

105TH CONGRESS
1ST SESSION

S. 1078

To amend the Organic Act of Guam to provide restitution to the people of Guam who suffered atrocities such as personal injury, forced labor, forced marches, internment, and death during the occupation of Guam in World War II, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 29, 1997

Mr. INOUE introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend the Organic Act of Guam to provide restitution to the people of Guam who suffered atrocities such as personal injury, forced labor, forced marches, internment, and death during the occupation of Guam in World War II, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Guam War Restitution
5 Act”.

1 **SEC. 2. AMENDMENT TO ORGANIC ACT OF GUAM TO PRO-**
 2 **VIDE RESTITUTION.**

3 The Organic Act of Guam (48 U.S.C. 1421 et seq.)
 4 is amended by adding at the end the following new section:

5 **“SEC. 35. RECOGNITION OF DEMONSTRATED LOYALTY OF**
 6 **GUAM TO UNITED STATES, AND SUFFERING**
 7 **AND DEPRIVATION ARISING THEREFROM,**
 8 **DURING WORLD WAR II.**

9 “(a) DEFINITIONS.—For purposes of this section:

10 “(1) AWARD.—The term ‘award’ means the
 11 amount of compensation payable under subsection
 12 (d)(2).

13 “(2) BENEFIT.—The term ‘benefit’ means the
 14 amount of compensation payable under subsection
 15 (d)(3).

16 “(3) COMMISSION.—The term ‘Commission’
 17 means the Guam Trust Fund Commission estab-
 18 lished by subsection (f).

19 “(4) COMPENSABLE INJURY.—The term ‘com-
 20 pensable injury’ means one of the following three
 21 categories of injury incurred during and as a result
 22 of World War II:

23 “(A) Death.

24 “(B) Personal injury (as defined by the
 25 Commission).

1 “(C) Forced labor, forced march, or in-
2 ternment.

3 “(5) GUAMANIAN.—The term ‘Guamanian’
4 means any person who—

5 “(A) resided in the territory of Guam dur-
6 ing any portion of the period beginning on De-
7 cember 8, 1941, and ending on August 10,
8 1944, and

9 “(B) was a United States citizen or na-
10 tional during such portion.

11 “(6) PROOF.—The term ‘proof’ relative to com-
12 pensable injury means any one of the following, if
13 determined by the Commission to be valid:

14 “(A) An affidavit by a witness to such
15 compensable injury;

16 “(B) A statement, attesting to compen-
17 sable injury, which is—

18 “(i) offered as oral history collected
19 for academic, historic preservation, or jour-
20 nalistic purposes;

21 “(ii) made before a committee of the
22 Guam legislature;

23 “(iii) made in support of a claim filed
24 with the Guam War Reparations Commis-
25 sion;

1 “(iv) filed with a private Guam war
2 claims advocate; or

3 “(v) made in a claim pursuant to the
4 first section of the Act of November 15,
5 1945 (Chapter 483; 59 Stat. 582).

6 “(7) TRUST FUND.—The term ‘Trust Fund’
7 means the Guam Trust Fund established by sub-
8 section (e).

9 “(b) REQUIREMENTS FOR CLAIMS AND GENERAL
10 DUTIES OF COMMISSION—

11 “(1) REQUIRED INFORMATION FOR CLAIMS.—
12 Each claim for an award or benefit under this sec-
13 tion shall be made under oath and shall include—

14 “(A) the name and age of the claimant;

15 “(B) the village in which the individual
16 who suffered the compensable injury which is
17 the basis for the claim resided at the time the
18 compensable injury occurred;

19 “(C) the approximate date or dates on
20 which the compensable injury occurred;

21 “(D) a brief description of the compen-
22 sable injury which is the basis for the claim;

23 “(E) the circumstances leading up to the
24 compensable injury; and

1 “(F) in the case of a claim for a benefit,
2 proof of the relationship of the claimant to the
3 relevant decedent.

