

AMENDING THE ORGANIC ACT OF GUAM FOR THE PURPOSES OF CLARIFYING THE LOCAL JUDICIAL STRUCTURE OF GUAM

SEPTEMBER 7, 2004.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. POMBO, from the Committee on Resources,  
submitted the following

R E P O R T

[To accompany H.R. 2400]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 2400) to amend the Organic Act of Guam for the purposes of clarifying the local judicial structure of Guam, haing considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 2400 is to amend the Organic Act of Guam for the purposes of clarifying the local judicial structure of Guam.

BACKGROUND AND NEED FOR LEGISLATION

H.R. 2400 amends the Organic Act of Guam to establish the Supreme Court of Guam as the highest local court in the territory. H.R. 2400 also amends the Organic Act to require a unified judicial system composed of: (1) an appellate court designated as the “Supreme Court of Guam”; (2) a trial court designated as the “Superior Court of Guam”; and (3) other lower local courts as may have been or may hereafter be established by the laws of Guam.

Originally, appellate cases in Guam that fell under territorial jurisdiction were reviewed by the U.S. Court of Appeals for the Ninth Circuit. In 1973, the 12th Guam Legislature established the first Supreme Court of Guam to hear these appealed cases. The establishment of the court was ruled to be unauthorized by the U.S. Supreme Court in *Territory of Guam v. Olsen*, 431 U.S. 195 (1977).

In 1984, in response to Olsen, Congress amended the Organic Act of Guam permitting the territorial legislature to create an appellate court to hear all cases in Guam over which any court established by the Constitution and laws of the United States does not have exclusive jurisdiction.

When the Guam Legislature passed legislation to create the Supreme Court of Guam in 1992, it intended to make this entity the highest local court and vest it with those powers traditionally held and exercised by the highest court of a State or territory.

In authorizing the creation of an appellate court for Guam, the Congress left the newly created court subordinate to Guam's other two branches of government. Because the judiciary was established under Guam law, it can be subject to changes based upon shifts in control of Guam's executive and legislative branches.

Establishing the Supreme Court of Guam within Guam's Organic Act will make the judiciary a coequal branch of government. The Committee believes H.R. 2400 would appropriately correct the unintended oversight of the Omnibus Territories Act of 1984 (Public Law 98-454) and insulate the judiciary in Guam from local politics and undue political interference. The Committee also believes H.R. 2400 would remove any uncertainty regarding future actions that threaten to undo the clarity of roles recently established in Guam public law. Recent developments in Guam have emphasized the need for H.R. 2400 in as much as the Supreme Court of Guam has rendered judgments on local disputes between different branches for the Government of Guam and between elected officials in the territory.

The Committee also notes that in the 107th Congress, there was local opposition on Guam to similar legislation, including some unfavorable views that were received by the Committee. However, the Guam Legislature subsequently took action on October 31, 2003, with the enactment of Public Law 27-31, which established the Supreme Court of Guam as the highest court with administrative control over the judiciary in the territory. In addition, on April 23, 2004, the Guam Legislature approved Resolution No. 139, sponsored by all 15 of its members, expressing their support of H.R. 2400. It is important to note that the current Governor of Guam, Governor Camacho, wrote to the author of the bill on May 7, 2004, in support of H.R. 2400, stating "My personal preference is for our tri-partite structure of government to be established in a Guam Constitution. Further, the specifics of the internal operation of our judicial branch should be established locally. \* \* \* However \* \* \* until Guam adopts its own constitution, \* \* \* I support your efforts to establish Guam's judicial branch in our Organic Act."

#### COMMITTEE ACTION

H.R. 2400 was introduced on June 10, 2003, by Congresswoman Madeleine Z. Bordallo (D-GU). The bill was referred to the Committee on Resources. On July 14, 2004, the Full Resources Committee met to consider the bill. No amendments were offered, and the bill was ordered favorably reported to the House of Representatives by unanimous consent.

The Committee held hearings on the restructuring of Guam's judicial branch during the 105th and 107th Congresses, and in the

107th Congress, a similar bill, H.R. 521, was favorably reported from the Committee on Resources by unanimous consent.

#### COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Resources' oversight findings and recommendations are reflected in the body of this report.

