

MEMORANDUM

January 4, 2022

To: Congressman Michael San Nicolas
Attention: Matthew Steil, Legislative Aide

From: Nina M. Hart, Legislative Attorney, nhart@crs.loc.gov, 7-3837

Subject: **Procedural and Substantive Requirements for Guam to Adopt a Constitution**

You requested a memorandum about whether and how Guam may adopt a constitution. This memorandum provides information about the current legal framework for adoption of a constitution; background information on an unsuccessful attempt to adopt a constitution in the 1970s; and how the legal framework may need to be updated to enable another constitutional convention.

Background

The Organic Act of 1950¹ currently governs Guam, acting as a quasi-constitution. To date, Guam has not adopted its own constitution. As described below, Congress passed Public Law No. 94-584 in 1976 to allow Guam to adopt a constitution. Pursuant to that Act, Guam enacted statutory provisions to draft a constitution and hold a constitutional referendum.

Public Law No. 94-584

Public Law No. 94-584 authorizes Guam to adopt a constitution, subject to certain procedural and substantive requirements.² The Act authorizes Guam to call a constitutional convention to draft a constitution. Although Guam retains discretion over some contents of any constitution, the Act requires that the proposed constitution do the following:

- Recognize, and be consistent with, the sovereignty of the United States over Guam, and the supremacy of the Constitution, treaties, and laws of the United States applicable to Guam, including the parts of the Organic Act of 1950 that do not relate to local self-government;
- Provide for a republican form of government with an executive, legislative, and judicial branch;
- Contain a bill of rights;

¹ Organic Act of 1950, Pub. L. No. 81-630 (codified at 48 U.S.C. § 1421 *et seq.*).

² Pub. L. No. 94-584, § 5. Further details of provisions and amendments applicable only to the Virgin Islands are outside the scope of this memorandum.

- Address the subject matter of the Organic Act of 1950's provisions related to local self-government;
- Provide that the voting franchise may be vested only in residents of Guam who are U.S. citizens; and
- Provide for the establishment of a local court system.³

The Act allows Guam to set out procedures for calling a constitutional convention in local law, but requires that all convention participants be U.S. citizens who are qualified to vote in Guam.⁴ If the convention finalizes a proposed constitution, the convention must submit the constitution to the Governor of Guam, who must in turn transmit it to the U.S. President.⁵ Within sixty calendar days of receiving the proposed constitution, the President must transmit it to Congress along with any comments the President wishes to make.⁶ Congress may approve, amend, or modify the proposed constitution by joint resolution within "sixty legislative days (not interrupted by an adjournment sine die of the Congress) after its submission."⁷ If Congress takes no action within the sixty-day period for consideration, the constitution is deemed approved.⁸ Following congressional approval, the constitution must be approved by referendum with at least a majority of voters in favor of adoption.⁹

Guam Public Law No. 13-202

Pursuant to the authority set out in Public Law No. 94-584, the Guam Legislature adopted Guam Public Law No. 13-202, setting out procedures for drafting and approving a constitution.¹⁰ Among other things, the law does the following:

- Establishes a constitutional convention for May 4, 1977;
- Sets out qualifications of and election processes for convention delegates;
- Sets voter registration requirements and a deadline of February 28, 1977;
- Sets the number of delegates for each municipal district by March 3, 1977;
- Requires the election of delegates on April 16, 1977;
- Requires the Speaker of the Guam Legislature to convene an organizational meeting of the Convention on May 4, 1977;
- Requires the Convention to draft a constitution consistent with Public Law No. 94-584;
- Provides that the Convention may not last for more than 120 days, and in no event may continue beyond October 31, 1977;
- Requires the Convention to submit a proposed constitution to the Governor on or before December 31, 1977; and

³ *Id.* § 2.

⁴ *Id.* § 3.

⁵ *Id.* § 4.

⁶ *Id.* § 5.

⁷ *Id.* (as amended by Pub. L. No. 96-597, § 501).

⁸ *Id.*

⁹ *Id.*

¹⁰ Guam Pub. L. No. 13-202 (1976) (codified at 5 G.C.A. ch. 42).

- Requires the proposed constitution, if approved by Congress, to be submitted to a referendum on August 4, 1979.¹¹

Guam's 1970s Attempt to Adopt a Constitution

Guam sought to adopt a constitution in 1977, consistent with the procedures and requirements of Public Law No. 94-584 and Guam Public Law No. 13-202.¹² After holding a constitutional convention, the Governor of Guam sent a proposed constitution to President Jimmy Carter. On April 28, 1978, President Carter transmitted the proposed constitution with his comments to Congress.¹³ On May 22, 1978, the House Committee on Energy and Natural Resources held a hearing on the proposed constitution,¹⁴ but Congress did not otherwise take action within the sixty-day time period set out in Public Law No. 94-584. Thus, the proposed constitution was deemed approved. On August 4, 1979, Guam held a referendum on the proposed constitution, which resulted in its rejection.¹⁵

Discussion

Should Guam wish to consider holding another constitutional convention, it appears that the authority and framework set out in Public Law No. 94-584 remains valid and legally binding, as the statute does not sunset and has not been repealed.¹⁶ Guam Public Law No. 13-202 does not appear to have been formally repealed. However, if the Guam Legislature wishes to rely on that law, it would need to be updated because many of the provisions and procedures set out for holding a constitutional convention apply specifically to dates in the 1970s.¹⁷

¹¹ *Id.*

¹² In 1969, Guam held what it called a “constitutional convention” to amend the Organic Act of 1950. *See* Guam Pub. L. No. 9-244 (1968). However, the 1977 Convention was the first authorized by Congress for purposes of drafting a full, new constitution.

¹³ Message to the Congress Transmitting the Territory’s Proposed Constitution from President Jimmy Carter, Apr. 28, 1978, available at <https://www.presidency.ucsb.edu/documents/territory-guam-message-the-congress-transmitting-the-territory-proposed-constitution> (last visited Jan. 4, 2022).

¹⁴ *Constitution of Guam*, H. Comm. on Energy & Nat. Res., 95th Cong. (1978).

¹⁵ *See* Guam Election Commission, *Election Comparative Analysis Report 56-57* (1979); G.A. Res. 34/39 (Nov. 21, 1979) (noting outcome of 1979 referendum).

¹⁶ Also authorized to adopt a constitution under this statute, the Virgin Islands has relied on it, as amended, to draft and hold referenda on five proposed constitutions, although none have thus far been adopted. *See* Ernice Gilbert, *Virgin Islanders Overwhelmingly Support Referendum Calling for Constitutional Convention*, THE VIRGIN ISLANDS CONSORTIUM (Nov. 5, 2020), <https://viconsortium.com/vi-election/virgin-islands-virgin-islanders-overwhelmingly-support-referendum-calling-for-constitutional-convention> (last visited Jan. 4, 2022).

¹⁷ This memorandum does not address other ways in which Guam may seek to change its political relationship with the United States, such as via the proposed Guam Commonwealth Act introduced in several Congresses. *See* H.R. 4100, 100th Cong. (1988); H.R. 98, 101st Cong. (1989); H.R. 98, 102d Cong. (1991); S. 692, 101st Cong. (1991); H.R. 1521, 103d Cong. (1993); H.R. 1056, 104th Cong. (1995); H.R. 100, 105th Cong. (1997); S. 1373, 105th Cong. (1997).