to a State. The application of the Tenth Amendment limits the use of the Territorial Clause so as to prevent federal intrusion into the Commonwealth's internal matters. Although the extent of the protection of the Tenth Amendment even in a State context is unclear, it affords a theoretical limitation on the reach of the Territorial Clause which may be important in assuring full local self-government to the people of Guam under their own Constitution.

The addition of the first sentence of the Fourteenth Amendment is to affirm the status of Guam's residents as citizens of the United States at birth, and to foreclose the possibility that this citizenship may ever be legislatively removed.

§202. EFFECT OF FEDERAL LAW.

Except as otherwise intended by this act, no federal laws, rules or regulations passed after the date of this act shall apply to the Commonwealth of Guam unless mutually consented to by the United States and the government of the Commonwealth of Guam.

Legislative History

This is a stronger restatement of the mutuality principle of the Commonwealth initially set forth in Section 105.

§203. JOINT COMMISSION.

(a) (i) There is hereby created a Joint Commission on the Applicability of Federal Law (hereinafter "Commission") to be composed of seven (7) members: three (3) members and their successors appointed by the President of the United States and four (4) members and their successors appointed by the Governor with the advice and consent of the Legislature of the Commonwealth of Guam. The appointees by the Government of Guam shall be citizens of the Commonwealth of Guam who are or have been ten (10) years continuously resident on Guam at the time of their appointment. Said appointees shall serve at the pleasure of the President of the United States and the Governor of the Commonwealth of Guam respectively. Any vacancy which may occur on the Commission shall not affect its powers or functions but shall be filled in the same manner in which the original appointment was made. Appointments shall be made within sixty (60) days of the effective date of this act.

(ii) The Commission shall adopt its own internal regulations to govern its procedures and may delegate authority on particular issues to some of its members.

(iii) A majority of the Commission shall constitute a quorum for the transaction of its business. The Commission may provide for the taking of testimony, discussion of issues with members of the federal government or government of Guam, and the reception of evidence at meetings at which there are present not less than three (3) members of the Commission. The Chairman of the Commission shall call a meeting to organize the Commission within thirty (30) days after he and a majority of the members of the Commission have been appointed.

Legislative History

This Commission follows generally the idea of the Commission established under Section 504 of the CNMI Covenant. However, it is expected that this Commission will be permanent during the period of Commonwealth status for Guam.

(b) The Commission shall:

(i) Be used for regular consultations between the government of the United States and the government of the Commonwealth of Guam on all matters affecting the relationship between them;

(ii) Study existing statutes and regulations affecting the relationship between Guam and the United States;

(iii) Review the policies and procedures of the federal agencies as such policies and procedures relate to the relationship between Guam and the United States;

(iv) Compile data as may be necessary for the conduct of the Commission's work or for the implementation of this act;

(v) Draft such modifications in existing laws, regulations, policies, and procedures as will, in the judgment of the Commission, best serve to carry out the purposes of the Commission or this act;

(vi) Obtain, if possible, the modification of existing laws, regulations and procedures by negotiation and mediation, such as issues concerning land claims and war claims by the people of Guam;

(vii) Seek to obtain the maximum economic development and political autonomy for the Commonwealth of Guam without impairing U.S. national security interests. The heads of federal departments and agencies are authorized and directed to furnish whatever assistance is requested by the Commission, without reimbursement, except classified information directly related to national security interests.

Legislative History

The Commission statement of purpose is a broad one to permit the Commission to be the focal point on matters between the United States and Guam. The Commission's role gains increased importance with the envisioned elimination of the supremacy role of the Interior Department in relation to Guam. The Commission may examine generally the applicability of federal law and may negotiate on a continuing basis issues of common concern between the United States and Guam. It is expected that the Guam government will pass legislation mandating Guam agencies to cooperate with the Commission.

(c) The Commission is authorized to appoint and fix the compensation of an Executive Secretary and such other additional personnel as may be necessary to enable the Commission to carry out its functions without regard to the Federal Property and Administrative Services Act of 1949 and Civil Service laws, rules and regulations, but any federal employee subject to those laws, rules and regulations, who may be detailed to the Commission (which detail is hereby authorized) shall retain his civil service status without interruption or loss of status or privilege. In addition, the Commission may enter into contracts in order to carry out its mandate.

Legislative History

Authority is granted to permit the Commission to hire a staff and consultants if necessary. Provision has been made to except the Commission from various Executive Branch administrative and housekeeping statutes to permit it to have greater flexibility in operation.

- (d) The United States will bear the cost of the work of the Commission.

Legislative History

This provision, providing for federal funding of the Joint Commission, recognizes the financial disparities between Guam and the United States. It follows past practices of Commissions in this area. See, for example, Section 504 of the CNMI Covenant, P.L. 94-241, March 24, 1976.

§204. DELEGATION OF AUTHORITY.

The Congress hereby authorizes the President or his designee to delegate to the Governor of Guam total or partial performance of functions now vested in administrative agencies in the federal government with respect to Guam. The President or his designee and the Governor of Guam shall consult from time to time on the implementation of this provision.

Legislative History

The United States recognizes the distinctively local conditions and geographic distance which make it difficult for federal legislation to be implemented in Guam. For this reason, this federal provision authorizes the future delegation of authority to Guam of various federal functions to permit maximum self-government and maximum effective administration in the government of Guam.

ARTICLE 3. FOREIGN AFFAIRS AND DEFENSE

§301. UNITED STATES AUTHORITY.

The United States shall have responsibility for and authority with respect to matters relating to foreign affairs and defense that affect the Commonwealth of Guam.

Legislative History

This establishes the authoritative role for the federal government in foreign affairs and defense.

§302. CONSULTATION WITH GUAM.

(a) The United States agrees to consult with the Commonwealth of Guam in advance of negotiations toward any treaties or international agreements, including Executive Agreements, which affect the well-being of the people of Guam.

(b) No military security zones shall be established and no foreign military personnel shall be stationed on the Island of Guam without approval of the government of the Commonwealth except in time of declared war, and no military bases will be established without consultation with the Governor of the Commonwealth of Guam.

