

**MINA'BENTE OCHO NA LIHESLATURAN GUÅHAN**  
**2006 (SECOND) Regular Session**

**Bill No. 259 (EC)**

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**AN ACT TO REQUEST THE UNITED STATES  
CONGRESS TO ADD A NEW SUBSECTION (C)  
TO SECTION 7 OF THE ORGANIC ACT OF  
GUAM TO PATRIATE THE ORGANIC ACT  
AND TO AMEND 3 GCA CH.17 ART. 4 TO  
PROVIDE THE MEANS TO AMEND THE  
PATRIATED ORGANIC ACT.**

1           **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2           **Section 1. To the United States Congress:** Although they enjoy a measure of  
3 home rule, the people of Guam are not served by a government established by a  
4 constitution of their own making. Home rule for the people of Guam is a function of an act  
5 of Congress, the Organic Act of 1950, which is a sort of quasi constitution.

6           The first step on the path toward home rule began with Congress' passage of the  
7 Organic Act in 1950. The Organic Act provides the framework for the government of  
8 Guam and serves as a quasi constitution. (See note 1)

9           As enacted, the Organic Act created a three branch government only one branch of  
10 which could have been called "local," i.e. the legislature. The judicial branch was the  
11 District Court of Guam, a federal court. The executive branch was headed by a governor  
12 appointed by the President with advice and consent of Congress.

1           Because Congress passed the Elective Governor Act in 1968, “local” status accrued  
2 to the executive branch allowing Guam voters to choose Guam’s first elected governor in  
3 1970.

4           Finally with the passage of Public Law 108-378 in 2004 the construction of the  
5 local three branch government was completed with the creation of a co-equal judicial  
6 branch headed by the Supreme Court of Guam.

7           During the 54 year genesis of the three co-equal branch local government of Guam  
8 Congress acted more than ten times to create and define sub elements of the government of  
9 Guam. It took an Act of Congress to permit the people of Guam to elect their Attorney  
10 General. Even the decision that the entire government of Guam, not just the Governor, is  
11 responsible for education on Guam required congressional action.

12           The next step in the development of home rule is logically the replacement of  
13 Guam’s quasi constitution, The Organic Act of 1950, with a popularly adopted  
14 constitution. However, unresolved questions of political status militate against the adoption  
15 of a constitution. (NB the two failed attempts to adopt a constitution – First Constitutional  
16 Convention, June 1, 1969 & Second Constitutional Convention, August 1978, P.L. 94-584)

17           Because of the absence of a constitution, the people of Guam must petition  
18 Congress for legislation on matters that are purely local. It may be desirable for Congress  
19 to avoid becoming involved with matters which are purely local.

20           Congress could amend the Organic Act to allow the people of Guam to amend  
21 those portions of the Organic Act which deal only with local matters thereby providing a  
22 full measure of home rule to the people of Guam while obviating the necessity for  
23 Congress to become involved with purely local matters. Such a procedure is not without  
24 precedent as home rule for the District of Columbia was brought about in a similar manner  
25 in 1973. (See note 2)

26           The people of Guam respectfully request the Congress to “patriate” (See notes 3 &  
27 4) those portions of the Organic Act of Guam which deal with local matters. Popular  
28 ability to amend what amounts to Guam’s quasi constitution in the deliberate fashion  
29 described below is in the best interest of all concerned as it continues the trend begun by  
30 Congress of extending greater measures of home rule to the people of Guam while freeing  
31 Congress of the necessity to deal with purely local matters.

1           **Section 2. Requesting Congress to amend §7 of the Organic Act.** The people of  
2 Guam respectfully request the United States Congress to amend §7 of the Organic Act of  
3 Guam (48 USC §1422a) to read:

4 “§1422a. Initiative, Referendum and Removal.

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

7           (b) Any Governor, Lieutenant Governor, or member of the Legislature of Guam  
8 may be removed from office by a referendum election in which at least two-thirds of the  
9 number of persons voting for such official in the last preceding general election at which  
10 such official was elected vote in favor of a recall and in which those so voting constitute a  
11 majority of all those participating in the referendum election. The referendum election  
12 shall be initiated by the Legislature of Guam following (a) a two-thirds vote of the  
13 members of the Legislature in favor of a referendum, or (b) a petition for such a  
14 referendum to the Legislature by registered voters equal in number to at least 50 per  
15 centum of the whole number of votes cast at the last general election at which such official  
16 was elected preceding the filing of the petition.

17           (c) The provisions of 48 USC §§1421b (a) through (t), 1421g, 1422,1422a, 1422b,  
18 1422c, 1423, 1423b, 1423c, 1423e, 1423f, 1423g, 1423h, 1423i,1423j,1423k and  
19 1424-1 are deemed to be laws of Guam and may be amended by a referendum conducted at  
20 a general election, provided that such referendum shall not occur unless the measure shall  
21 first have been approved by a two-thirds (2/3) vote by two successive terms of the  
22 Legislature of Guam.”

23           **Section 3. Patriation of the Organic Act.** Patriation of the Organic Act occurs  
24 when the Organic Act of Guam is amended by the United States Congress to allow the  
25 people of Guam, in accordance herewith, to amend the provisions of the Act relating to  
26 local government. At that time the provisions of this act are deemed reenacted.

27           **Section 4. The Patriated Organic Act.** The Patriated Organic Act of Guam  
28 consists of those parts of the Organic Act which may be amended pursuant to 3 GCA Ch.  
29 17 Art. 4 in accordance with the terms of the Organic Act. The Compiler of Laws shall set  
30 out the Patriated Organic Act, with appropriate cross references and notations, as 1 GCA  
31 Ch. 1 and renumber other chapters as appropriate.