#### CONSTITUTIONAL AUTHORITY STATEMENT

Article IV, section 3 of the Constitution of the United States grants Congress the authority to enact this bill.

#### COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

2. Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

3. General Performance Goals and Objectives. This bill does not authorize funding and therefore, clause 3(c)(4) of rule XIII of the Rules of the House of Representatives does not apply.

4. Congressional Budget Office Cost Estimate. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, July 21, 2004.*

Hon. RICHARD W. POMBO,  
*Chairman, Committee on Resources,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2400, a bill to amend the Organic Act of Guam for the purposes of clarifying the local judicial structure of Guam.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Matthew Pickford (for federal costs) and Marjorie A. Miller (for the state and local impact).

Sincerely,

ELIZABETH M. ROBINSON  
(For Douglas Holtz-Eakin, Director).

Enclosure.

*H.R. 2400—A bill to amend the Organic Act of Guam for the purposes of clarifying the local judicial structure of Guam*

H.R. 2400 would amend the Organic Act of Guam to establish a unified judicial system in Guam, independent of the Guam legislature, consisting of an appellate court (Supreme Court) and a trial court (Superior Court of Guam). In addition, the bill would give the Supreme Court administrative authority over all local courts. CBO estimates that enacting this legislation would have no impact on the federal budget because it would affect the structure of the local judiciary system.

The bill contains no private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). H.R. 2400 contains an intergovernmental mandate as defined in UMRA, but CBO estimates that the cost of the mandate would be well below the threshold established in that act (\$60 million in 2004, adjusted annually for inflation). This mandate is a preemption of authority delegated to the legislature of Guam by the Organic Act of Guam. Under that act, the local legislature currently has the authority to establish the structure of the Guam judiciary. H.R. 2400 would eliminate that authority and impose a specific structure. Because this structure is similar to the existing system, however, we expect that the mandate would impose no significant costs on the government of Guam. Enacting this bill would have no impact on the budgets of other state, local, or tribal governments.

The CBO staff contacts for this estimate are Matthew Pickford (for federal costs) and Marjorie A. Miller (for the state and local impact). This estimate approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates, as defined in Public law 104-4.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

**ORGANIC ACT OF GUAM**

\* \* \* \* \*

SEC. 22. [(a) The judicial authority of Guam shall be vested in a court of record established by Congress, designated the "District Court of Guam," and such local court or courts as may have been or shall hereafter be established by the laws of Guam in conformity with section 22A of this Act.] *(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 ap-*

*pellate 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.*

\* \* \* \* \*

**【SEC. 22A. (a) The local courts of Guam shall consist of such trial court or courts as may have been or may hereafter be established by the laws of Guam. On or after the effective date of this Act, the legislature of Guam may in its discretion establish an appellate court.**

**【(b) The legislature may vest in the local courts jurisdiction over all causes in Guam over which any court established by the Constitution and laws of the United States does not have exclusive jurisdiction. Such jurisdiction shall be subject to the exclusive or concurrent jurisdiction conferred on the District Court of Guam by section 22(b) of this Act.**

**【(c) The practice and procedure in the local courts and the qualifications and duties of the judges thereof shall be governed by the laws of Guam and the rules of those courts.】**

*SEC. 22A. (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.

SEC. 22B. 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[ *Provided, That for the first fifteen years following the establishment of the appellate court authorized by section 22A(a) of this Act, the United States Court of Appeals for the Ninth Circuit shall have jurisdiction to review by writ of certiorari all final decisions of the highest court of Guam from which a decision could be had. The Judicial Council of the Ninth Circuit shall submit reports to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives at intervals of five years following the establishment of such appellate court as to whether it has developed sufficient institutional traditions to justify direct review by the Supreme Court of the United States from all such final decisions. 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.*].

SEC. 22C. (a) Prior to the establishment of the appellate court authorized by section 22A(a) of this Act, *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 pre-*

clude the review of any judgment or order which involves the Constitution, treaties, or laws of the United States including this Act, 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 Act, or any authority exercised thereunder by an officer or agency of the United States.

\* \* \* \* \*

(d) Upon the establishment of the appellate court provided for in section 22A(a) of this Act, *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 the appellate court】** *taken to such appellate court*. The establishment of that 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.

\* \* \* \* \*

○