(c) The United States shall consult with the government of the Commonwealth of Guam with respect to any proposed plan to increase or decrease Department of Defense activities within the Commonwealth.

Legislative History

Subsection (a). This section reflects Guam's geographical location which makes it uniquely sensitive to international agreements and treaties entered into by the United States with large countries in the Pacific.

Subsection (b). Because of the significance the military establishment plays in life on Guam, consultation is of great importance, permitting the government of Guam to be advised of major changes which may impact on the Guam economy.

Subsection (b) also reflects both the civil liberties and economic opportunities lost to Guam from 1945 to 1962 when, in peace time, a military security zone was established which restricted Guam citizens and U.S. citizens from entering Guam without U.S. military approval. Guam was also the only organized part of the U.S. to be occupied by foreign troops during World War II. This experience provides justification for Guam to have its views considered prior to any agreement by the U.S. to permit foreign troops - - which may be of a former occupying power - - to be stationed on the island.

Subsection (c). This subsection again focuses on the economic importance of defense activities in Guam and seeks local input prior to critical decisions being made which would affect Guam.

§303. UNITED STATES CONSULAR AND TRADE ASSISTANCE.

(a) (i) The United States shall assist and facilitate the establishment by Guam of offices in the United States and abroad.

Legislative History

This section was taken from Section 904(b) of the CNMI Covenant.

(ii) The United States shall assist the Commonwealth of Guam to become a member or participate in appropriate regional and other international organizations to include but not be limited to the South Pacific Forum, the regional organizations of the United Nations Specialized agencies, and the Asian Development Bank. Under such authority Guam shall be free to accept and grant financial and technical assistance, to enter into bilateral and multilateral agreements to promote joint ventures private and public, exchange programs, and to be come a part to all agreements between and among foreign entities involving regional and subregional affairs. The Commonwealth may enter into agreements with sovereign states, and the political entities resulting from the Trust Territory of the Pacific Islands, relative to reciprocal trade and tax questions and their application to the respective jurisdictions.

(b) The government of the United States shall seek to obtain from foreign countries favorable treatment for exports from the Commonwealth of Guam and will encourage other countries to consider the Commonwealth of Guam a developing territory.

Legislative History

Subsection (a) (i) is based upon Section 904(b) of the CNMI Covenant.

Subsection (a) (ii) is based upon Section 904(c) of the CNMI Covenant. It reflects the importance of regional economic development organizations in Guam's economic development.

Subsection (b). In many cases Guam competes with independent nations who see Guam only as part of a large, wealthy, developed nation, the United States. This section is intended to enlist U.S. efforts in support of Guam's economic development and to reflect the geographic distance from the States and Guam's insular character. This section parallels Section 603(d) of the CNMI Covenant.

§304. NUCLEAR WASTE.

(a) The United States shall not utilize the waters surrounding the Commonwealth of Guam or the island for dumping or storage of nuclear waste.

(b) The United States shall clean up and make safe for human habitation all chemical waste dump sites used by the military in the past and at present, and shall not, at any time, use the island and the surrounding waters of Guam as a depository for hazardous chemicals in the future.

(c) The United States shall compensate, in a manner to be decided by the District Court of Guam, any person injured as a result of chemical, nuclear, or other hazardous materials stored, used, or disposed of by agencies of the United States government in the Commonwealth of Guam or its surrounding waters.

Legislative History

This section in large measure incorporates and restates existing U.S. policy. It reflects the deep concern felt by the island people of Guam with respect to nuclear waste disposal in their surrounding oceanic waters.

ARTICLE 4. COURTS

§401. JUDICIAL RELATIONSHIP OF GUAM TO THE UNITED STATES.

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.

Legislative History

This section is intended to establish the judicial authority of Guam in the courts of Guam as in the several States of the Union. It is envisioned that the Federal-Guam judicial relationship would be the same as that of the federal government to a State of the Union.

§402. JURISDICTION OF DISTRICT COURT.

(a) The District Court of Guam established by Section 22 of the Organic Act of Guam, as amended, is continued by this act as the "District Court of Guam."

(b) 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.

Legislative History

This section establishes the jurisdiction of the U.S. District Court of Guam to be the same as the district courts in the several States of the Union.

§403. APPLICABLE DISTRICT COURT RULES.

Where appropriate, the provisions of Part II of Title 18 and of Title 28, United States Code, 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, United States Code, 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, Federal Rules of Civil Procedure and Federal Rules of Appellate Procedure shall, when applicable to cases arising under the laws of Guam, including the Guam Commonwealth 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.

Legislative History

This section derives from the provisions of the 1950 Organic Act with certain conforming, technical changes to cover the Federal Rules of Civil Procedure and Federal Rules of Appellate Procedure which were previously omitted.

§404. DISTRICT COURT JUDGE, UNITED STATES ATTORNEY, MARSHAL.

(a) The President shall appoint, by and with the advice and consent of the Senate, a judge for the District Court of Guam who shall hold office for the term of ten (10) 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 31 and 33 of Title 28, United States Code, respectively, shall apply.

(c) The Judge of the District Court of Guam and the United States Attorney and Marshal serving on the effective date of this section shall continue to hold their positions under this act until the expiration of their current terms of office.

Legislative History

This section provides for the selection and tenure of the District Court Judge of Guam and for the appointment of other key federal enforcement officials on Guam.

ARTICLE 5. TRADE

§501. GUAM-UNITED STATES FREE TRADE AREA.

(a) The Commonwealth of Guam will remain outside the customs territory of the United States, and no duty, tariff, and/or quota restrictions shall be imposed or collected by the United States. Economic, trade and commercial relationships between the United States and the Commonwealth of Guam shall be conducted within the framework of the free trade area between the United States and the Commonwealth of Guam as established by subsection (b).

(b) The Commonwealth of Guam shall not impose duties, quotas, or other restrictions on products of the United States imported into Guam, nor shall the United States impose duties, quotas, or other restrictions on "products of Guam" imported into the United States, nor shall the United States treat products of Guam as having originated in any other country.