1 **January 3, 1973** – Antonio B. Won Pat was sworn into office as Guam’s first Delegate to  
2 Congress.

3 **August 1978** – A proposed constitution drafted by the Second Constitutional Convention  
4 was rejected by the voters of Guam (P.L. 94-584).

5 **August 27, 1986: Public Law 99-396**

6 - The Organic Act was amended to substitute “according to the laws of Guam”  
7 for “at such places in Guam as may be necessary” (§13(a)(1) - permitted elected  
8 board of education).

9 - The Organic Act was amended to substitute “Government of Guam” for  
10 “Governor” (§ 5 - permitted elected board of education).

11 - A new provision was added to the Organic Act granting the Government of  
12 Guam the authority to establish and remove, by law, an Office of the Public  
13 Prosecutor and an Office of the Public Auditor (§13(a)(2)).

14 **October 22, 1986** – President Ronald Reagan signed the Tax Reform Act of 1986 into law  
15 (P.L. 99-514), granting Guam, American Samoa, and the Northern Mariana Islands the  
16 ability to enact their own income tax laws.

17 **October 27, 1998** – The Organic Act was amended allowing qualified voters on Guam to  
18 elect an Attorney General (P.L. 105-291).

19 **June 6, 1999** – Public Law 25-42 was enacted allowing qualified voters on Guam to elect  
20 a Public Auditor.

21 **November 2000** – The first Public Auditor of Guam was elected.

22 **November 2002** – The first Attorney General of Guam was elected

23 **October 30, 2004** – The Organic Act was amended establishing the Judiciary as an  
24 independent branch of the local Government and the Supreme Court as the highest court of  
25 Guam (P.L. 108-378).

26 **Note 2.** Congress enacted Public Law 93-198; 87 Stat. 777; which became law on  
27 December 24, 1973. This act of Congress enacted the District of Columbia Code. §§301  
28 et seq. of the act is the District of Columbia Preamble and Charter, the organic document  
29 for the government of the District, which can be amended by an act of the District of  
30 Columbia Council and a referendum (§303). The District of Columbia Council was

1 created by Congress in the District of Columbia Charter (§401).

2 (<http://www.abfa.com/ogc/hrtall.htm>)

3 **Note 3:** While Canadian constitutional history would seem to have little relevance  
4 to providing greater home rule for Guam, the Canadian experience can be illustrative of a  
5 path the people of Guam might follow in their quest for greater home rule.

6 Tom Bateman of the University of Alberta's Centre for Constitutional Studies  
7 defines patriation as a "term referring to the process by which the Canadian Constitution  
8 was brought fully and formally within the control of the local Canadian government."

9 "In *Re Resolution to Amend the Constitution (Manitoba (Attorney General) v.*  
10 *Canada (Attorney General)*, [1981] 1 S.C.R. 753) the Supreme Court of Canada referred to  
11 the 'anomaly that although Canada has international recognition as an independent,  
12 autonomous and self-governing state ... yet it suffers from an internal deficiency in the  
13 absence of legal power to alter or amend the essential distributive arrangements under  
14 which legal authority is exercised in the country, whether at the federal or provincial level.'  
15 The root of the anomaly is Canada's historic colonial relationship with the United  
16 Kingdom. While Canada became an internally self-governing Dominion in 1867, the  
17 constitutional document establishing the Canadian federation was in fact an Act of the  
18 Parliament at Westminster, alterable by that same Parliament (see British North America  
19 Act). Canadian authorities could request the British authorities to make changes to  
20 Canada's Constitution, but the final decision and the formal amendment machinery lay  
21 with the British.

22 " 'Patriation' would end this vestige of colonial subordination. But in order for  
23 Canada to assume full control of its constitutional destiny, a domestic constitutional  
24 amending formula would have to be added to the Constitution before the British could  
25 relinquish control. Any written constitution must provide the terms for its own amendment.  
26 Yet it was precisely the terms of such a formula on which the Canadians could reach no  
27 consensus. The patriation debate was then bound up with the search for an amending  
28 formula that engaged Canadian politicians off and on from 1927 to 1982. A partial  
29 patriation occurred in 1949 when the British amended the Canadian Constitution to allow  
30 the federal Parliament henceforth to regulate several elements of its internal workings (see  
31 *British North America Act (No.2), 1949*, 13 Geo. VI, c. 81 (U.K.)). The federal government

1 that same year, in another example of partial patriation, unilaterally ended the opportunity  
2 of appeal of Supreme Court of Canada judgments to the Judicial Committee of the Privy  
3 Council (see *An Act to Amend the Supreme Court Act*, S.C. 1949 (2nd sess.), c. 37, s. 3).  
4 Finally, in November 1981, when the First Ministers were able substantially to agree on a  
5 formula and other aspects of constitutional change, the way was clear for the British to  
6 relinquish control of the Canadian Constitution. Patriation formally occurred on 17 April  
7 1982.”

8         **Note 4:** The term “patriate” is somewhat obscure and not found in most  
9 dictionaries. Some would suggest that the term is properly used when it means transfer of  
10 legislative authority to an **autonomous country** from a previous **mother country**. Even  
11 though Guam is not an autonomous country the word “patriate” is quite useful in the  
12 context in which it is used here and easily bears the meaning assigned to it in this bill.