4 “(2) GENERAL DUTIES OF THE COMMISSION TO
5 PROCESS CLAIMS.—With respect to each claim filed
6 under this section, the Commission shall determine
7 whether the claimant is eligible for an award or ben-
8 efit under this section and, if so, shall certify the
9 claim for payment in accordance with subsection (d).

10 “(3) TIME LIMITATION.—With respect to each
11 claim submitted under this section, the Commission
12 shall act expeditiously, but in no event later than 1
13 year after the receipt of the claim by the Commis-
14 sion, to fulfill the requirements of paragraph (2) re-
15 garding the claim.

16 “(4) DIRECT RECEIPT OF PROOF FROM PUBLIC
17 CLAIMS FILES PERMITTED.—The Commission may
18 receive proof of a compensable injury directly from
19 the Governor of Guam, or the Federal custodian of
20 an original claim filed with respect to the injury pur-
21 suant to the first section of the Act of November 15,
22 1945 (Chapter 483; 59 Stat. 582), if such proof is
23 contained in the respective public records of the
24 Governor or the custodian.

25 “(c) ELIGIBILITY.—

1 “(1) ELIGIBILITY FOR AWARDS.—A claimant
 2 shall be eligible for an award under this section if
 3 the claimant meets each of the following criteria:

4 “(A) The claimant is—

5 “(i) a living Guamanian who person-
 6 ally received the compensable injury that is
 7 the basis for the claim, or

8 “(ii) the heir or next of kin of a dece-
 9 dent Guamanian, in the case of a claim
 10 with respect to which the compensable in-
 11 jury is death.

12 “(B) The claimant meets the requirements
 13 of paragraph (3).

14 “(2) ELIGIBILITY FOR BENEFITS.—A claimant
 15 shall be eligible for a benefit under this section if the
 16 claimant meets each of the following criteria:

17 “(A) The claimant is the heir or next of
 18 kin of a decedent Guamanian who personally
 19 received the compensable injury that is the
 20 basis for the claim, and the claim is made with
 21 respect to a compensable injury other than
 22 death.

23 “(B) The claimant meets the requirements
 24 of paragraph (3).

1 “(3) GENERAL REQUIREMENTS FOR ELIGI-
2 BILITY.—A claimant meets the requirements of this
3 paragraph if the claimant meets each of the follow-
4 ing criteria:

5 “(A) The claimant files a claim with the
6 Commission regarding a compensable injury
7 and containing all of the information required
8 by subsection (b)(1).

9 “(B) The claimant furnishes proof of the
10 compensable injury.

11 “(C) By such procedures as the Commis-
12 sion may prescribe, the claimant files a claim
13 under this section not later than 1 year after
14 the date of the appointment of the ninth mem-
15 ber of the Commission.

16 “(4) LIMITATION ON ELIGIBILITY FOR AWARDS
17 AND BENEFITS—

18 “(A) AWARDS.—

19 “(i) No claimant may receive more
20 than 1 award under this section and not
21 more than 1 award may be paid under this
22 section with respect to each decedent de-
23 scribed in paragraph (1)(A)(ii).

1 “(ii) Each award shall consist of only
2 1 of the amounts referred to in subsection
3 (d)(2).

4 “(B) BENEFITS.—

5 “(i) Not more than 1 benefit may be
6 paid under this Act with respect to each
7 decedent described in paragraph (2)(A).

8 “(ii) Each benefit shall consist of only
9 1 of the amounts referred to in subsection
10 (d)(3).

11 “(d) PAYMENTS.—

12 “(1) CERTIFICATION.—The Commission shall
13 certify for payment all awards and benefits that the
14 Commission determines are payable under this sec-
15 tion.

16 “(2) AWARDS.—The Commission shall pay from
17 the Trust Fund 1 of the following amounts as an
18 award for each claim with respect to which a claim-
19 ant is determined to be eligible under subsection
20 (c)(1):

21 “(A) \$20,000 if the claim is based on
22 death.