(c) The term "products of Guam" shall mean articles that contain at least thirty (30) percent value added in Guam. Value added includes:

(i) All actual labor costs involved in the growth, production, manufacture, or assembly of the specific merchandise, including fringe benefits, on-the-job training, and the cost of engineering, supervisory, quality control, and similar personnel;

(ii) Dies, molds, tooling, and depreciation on machinery and equipment which are allocable to the specific merchandise;

(iii) Research, development, design, engineering, and blueprint costs insofar as they are allocable to the specific merchandise; and costs of inspecting and testing the specific merchandise.

(d) The Commonwealth of Guam may impose, increase, reduce or eliminate duties and other restrictions:

(i) On products that originate in any area outside the customs territory of the United States and that are imported into Guam; and

(ii) On exports from Guam, whether or not products of Guam.

(e) The Governor of Guam shall make a certificate that the origin of the products as defined in (c) above is the Commonwealth of Guam pursuant to the provisions of this act. An agent of the United States Customs Service stationed on Guam shall then perform such customs inspections as are necessary for compliance with this act and the appropriate laws of the United States. Upon completion of such inspections such products shall enter the United States without further inspection by the United States Customs Service.

(f) Nothing herein contained shall be construed to have any effect on any obligations or benefits accruing to the Commonwealth of Guam or the United States under the Generalized System of Preferences.

(g) Except as provided for in (b) above the Trade and Development Act of 1974 shall continue to apply to the Commonwealth of Guam.

Legislative History

This section continues Guam as an area outside the common market of the United States. It establishes by statute a free trade area between Guam and the United States, thus eliminating a number of non-tariff barriers that have arisen between Guam and the United States as a result of Guam being grouped with foreign countries for various trade provisions.

This section also modifies somewhat 19 U.S.C.A. 1202, General Headnote 3a. In determining what goods are goods originating in Guam, the provision establishes a 30 percent local input as the criterion, a percentage now utilized for a number of goods in U.S. trade with its possessions. Reducing the local input on all goods from 50 percent to 30 percent will act as a strong incentive to private sector development so necessary to the economic stability of the Commonwealth of Guam.

ARTICLE 6. TAXATION

§601. MIRROR IMAGE TAX.

(a) 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.

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

(c) The administration and enforcement of the Guam Commonwealth Income Tax shall be performed pursuant to the laws of Guam. 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 duly authorized officer or employee of the government of Guam.

(d) (i) 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 (not including chapter 2 and § 931); chapters 24 and 25 of Subtitle C, with reference to the collection of income tax at source on wages; and all provisions of Subtitle F which apply to the income tax, including provisions as to crimes, other offenses and forfeitures contained in Chapter 75. 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.

(ii) The Governor or his delegate or other official duly authorized to act under the laws of Guam shall have the same administrative and enforcement powers and remedies with regard to the Commonwealth of Guam 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. Rules and regulations required for enforcement of the Commonwealth of Guam Income Tax shall be prescribed pursuant to the laws of Guam. The Governor or his delegate or other official duly authorized to act under the laws of Guam shall have 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.

(e) In applying as the Commonwealth of Guam 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 or other official duly authorized to act under the laws of Guam" for "Secretary or his delegate," "Governor or his delegate or other official duly authorized to act under the laws of Guam" for "Commissioner of Internal Revenue" and "Collector of Internal Revenue" for "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.

Legislative History

This section basically continues Section 31(a)-(e) of the 1950 Organic Act, which provides for a Guam Territorial Income Tax based on the federal income tax. Minor changes in nomenclature have been made to recognize the authority of the Commonwealth of Guam.

§602. ENFORCEMENT INSTITUTIONS.

(a) Any act or failure to act with respect to the Guam Commonwealth Income Tax which constitutes a criminal offense under Chapter 75 of Subtitle F of the Internal Revenue Code of 1954, or the corresponding provisions of the Internal Revenue Code of 1939, as included in the income tax laws in force in Guam pursuant to 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.

(b) The government of Guam shall have a lien with respect to the Guam Commonwealth 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 U.S. income tax. Such lien in respect of the Guam Commonwealth Income Tax shall be enforceable in the name 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 or such other court as the Guam Legislature may provide.

(c) (i) 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 Commonwealth Income Tax.

(ii) Suits for the recovery of any Guam Commonwealth 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 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 U.S. District Court of Guam 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.

(iii) 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 probable cause existed, or such officer or employee acted under the direction of the Governor or his delegate or other official duly authorized to act under the laws of Guam. 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.

(iv) A civil action for the collection of the Guam Commonwealth 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.

(v) The jurisdiction conferred upon the District Court of Guam by this subsection may be subject to transfer to any local court by the Legislature of Guam.

Legislative History

These sections provide for the means of enforcement of the Guam income tax. Minor changes in nomenclature have been made throughout. Changes have been made in the existing Organic Act by adding a final clause in Subsection 602 (b) (31) (g) (5) of the Organic Act, and changing the introductory clause in Subsection 602 (c) (i) (31) (h) (1) of the Organic Act. These changes permit local courts to assume gradually jurisdiction to interpret the local income tax structure. This approach is consistent with the establishment of the Commonwealth and the strengthening of the local court structure, including authorization of a Guam appellate court under the Omnibus Territories Act of 1984, P.L. 98-454.

§603. REBATE OF TAXES.

The government of the Commonwealth of Guam may by local law provide for the rebate or reduction of any taxes received by it in order to assist new industries coming to Guam or to assist Guam's economic development.

Legislative History

This section authorizes the Commonwealth of Guam to rebate taxes in order to attract new industry to the island or assist Guam's economic development. This generally parallels Section 602 of the CNMI Covenant and permits industrial attraction programs used in many States of the Union. It expands the authority utilized by Guam in connection with GEDA which has been upheld by the judiciary. Ramsey v. Chaco, 549 F. 2d 1335 (CA9 1978). It is also intended to overrule Guam v. Koster, 362 F. 2d 248 (9th Cir. 1966).

§604. GUAM INCOME TAX AUTHORITY.

(a) The Commonwealth of Guam shall have the power to determine under the laws of Guam the nature and amount of taxes imposed upon the income and property of persons within its jurisdiction, from whatever source derived.

(b) The income tax established in §601 (a) - (e) of this act shall be repealed one year following certification by the Chief Executive of Guam that Guam has enacted into law a comprehensive local income tax to replace that set forth in §601 (a) - (e). Upon this repeal the income tax laws of the United States, except for Chapters 2 and 21 of the Internal Revenue Code of 1954, shall not be applicable to Guam or to the persons within the jurisdiction of Guam who have met their tax obligations imposed by the laws of Guam.

Legislative History

This section permits the Commonwealth of Guam eventually to pass its own local income tax in lieu of the mirror image federal income tax. It is consistent with the principle of greater self-reliance on behalf of the local jurisdiction and is especially important in this case after the creation of the new status of Commonwealth. It is similar to legislation proposed by the Administration and endorsed by the government of Guam.

§605. BONDS TAX EXEMPTION.

All bonds or other obligations issued by the Commonwealth 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 any State or Territory or any political subdivision thereof, or by the District of Columbia.

Legislative History

This section, permitting the issuance of tax-free instruments by the Commonwealth of Guam, is important to the economic development of the island. It parallels Section 607(a) of the CNMI Covenant.

ARTICLE 7. IMMIGRATION

§701. GUAM IMMIGRATION AUTHORITY.

(a) The Commonwealth of Guam shall have the authority to control entry of all aliens into the Commonwealth of Guam to include the admission, exclusion, and expulsion of such aliens.

(b) The Immigration and Naturalization Act of 1952, as amended, and federal regulations applicable thereto, shall remain applicable to Guam until replaced as to applicability to Guam by duly enacted comprehensive law of the Guam Legislature. Enactment of local law by the Legislature of Guam under this authority, and the actions of the Commonwealth of Guam pursuant to such authority shall be duly coordinated with the U.S. Immigration and Naturalization Service of the Department of Justice, the Department of Labor, and the Department of State.

(c) (i) Such actions by the Commonwealth of Guam shall not impair the free movement of U.S. citizens to and from Guam.

(ii) Such authority shall not include naturalization of aliens for U.S. citizenship.

(iii) The Governor of Guam shall continue to have the authority to issue U.S. passports within existing regulations.

(iv) Entry of aliens into Guam under the authority of subsection (a), above, shall not affect, either favorably or unfavorably, an alien's entry to any other parts of the United States.

Legislative History

This section effects a delegation of authority from federal to local officials to regulate entrants to Guam. Continuous and mounting immigration from Asian countries under the U.S. Immigration and Naturalization law has imposed hardships on the people of the island, and could submerge their Chamorro identity within a few decades. It generally reflects the precedent established in the CNMI Covenant and in American Samoa. The provision also recognizes what in fact already exists wherein the U.S. INS and Customs Service treat Guam as outside the United States for purposes of customs searches and identification upon entry into or exit from the several States.

§702. PORT OF ENTRY.

Guam shall not be considered as a port of entry for the entrance into the United States of aliens lawfully admitted for permanent residence into the United States except in those cases where the Governor of Guam has made a labor determination under §701.

Legislative History

This section is designed to encourage persons to come to other places in the United States prior to Guam for entry into the United States. It is part of a general effort in the Commonwealth Act to relieve the pressure of uncontrolled immigration into the island.

§703. GUAM-ONLY VISA.

United States Consular officials, and other officials authorized to issue visas for entry into the United States, are authorized to issue visas for travel only to the Commonwealth of Guam for any alien seeking to enter Guam as a nonimmigrant in order to encourage investors and tourists to come to Guam. Regulations governing the issuance of such visas shall be coordinated with the Governor of Guam. Such regulations shall consider the points of origin, duration of permitted stay, the means by which the aliens could alter visas to permit entry in the United States, and other appropriate conditions to assure the regulation serves the best interests of the Commonwealth of Guam. The United States and the Commonwealth of Guam shall adopt appropriate measures for the implementation and enforcement of this section upon or after entry of the aliens into Guam.

Legislative History

This section is designed to facilitate tourists and business related nonimmigrant to come to Guam. It recognizes the island character of Guam, making it unlikely that nonimmigrants will hide or proceed to the United States without permission.

ARTICLE 8. LABOR

§801. FEDERAL EMPLOYMENT.

In all vacancies in the federal Civil Service occurring in Guam, residents of Guam possessing the requisite standards of age, health, character, education, knowledge, and experience shall be given preference over transfers of persons from off Guam or the recruiting of persons from outside Guam.

Legislative History

This subsection is designed to assist the employment of local citizens in federal governmental positions on Guam. No change in federal requirements for employment on Guam is envisioned. What is intended is a greater focus on the capabilities and needs of the population on Guam. In the past local skilled workers were sometimes overlooked and jobs for which they were qualified were not obtained by local residents.

§802. GUAM LABOR LAWS.

Except and to the extent prohibited by Congress, the Commonwealth of Guam shall have authority to enact and enforce all laws regulating or affecting employment in the Commonwealth. All applicable laws of the United States which regulate employment on Guam on the effective date of this act shall remain applicable to Guam until replaced as to their applicability to Guam by duly enacted law of the Guam Legislature.

Legislative History

This section permits the Commonwealth to obtain greater control of one of the key areas important to its economic development. A similar grant of authority was accorded the Northern Mariana Islands in Section 503 (c) of the CNMI Covenant.

ARTICLE 9. TRANSPORTATION AND TELECOMMUNICATIONS

§901. MARITIME SHIPPING.

(a) No provision of the laws of the United States, including, without limitation, the vessel documentation laws of the United States, shall apply to prevent the U.S. registration of, and use of, any foreign-built vessel (including vessels engaged in towing, barges, dredges, vessels or boats leased, rented, or chartered to another for any use, including, without limitation, vessels used to take out chartered fishing and diving parties or sightseeing tours) for any purpose whatsoever within the internal waters, harbors, territorial sea and adjacent Exclusive Economic Zone around Guam.