23 “(B) \$7,000 if the claim is based on per-
24 sonal injury.

1 “(C) \$5,000 if the claim is based on forced
2 labor, forced march, or internment and is not
3 based on personal injury.

4 “(3) BENEFITS.—The Commission shall pay
5 from the Trust Fund 1 of the following amounts as
6 a benefit with respect to each claim for which a
7 claimant is determined eligible under subsection
8 (c)(2):

9 “(A) \$7,000 if the claim is based on per-
10 sonal injury.

11 “(B) \$5,000 if the claim is based on forced
12 labor, forced march, or internment and is not
13 based on personal injury.

14 “(4) REDUCTION OF AMOUNT TO COORDINATE
15 WITH PREVIOUS CLAIMS.—The amount required to
16 be paid under paragraph (2) or (3) for a claim with
17 respect to any Guamanian shall be reduced by any
18 amount paid under the first section of the Act of
19 November 15, 1945 (Chapter 483; 59 Stat. 582)
20 with respect to such Guamanian.

21 “(5) FORM OF PAYMENT.—

22 “(A) AWARDS.—In the case of a claim for
23 an award, payment under this subsection shall
24 be made in cash to the claimant, except as pro-
25 vided in paragraph (6).

1 “(B) BENEFITS.—In the case of a claim
2 for a benefit—

3 “(i) IN GENERAL.—Payment under
4 this subsection shall consist of—

5 “(I) provision of a scholarship;

6 “(II) payment of medical ex-
7 penses; or

8 “(III) a grant for first-time home
9 ownership.

10 “(ii) METHOD OF PAYMENT.—Pay-
11 ment of cash under this subsection may
12 not be made directly to a claimant, but
13 may be made to a service provider, seller
14 of goods or services, or other person in
15 order to provide to a claimant (or other
16 person, as provided in paragraph (6)) a
17 benefit referred to in subparagraph (B).

18 “(C) DEVELOPMENT OF PROCEDURES.—
19 The Commission shall develop and implement
20 procedures to carry out this paragraph.

21 “(6) PAYMENTS ON CLAIMS WITH RESPECT TO
22 SAME DECEDENT.—

23 “(A) AWARDS.—In the case of a claim
24 based on the compensable injury of death, pay-
25 ment of an award under this section shall be di-

1 vided, as provided in the probate laws of Guam,
2 among the heirs or next of kin of the decedent
3 who file claims for such division by such proce-
4 dures as the Commission may prescribe.

5 “(B) INDIVIDUALS PROVING CONSANGUIN-
6 ITY WITH CLAIMANTS FOR BENEFITS.—Each
7 individual who proves consanguinity with a
8 claimant who has met each of the criteria speci-
9 fied in subsection (c)(2) shall be entitled to re-
10 ceive an equal share of the benefit accruing
11 under this section with respect to the claim of
12 such claimant if the individual files a claim with
13 the Commission by such procedures as the
14 Commission may prescribe.

15 “(7) ORDER OF PAYMENTS.—The Commission
16 shall endeavor to make payments under this section
17 with respect to awards before making such payments
18 with respect to benefits and, when making payments
19 with respect to awards or benefits, respectively, to
20 make payments to eligible individuals in the order of
21 date of birth (the oldest individual on the date of the
22 enactment of this Act, or if applicable, the survivors
23 of that individual, receiving payment first) until all
24 eligible individuals have received payment in full.

1 “(8) REFUSAL TO ACCEPT PAYMENT.—If a
2 claimant refuses to accept a payment made or of-
3 fered under paragraph (2) or (3) with respect to a
4 claim filed under this section—

5 “(A) the amount of the refused payment,
6 if withdrawn from the Trust Fund for purposes
7 of making the payment, shall be returned to the
8 Trust Fund; and

9 “(B) no payment may be made under this
10 section to such claimant at any future date with
11 respect to the claim.