(b) The shipment of fish or fish products from Guam to any coastwise point of the United States shall not be subject to the coastwise laws of the United States.

(c) The application of the coastwise laws of the United States to Guam pursuant to 46 USC 883 shall be periodically examined by the Commission to determine, mutually, the desirability of the continued applicability of such laws to Guam. Such determination by the Commission shall be based solely on the criteria of whether such laws or any or a part thereof as applied to Guam constrain Guam's economic development and, if such a determination is made, the Commission shall recommend such laws should not continue to apply to Guam, PROVIDED: so long as the coast-

wise laws apply to Guam the United States government shall be responsible for ensuring adequate and reliable cargo service between Guam and the United States as determined mutually in the Commission.

Legislative History

Subsection (a) provides a general exception to permit foreign-built or registered vessels to participate in pleasure fishing and diving in support of tourism development on Guam. In addition, the exception applies to other vessels in order to assist the dredging of the waters around Guam.

Subsection (b) provides a limited exception to the coastwise shipping laws to permit the transshipment of fish and fish products from Guam to points in the United States on foreign ships. A broader exception is found in Section 503(b) of the CNMI Covenant.

Subsection (c) places on the agenda of the Joint Commission the issue of a broad exception to the coastwise shipping laws.

§902. AIRLINES.

(a) The Governor of Guam shall have the authority to sponsor any qualified air service carrier to come to Guam subject only to presidential consultation concerning articulated foreign policy and national defense interests of the United States. The Commonwealth of Guam shall be exempt from all bilateral treaties between the United States and foreign states with respect to scheduling and to technical specifications of aircraft, other than safety requirements, for foreign or U.S. charter passenger flights to and from Guam where such flights originate from foreign jurisdictions. This provision shall not be applied in such a manner as to impair regularly scheduled passenger and cargo flights from any of the several U.S. States and Territories to and from Guam.

(b) The Commonwealth of Guam shall remain an "eligible point" for purposes of being ensured essential air transportation under applicable provisions of the Federal Aviation Act of 1958, as amended by P.L. 98-213, Section 10, with passenger and other service to be scheduled to provide regular and satisfactory delivery of postal mail and cargo to and from the United States.

(c) In addition to any other requirement in compliance with federal law for new, additional, or changed routes, U.S. domestic air carriers shall obtain the concurrence of the Governor of Guam on any application filed for such service to Guam.

Legislative History

Subsection (a) will permit Guam to negotiate needed air transportation for the island outside existing formal channels where Guam's needs are frequently overlooked.

Subsections (b) and (c) attempt to overcome the disability of Guam's small size and isolated location in order to assure continued international air service essential to Guam's economy and social well-being.

§903. TELECOMMUNICATIONS.

The Commonwealth of Guam shall be defined as domestic for the purposes of setting of rates in telecommunications by the Federal Communications Commission.

Legislative History

It is the intent of this section to treat Guam equal to Hawaii and other States of the Union with respect to the cost of telephone and telegraph service. Guam has unusually high rates at this time because it is treated as "international." High rates have inhibited the island's development by placing an excessive cost of doing business in the private sector on Guam. With the introduction of communications satellites in the 1970's, the FCC by administrative action began to accord to Hawaii, Puerto Rico, and the Virgin Islands what amounted to "domestic" rate treatment. However, the FCC still treats Guam as an "international" point, owing to original carrier practice and to former Section 222 of the Communications Act.

ARTICLE 10. LAND, NATURAL RESOURCES AND UTILITIES

§1001. AUTHORITY OVER LAND AND RESOURCES.

(a) The government of the Commonwealth of Guam shall have power of eminent domain over property within the Commonwealth in accord with the Constitution of Guam.

(b) The Commonwealth of Guam shall have jurisdiction over all living and non-living natural resources of the seabed, subsoil, tidelands, and adjacent territorial waters, as defined by United States law, of the Island of Guam. The Commonwealth shall exercise rights to determine the conditions, including pollution control, and terms of all scientific research, management, exploration and exploitation of all ocean resources and all sources of energy and prevention of pollution within the 200-mile Exclusive Economic Zone, including pollution originating outside the zone that poses a threat within the zone.

(c) The United States may, upon written notice to the government of the Commonwealth of Guam, acquire for public purposes in accordance with federal laws and procedures, any interest in real property in the Commonwealth only by voluntary

means, under such terms and conditions as may be negotiated by the parties. The United States will continue to recognize and respect the scarcity and special importance of land in the Commonwealth of Guam. If the United States must acquire any interest in real property, it will follow the policy of seeking to acquire only the minimum area necessary to accomplish the public purpose for which the real property is required, of seeking only the minimum interest in real property necessary to support such public purpose, and of seeking first to satisfy its requirement by acquiring an interest in public rather than private real property. No interest in real property on Guam will be acquired by the United States unless duly authorized by the Congress of the United States and for which appropriations are available.

(d) The United States agrees not to exercise within the Commonwealth the power of eminent domain except in time of war and then only to the extent necessary and in compliance with applicable United States and Commonwealth of Guam laws, and with full recognition of due process required by the Constitutions of Guam and the United States.

(e) The Commonwealth of Guam is exempt from the federal regulations governing the transfer or sale of excess federal real property. All excess real properties of the United States on the Island of Guam released after establishment of the Commonwealth will be conveyed in fee simple to the government of the Commonwealth of Guam without any condition, limitation or reversion clause in said conveyance.

(f) All lands heretofore transferred to the government of Guam by the United States are released from any and all provisions limiting the use of such land, and are conveyed in fee simple.

Legislative History

Subsections (a) and (b) recognize and reaffirm the authority of the Government of Guam over the land and territorial waters of Guam.

Subsection (c) establishes the principle of voluntary and negotiated transfer of land. It follows closely the language in Section 806(a) and (b) of the CNMI Covenant with changes only in nomenclature.