12 “(9) CLARIFICATION OF TREATMENT OF PAY-
13 MENTS UNDER OTHER LAWS.—Awards paid to eligi-
14 ble claimants—

15 “(A) shall be treated for purposes of the
16 internal revenue laws of the United States as
17 damages received on account of personal inju-
18 ries or sickness; and

19 “(B) shall not be included as income or re-
20 sources for purposes of determining eligibility to
21 receive benefits described in section
22 3803(c)(2)(C) of title 31, United States Code,
23 or the amount of such benefits.

24 “(e) GUAM TRUST FUND.—

1 “(1) ESTABLISHMENT.—There is established in
 2 the Treasury of the United States the Guam Trust
 3 Fund, which shall be administered by the Secretary
 4 of the Treasury.

5 “(2) INVESTMENTS.—Amounts in the Trust
 6 Fund shall be invested in accordance with section
 7 9702 of title 31, United States Code.

8 “(3) USES.—Amounts in the Trust Fund shall
 9 be available only for disbursement by the Commis-
 10 sion in accordance with subsection (f).

11 “(4) DISPOSITION OF FUNDS UPON TERMI-
 12 NATION.—If all of the amounts in the Trust Fund
 13 have not been obligated or expended by the date of
 14 the termination of the Commission, investments of
 15 amounts in the Trust Fund shall be liquidated, the
 16 receipts of such liquidation shall be deposited in the
 17 Trust Fund, and any unobligated funds remaining
 18 in the Trust Fund shall be given to the University
 19 of Guam, with the conditions that—

20 “(A) the funds are invested as described in
 21 paragraph (2);

22 “(B) the funds are used for scholarships to
 23 be known as Guam World War II Loyalty
 24 Scholarships, for claimants described in para-
 25 graph (1) or (2) of subsection (c) or in sub-

1 section (d)(6), or for such scholarships for the
 2 descendants of such claimants; and

3 “(C) as the University determines appro-
 4 priate, the University shall endeavor to award
 5 the scholarships referred to in subparagraph
 6 (B) in a manner that permits the award of the
 7 largest possible number of scholarships over the
 8 longest possible period of time.

9 “(f) GUAM TRUST FUND COMMISSION.—

10 “(1) ESTABLISHMENT.—There is established
 11 the Guam Trust Fund Commission, which shall be
 12 responsible for making disbursements from the
 13 Guam Trust Fund in the manner provided in this
 14 section.

15 “(2) USE OF GUAM TRUST FUND.—The Com-
 16 mission may make disbursements from the Guam
 17 Trust Fund only for the following uses:

18 “(A) To make payments, under subsection
 19 (d), of awards and benefits.

20 “(B) To sponsor research and public edu-
 21 cational activities so that the events surround-
 22 ing the wartime experiences and losses of the
 23 Guamanian people will be remembered, and so
 24 that the causes and circumstances of this event

1 and similar events may be illuminated and un-
2 derstood.

3 “(C) To pay reasonable administrative ex-
4 penses of the Commission, including expenses
5 incurred under paragraphs (3)(C), (4), and (5).

6 “(3) MEMBERSHIP.—

7 “(A) NUMBER AND APPOINTMENT.—The
8 Commission shall be composed of 9 members
9 who are not officers or employees of the United
10 States Government and who are appointed by
11 the President from recommendations made by
12 the Governor of Guam.

13 “(B) TERMS.—

14 “(i) Initial members of the Commis-
15 sion shall be appointed for initial terms of
16 3 years, and subsequent terms shall be of
17 a length determined pursuant to subpara-
18 graph (F).

19 “(ii) Any member of the Commission
20 who is appointed to fill a vacancy occur-
21 ring before the expiration of the term for
22 which such member’s predecessor was ap-
23 pointed shall be appointed only for the re-
24 mainder of such term.