Subsection (d) recognizes that the amount of land already acquired for military use by the federal government is adequate for all foreseeable peacetime purposes.

Subsection (e). At present, despite the fact that land was taken by the federal government at extremely low prices (if any compensation was paid at all), GSA regulations require the land to be returned to Guam at present market values. This section would except Guam from this requirement and permit the land to be returned at no cost.

Subsection (f). At present a number of land parcels that have been returned to Guam have restrictions upon them, preventing them from being used with maximum benefit by the Government of Guam. These restrictions would be eliminated by this subsection.

§1002. TRANSFER OF EXCESS FEDERAL REAL PROPERTY.

(a) All real property, including undeveloped land and developed recreational facilities, controlled or owned by any United States military service or federal agency on Guam and not necessary for direct and continuous operational, logistical, or security use as a military facility or other federal function shall be transferred as excess federal real property to the Government of Guam. PROVIDED: all national parks, historical sites, monuments, and cemeteries shall be exempt from this provision. Such transfers will be, whenever possible, at no cost to the people of Guam, or, when appropriate, at cost no higher than the valuation of the property at the time of original acquisition by the federal authority, regardless of any subsequent alterations or additions to the property. Final determination of which federal real property is excess to federal needs, and the authority to mandate prompt and fair transfer to the Government of Guam by the federal proprietor, shall be with the Joint Commission after consultations with the proprietor.

Legislative History

This section in effect restates an operating principle of the 1950 Organic Act (Sec. 28), and provides for the immediate transfer to Guam of real property now controlled by the Department of Defense but not necessary for defense purposes or for other federal purposes.

§1003. ACCESS TO FEDERAL PROPERTY.

(a) All recreational facilities, and all historical and archaeological sites on real property retained under federal civil or military authority shall be open to access and use by the residents of Guam so long as military security requirements are not compromised.

(b) Except where prevented by military security requirements, easements for roadways or other means of public access through property retained under federal civil or military authority shall be granted the Government of Guam when such easements constitute the only practicable means of land access by the Government of Guam or the public to localities within the jurisdiction of the Government of Guam.

(c) The Joint Commission shall determine, after consultation with the general proprietor, which federal recreational facilities and which easements over federal property shall be open to the Government of Guam and to the general public on Guam and the manner of access.

Legislative History

This section is designed to permit greater access by the people of Guam to the limited land resources on the island. It is also intended to improve relations between the military and the people of Guam.

§1004. AUTHORITY OVER UTILITIES.

Within ninety (90) days after the enactment of this act, the United States shall transfer to the Commonwealth of Guam all rights, title and interest possessed by the United States in the island's power, water, sewer, and other utility systems, except for those portions of the systems which are located within the confines of property owned by the United States and which are used solely for the purposes of the United States, and which do not serve or impact upon the normal operations of the island's utility system. The government of the Commonwealth of Guam may decline to accept any portion of such utilities which it believes would act as a detriment to effective use of the utilities it owns. The United States shall provide access for the Commonwealth of Guam, or its agents, to all utilities and transmission lines which the Commonwealth owns on federal property on Guam.

Legislative History

This returns to the government of Guam the island's power, water, sewer and utility systems held by the federal government, except for those portions located on military reservations and used exclusively by the United States.

ARTICLE 11. U.S. FINANCIAL ASSISTANCE

§1101. RETURN OF TAXES AND FEES.

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 in accordance with the annual budgets except that nothing in this act shall be construed to apply to any tax imposed by Chapter 2 or 21 of the Internal Revenue Code of 1954.

Legislative History

This continues existing law (the 1950 Organic Act, Section 30 cover-over provision), as amended by the Omnibus Territories Act of 1984, returning collected fees and duties derived from Guam to the government of Guam.

§1102. EQUAL FINANCE FOR GUAM CITIZENS WITH STATES.

The laws of the United States providing federal benefits and financial assistance and which have a general application to the several States shall be applicable to Guam, including Section 228 or Title II and Title XVI of the Social Security Act (Supplemental Security Income). The formula for granting such financial assistance to Guam and its residents shall be the same as the formula applied to the several States and their residents unless such formula cannot, on its face, be applied to Guam or it is specifically stated to the contrary in this act.

Legislative History

This section establishes equal participation for Guam and its citizens with that of the States and its citizens in federal programs. Exclusions, set-asides, and other unique formulae for the territories have unnecessarily discriminated against the citizens of Guam in the past and this section is intended to rectify the injustice. It also restates the importance of U.S. citizenship.

§1103. RETURN OF ECONOMIC ZONE FEES.

The Commonwealth shall have paid to the Treasury of Guam all licensing and other fees obtained by permitting foreign vessels to fish or other exploitation of the 200-mile Exclusive Economic Zone of Guam.

Legislative History

This return of licensing fees to the government of Guam is consistent with the return of taxes and fees formerly in Section 30 of the Guam Organic Act which is continued in §1101 of this act.

§1104. FEDERAL PAYMENT.

(a) The Governor of Guam, in preparing an annual budget for the government of the Commonwealth of Guam, shall develop meaningful expenditure and revenue comparisons based on data supplied by the Bureau of the Census and other independent, reliable sources and identify elements of cost and benefits to Guam which result

from the unusual role of Guam as one of the nation's principal military bastions in the Far East despite its small size. The results of the studies conducted by the Governor under this subsection shall be made available to the Guam Legislature and to the Federal Office of Management and Budget for their use in reviewing and revising the Governor's request with respect to the level of the appropriation for the annual federal payment to the Commonwealth of Guam. Such federal payment should operate to encourage efforts on the part of the government of Guam to maintain and increase its level of revenues and to seek such efficiencies and economies in the management of its programs as are possible.