1 “(C) PROHIBITION OF COMPENSATION
2 OTHER THAN EXPENSES.—Members of the
3 Commission shall serve without pay as such, ex-
4 cept that members of the Commission shall be
5 entitled to reimbursement for travel, subsist-
6 ence, and other necessary expenses incurred by
7 them in carrying out the functions of the Com-
8 mission in the same manner that persons em-
9 ployed intermittently in the United States Gov-
10 ernment are allowed expenses under section
11 5703 of title 5, United States Code.

12 “(D) QUORUM.—5 members of the Com-
13 mission shall constitute a quorum but a lesser
14 number may hold hearings.

15 “(E) CHAIRPERSON.—The Chairperson of
16 the Commission shall be elected by the mem-
17 bers of the Commission.

18 “(F) SUBSEQUENT APPOINTMENTS.—

19 “(i) Upon the expiration of the term
20 of each member of the Commission, the
21 President shall reappoint the member (or
22 appoint another individual to replace the
23 member) if the President determines, after
24 consideration of the reports submitted to
25 the President by the Commission under

1 this section, that there are sufficient funds
 2 in the Trust Fund for the present and fu-
 3 ture administrative costs of the Commis-
 4 sion and for the payment of further
 5 awards and benefits for which claims have
 6 been or may be filed under this title.

7 “(ii) Members appointed under clause
 8 (i) shall be appointed for a term of a
 9 length that the President determines to be
 10 appropriate, but the length of such term
 11 shall not exceed 3 years.

12 “(4) STAFF AND SERVICES.—

13 “(A) DIRECTOR.—The Commission shall
 14 have a Director who shall be appointed by the
 15 Commission.

16 “(B) ADDITIONAL STAFF.—The Commis-
 17 sion may appoint and fix the pay of such addi-
 18 tional staff as it may require.

19 “(C) INAPPLICABILITY OF CERTAIN PROVI-
 20 SIONS OF TITLE 5, UNITED STATES CODE.—The
 21 Director and the additional staff of the Com-
 22 mission may be appointed without regard to
 23 section 5311 of title 5, United States Code, and
 24 without regard to the provisions of such title
 25 governing appointments in the competitive serv-

ice, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates, except that the compensation of any employee of the Commission may not exceed a rate equivalent to the minimum rate of basic pay payable for GS-15 of the General Schedule under section 5332(a) of such title.

“(D) ADMINISTRATIVE SUPPORT SERVICES.—The Administrator of General Services shall provide to the Commission, on a reimbursable basis, such administrative support services as the Commission may request.

“(5) GIFTS AND DONATIONS.—The Commission may accept, use, and dispose of gifts or donations of funds, services, or property for uses referred to in paragraph (2). The Commission may deposit such gifts or donations, or the proceeds from such gifts or donations, into the Trust Fund.

“(6) TERMINATION.—The Commission shall terminate on the earlier of—

“(A) the expiration of the 6-year period beginning on the date of the appointment of the first member of the Commission; or

1 “(B) the date on which the Commission
2 submits to the Congress a certification that all
3 claims certified for payment under this section
4 are paid in full and no further claims are ex-
5 pected to be so certified.

6 “(g) NOTICE.—Not later than 90 days after the ap-
7 pointment of the ninth member of the Commission, the
8 Commission shall give public notice in the territory of
9 Guam and such other places as the Commission deems ap-
10 propriate of the time limitation within which claims may
11 be filed under this section. The Commission shall ensure
12 that the provisions of this section are widely published in
13 the territory of Guam and such other places as the Com-
14 mission deems appropriate, and the Commission shall
15 make every effort both to advise promptly all individuals
16 who may be entitled to file claims under the provisions
17 of this title and to assist such individuals in the prepara-
18 tion and filing of their claims.