(b) The Governor, in studying and identifying the costs and benefits to Guam brought about by its role in the nation's national security, should to the extent feasible, among other elements, consider:

(i) Revenues unobtainable because of the relative lack of taxable commercial and industrial property;

(ii) Revenues unobtainable because of the relative lack of taxable business income;

(iii) Potential revenues that would be realized if exemptions from Guam taxes were eliminated;

(iv) Net costs, if any, after considering other compensation for tax base deficiencies and direct and indirect taxes paid, of providing services to organizations and corporate offices doing business only with the Defense Department;

(v) Recurring and nonrecurring costs of unreimbursed services to the Defense Department;

(vi) Recurring and nonrecurring costs of unreimbursed services rendered Guam by the Defense Department; and

(vii) Relative tax burden on Guam residents compared to that of residents in other jurisdictions in the Pacific.

(c) The Governor shall submit his request, with respect to the amount of an annual federal payment, to the Guam Legislature. The Guam Legislature shall by act approve, disapprove, or modify the Governor's request. After the action of the Legislature, the Governor shall, by December 1st of each calendar year, in accordance with the provisions in the Budget and Accounting Act, 1921 (31 U.S.C. 2), submit such request to the President for submission to the Congress. Each request regarding an annual federal payment shall be submitted to the President seven (7) months prior to the beginning of the fiscal year for which such request is made and shall include a request for an annual federal payment for the next following fiscal year.

Legislative History

This section takes into consideration the unique demands placed upon Guam in assisting the U.S. defense program. This formula set forth in this section is based on the federal payment to the District of Columbia and its authorizing statute, 47 D.C. Code 3405 (1981 ed.). Similar federal payments based upon other formulae are found in the CNMI Covenant and the Compact with the Free Associated States on federal use of island property for national security purposes.

§1105. TRANSITION ASSISTANCE TO THE COMMONWEALTH.

(a) The government of the United States in order to assist Guam to make the political and economic transition to Commonwealth agrees to assist the Commonwealth of Guam as follows:

(i) Finance the costs of institutional changes connected with the change in Guam's political relationship with the United States, to include past staff, contracts, and referendum costs of the Guam Commission on Self-Determination;

(ii) Help meet the capital needs of Guam, in accordance with the following section, necessary to Guam's long-term, self-sustaining development; and

(iii) Establish a new Economic Development Fund on Guam to assist expansion of the private sector.

(b) There is hereby authorized such sums as may be necessary to implement a long-term capital improvement program approved by the Congress permitting the Commonwealth of Guam to establish an infrastructure base adequate for development of the private sector and to strengthen the utility of Guam for U.S. national security purposes. Guam shall submit a plan for Congressional approval showing the total amounts proposed, the distribution of funds by projects, phases, or programs with an assessment of needs, costs, benefits and provision of local funds where available. The capital improvement plan shall take into account all related economic development projects and plans by the Commonwealth of Guam.

(c) There is hereby authorized a revolving fund to establish an Economic Development Fund on Guam with authority to assist in the financing of the private sector needs of Guam in its efforts to achieve a higher standard of living for its people as members of the American community and to develop the economic resources needed to meet the financial responsibilities of local self-government. To this end,

the Economic Development Fund is authorized to provide financial and other assistance to increase investments (including loans, tax incentives, guarantees and equity capital) and to start or expand commercial businesses on Guam in order to provide employment and ownership opportunities for the residents of Guam. Participation by private banks and savings and loan institutions in the Economic Development Fund shall be encouraged. Funds shall be made available to the Economic Development Fund by Congress after the following conditions have been met:

(i) The submission of a set of procedures to Congress for the participation of private lending institutions and for the processing of applications for assistance, indicating the role of the Economic Development Fund's staff, outside consultants, and board review, and to guide reviewers in making assistance and determining eligibility.

(ii) Submission of an economic development plan, to be updated annually, by the Governor of Guam to Congress, showing the proposed amount, the proposed distribution of the funds, and the terms on which the funds will be made available. Such plan will take into account any capital improvement projects and other programs related to economic development. The funds granted to the Economic Development Fund shall be a revolving fund, available to the Economic Development Fund until expended.

(iii) The Economic Development Fund shall be headed by a five-member Board of Directors with financial experience for fixed terms and selected by the Governor of Guam. The Economic Development Fund shall issue a public and audited report annually, setting forth the administrative and programmatic developments for the year with full disclosure of the utilization of its funds, the recipients of its assistance, and the applications in process.

Legislative History

This section is an attempt to establish Commonwealth of Guam institutions on a strong footing. It parallels the CNMI Covenant by providing budgetary support for the new Commonwealth institutions.

ARTICLE 12. TECHNICAL AMENDMENTS AND INTERPRETATION

§1201. INTERPRETATION AND JURISDICTION.

(a) It is the intention of Congress that this act provide complete internal self-government for the Commonwealth of Guam and, to that end, that this act be interpreted liberally to accomplish that purpose.

(b) When ruling upon the laws of the Commonwealth, the courts of the United States shall give the same deference to the laws of the Commonwealth as they give to laws of the several States. Jurisdiction to interpret the provisions of this act is vested in appropriate courts of the United States and in the local courts of Guam.

Legislative History

This section clearly states the purpose of the act, and directs the courts to view the act as providing a whole framework for self-government, rather than a narrow delegation of specific powers to Guam, as was the case under the 1950 Organic Act. Specifically, this is intended to change the narrow reading of Congressional delegations of authority to territorial officials found in Territory of Guam v. Olsen, 451 U.S. 195 (1977) and Chase Manhattan Bank v. South Acres Development Co., 98 S. Ct. 544 (1978).

This section also grants concurrent jurisdiction with respect to issues arising under this act, permitting the act to be interpreted by federal courts as a federal law, and by local courts as a local statute establishing Guam's governmental structure.

§1202. CONTINUED EFFECTIVENESS OF LOCAL LAWS.

The laws of Guam in force on the date of enactment of this act, except as amended by this act, are hereby continued in force, subject to modification or repeal by the Legislature of Guam.

Legislative History

This section is intended to continue applicable laws of the federal government and the local government.

§1203. ACTS REPEALED AND CONTINUED.

(a) All laws or parts of laws inconsistent with this act are hereby repealed to the extent of such inconsistency.

(b) Upon the enactment of this act, the following sections of the Organic Act of Guam (Act of August 1, 1950, 64 Stat. 384), as amended, are repealed: Sections 1, 2, and 3; fourth sentence of section 11; sections 25, 27, 33, and section 34.

(c) Upon the effective date of the Constitution adopted by the people of Guam, the following provisions of the Organic Act of Guam (Act of Aug. 1, 1950, 64 Stat. 384), as amended, and in effect at that time, are repealed: Sections 5(a) through (t), 6, 7, 8, 9, 9-A, 10; the first three sentences of section 11; sections 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 22A, 22B, 22C, 22D, 24, 26, 29, 30, and section 31.

(d) The following sections of the Organic Act of Guam (Act of Aug. 1, 1950, 64 Stat. 384), as amended, shall continue in force and shall be deemed to be a part of this act: Section 5 (u), beginning at the fifth sentence; all the remainder of sections 11, 21-A, 24-A; section 28 as modified by Article 10 of this act; section 32, and section 35.

(e) Public Law 94-584 (90 Stat. 2899), as amended, is repealed as it affects Guam.

Legislative History

Subsection (b) repeals sections of the 1950 Organic Act immediately upon the effective date of the Commonwealth Act. Certain Organic Act sections are replaced by sections of this act, and need not be continued until Guam has enacted its Constitution. These repealed sections are:

Section 1 - Short Title -- replaced by §101 of the Guam Commonwealth Act;

Section 2 - Name & Territory -- replaced by §102 of the Guam Commonwealth Act;

Section 3 - Unincorporated Territory -- replaced by §103 and §104 of the Guam Commonwealth Act;

Section 11 - 4th Sentence, which is replaced by §605 of the Guam Commonwealth Act;

Section 25 - Continuation of Local Laws -- replaced by §1202 of the Guam Commonwealth Act;

Section 27 - Custom Treatment of Guam -- replaced by §501 and §502 of the Guam Commonwealth Act;

Section 33 - Naval & Military Reservations -- replaced by §302 (b) of the Guam Commonwealth Act;

Section 34 - Effective Date -- replaced by §1204 of the Guam Commonwealth Act.

Subsection (c) repeals upon the effective date of the Constitution of Guam those sections of the Organic Act which establish the existing government. Note that the taxation sections are left for repeal and the Commonwealth Act provisions for implementation only after the Constitution is prepared, as both the Constitution and the laws of Guam may contain taxation provisions. The sections retained until the implementation of the Constitution are:

Section 5(a-t) - Bill of Rights -- see §102, and §103 (b) and (c) and §104 (a) (iv) of the Guam Commonwealth Act;

Section 6 - Term & General Powers of Governor -- see §104, details in Guam Constitution;

Section 7 - Initiative, Referendum & Removal -- details in Guam Constitution;

Section 8 - Vacancy in Governor's Office -- details in Guam Constitution;

Section 9 - Specific Powers of Governor -- details in Guam Constitution;

Section 9-A - Inspector General -- not in Act;

Section 10 - Legislature -- see §104, details in Guam Constitution;

The first three sentences of section 11 - Legislative Authority -- in Guam Constitution;

Section 12 - Selection of Legislators -- in Guam Constitution;

Section 13 - Legislative Immunities -- in Guam Constitution;

Section 14 - Oaths -- for Guam Constitution;

Section 15 - Legislative Restrictions -- in Guam Constitution;

Section 16 - Qualifications -- in Guam Constitution;

Section 17 - Vacancies -- in Guam Constitution;

Section 18 - Sessions -- in Guam Constitution;

Section 19 - Approval of Bills -- in Guam Constitution;

Section 20 - Appropriations -- Art. 11 of the Guam Commonwealth Act, local powers in Guam Constitution;

Sections 22 through 24 - Judiciary -- Art. 4 of Guam Commonwealth Act, local powers in Guam Constitution;

Section 26 - Travel Allowances -- Superfluous; no need to address in Guam Commonwealth Act or Guam Constitution;

Section 29 - Education & Health as Guam Governor's Powers -- in Guam Constitution;

Section 30 - Duties & Taxes -- Continued by §1101 of Guam Commonwealth Act;

Section 31 - Mirror Tax -- replaced by Art. 6 of Guam Commonwealth Act.

Subsection (d) retains certain portions of the Organic Act, and incorporates them into this act where such sections are necessary either for the continuation of programs underway or for the continuation of benefits to Guam. Specifically, these sections are:

Section 5 (u) - Retaining existing provisions of U.S. Bill of Rights; see §201 of Guam Commonwealth Act;

Section 11, beginning at the fifth sentence to the end of the section - Refinancing of GPA -- This portion of the section must continue not to jeopardize the refinancing of GPA. Other portions of Section 11 are repealed by §1203(b) and (c) of the Guam Commonwealth Act;

Section 21-A - Authority to purchase through the federal GSA;

Section 24-A - Land Claims -- In order to continue all existing land claims now pending in District Court;

Section 28 as modified by Article 10 of this act - Land Transferred -- continuation will not jeopardize land which has already been transferred to Guam, but restrictions placed upon this land are removed by the act, also see §1004 re: utilities;

Section 32 - General Authorization for Congress to appropriate funds to Guam;

Section 35 - Expenses of Delegate to Congress -- continued for benefit of Delegate.

Subsection (e) repeals the existing law that authorizes a Guam Constitution but does not change the authority as to the Virgin Islands, which is contained in the same bill. Guam's authority to enact a constitution is found in §103 and §104 of this act.

§1204. EFFECTIVE DATE OF THE GUAM COMMONWEALTH ACT.

This act, upon approval by Congress, shall be submitted to the registered voters of Guam for ratification through a plebiscite to be held in accordance with the laws of Guam. This act will become effective upon the approval of this act by a majority of the voters who participate in such plebiscite, and at that time, except as provided in §1203 of this act, the Organic Act of Guam, August 1, 1950, 64 Stat. 384, shall be repealed.

Legislative History

This section establishes that the Commonwealth Act does not become effective after U.S. Congressional action is completed until approved finally by the people of Guam as an expression of their own self-determination.

END OF ACT