19 “(h) REPORTS.—

20 “(1) COMPENSATION AND CLAIMS.—Not later
21 than 12 months after the formation of the Commis-
22 sion, and each year thereafter for which the Com-
23 mission is in existence, the Commission shall submit
24 to the Congress, the President, and the Governor of
25 Guam a report containing a determination of the

1 specific amount of compensation necessary to fully
2 carry out this section, the expected amount of re-
3 ceipts to the Trust Fund, and all payments made
4 by the Commission under this section. The report
5 shall also include, with respect to the year which the
6 report concerns—

7 “(A) a list of all claims, categorized by
8 compensable injury, which were determined to
9 be eligible for an award or benefit under this
10 section, and a list of all claims, categorized by
11 compensable injury, which were certified for
12 payment under this section; and

13 “(B) a list of all claims, categorized by
14 compensable injury, which were determined not
15 to be eligible for an award or benefit under this
16 section, and a brief explanation of the reason
17 therefor.

18 “(2) ANNUAL OPERATIONS AND STATUS OF
19 TRUST FUND.—Beginning with the first full fiscal
20 year ending after submission of the first report re-
21 quired by paragraph (1), and annually thereafter
22 with respect to each fiscal year in which the Com-
23 mission is in existence, the Commission shall submit
24 a report to Congress, the President, and the Gov-
25 ernor of Guam concerning the operations of the

1 Commission under this section and the status of the
 2 Trust Fund. Each such report shall be submitted
 3 not later than January 15th of the first calendar
 4 year beginning after the end of the fiscal year which
 5 the report concerns.

6 “(3) FINAL AWARD REPORT.—After all awards
 7 have been paid to eligible claimants, the Commission
 8 shall submit a report to the Congress, the President,
 9 and the Governor of Guam certifying—

10 “(A) the total amount of compensation
 11 paid as awards under this section, broken down
 12 by category of compensable injury; and

13 “(B) the status of the Trust Fund and the
 14 amount of any existing balance thereof.

15 “(4) FINAL BENEFITS REPORT.—After all bene-
 16 fits have been paid to eligible claimants, the Com-
 17 mission shall submit a report to the Congress, the
 18 President, and the Governor of Guam certifying—

19 “(A) the total amount of compensation
 20 paid as benefits under this section, broken down
 21 by category of compensable injury; and

22 “(B) the final status of the Trust Fund
 23 and the amount of any existing balance thereof.

24 “(i) LIMITATION OF AGENT AND ATTORNEY FEES.—

25 It shall be unlawful for an amount exceeding 5 percent

1 of any payment required by this section with respect to
2 an award or benefit to be paid to or received by any agent
3 or attorney for any service rendered in connection with
4 the payment. Any person who violates this section shall
5 be fined under title 18, United States Code, or imprisoned
6 for not more than 1 year, or both.

7 “(j) DISCLAIMER.—No provision of this section shall
8 constitute an obligation for the United States to pay any
9 claim arising out of war. The compensation provided in
10 this section is ex gratia in nature and intended solely as
11 a means of recognizing the demonstrated loyalty of the
12 people of Guam to the United States, and the suffering
13 and deprivation arising therefrom, during World War II.

14 “(k) AUTHORIZATION OF APPROPRIATIONS.—There
15 are authorized to be appropriated, from sums appro-
16 priated to the Department of the Interior, such sums as
17 may be necessary to carry out this section, including the
18 administrative responsibilities of the Commission for the
19 36-month period beginning on the date of the appointment
20 of the ninth member of the Commission. Amounts appro-
21 priated pursuant to this section are authorized to remain
22 available until expended.”.

23 **SEC. 3. RECOMMENDATION OF FUNDING MEASURES.**

24 Not later than 1 year after the date of the submission
25 of the first report submitted under section 35(h)(1) of the

1 Organic Act of Guam (as added by section 2 of this Act),
2 the President shall submit to the Congress a list of rec-
3 ommended spending cuts or other measures which, if im-
4 plemented, would generate sufficient savings or income,
5 during the first 5 fiscal years beginning after the date of
6 the submission of such list, to provide the amount of com-
7 pensation necessary to fully carry out this section (as de-
8 termined in such first report).

○