I MINA'TRENTAI UNU NA LIHESLATURAN GUÅHAN
2011 (FIRST) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO *I MAGA'LAHEN GUÅHAN*

This is to certify that **Substitute Bill No. 62-31 (COR), "AN ACT TO *AMEND* §53105 OF CHAPTER 53, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO ENSURING THE ADEQUATE REPAIR AND RESTORATION OF GUAM'S PUBLIC ROADS AND HIGHWAYS BY CONTRACTORS WHO OPEN AND EXCAVATE THESE ROADS,"** was on the 19th day of September, 2011, duly and regularly passed.

Judith T. Won Pat, Ed.D.
Speaker

Attested:

Tina Rose Muña Barnes
Legislative Secretary

This Act was received by *I Maga'lahen Guåhan* this 20th day of Sept., 2011, at 4:10 o'clock P .M.

Assistant Staff Officer
Maga'lahi's Office

APPROVED:

EDWARD J.B. CALVO
I Maga'lahen Guåhan

Date: _____

Public Law No. _____

I MINA'TRENTAI UNU NA LIHESLATURAN GUÅHAN
2011 (FIRST) Regular Session

Bill No. 62-31 (COR)
As substituted by the Committee on Utilities,
Transportation, Public Works and Veterans Affairs,
and amended on the Floor.

Introduced by: Adolpho B. Palacios, Sr.
T. C. Ada
V. Anthony Ada
F. F. Blas, Jr.
B. J.F. Cruz
Chris M. Dueñas
Judith P. Guthertz, DPA
Sam Mabini, Ph.D.
T. R. Muña Barnes
v. c. pangelinan
Dennis G. Rodriguez, Jr.
R. J. Respicio
M. Silva Taijeron
Aline A.Yamashita, Ph.D.
Judith T. Won Pat, Ed.D.

AN ACT TO *AMEND* §53105 OF CHAPTER 53, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO ENSURING THE ADEQUATE REPAIR AND RESTORATION OF GUAM'S PUBLIC ROADS AND HIGHWAYS BY CONTRACTORS WHO OPEN AND EXCAVATE THESE ROADS.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent. *I Liheslaturan Guåhan* finds that many of Guam's residents have expressed concerns about the opening or excavating of public roads or highways by contractors, who eventually repair the

road following the completion of their work; but at times such repairs are inadequate. The roads and highways that are *not* properly restored to their original condition as a result of temporary excavations or openings eventually become a safety hazard to Guam's drivers and further cause damage to vehicles. Thus, it is essential that the government of Guam have a system in place whereby these private contractors are required to place a deposit fee, and are penalized if the repair work *does not* restore the road or highway back to its original condition. The dangerous road condition these situations present can be minimized or prevented if the government of Guam works collectively with these contractors to ensure repairs are completed, and if an appropriate system is established which would further encourage proper compliance.

Therefore, it is the intent of *I Liheslaturan Guåhan* to require that private contractors who must encroach into Guam's roads or highways for their respective projects provide an initial deposit, which will be returned upon the complete repair and restoration of the road or highway to Department of Public Works standards; or if such repair is inadequate, the deposit fee *shall* then serve as a penalty, in addition to the requirement to re-do the repair work on the designated site.

Section 2. Requirement for Deposit Fee and Bond Insurance for Repair of Highways and Roadways by Public or Private Contractors.

§53105 of Chapter 53, Title 5, Guam Code Annotated, relative to bond and deposit fee requirements for care and protection of highways, is hereby *amended* to read as follows:

"**§ 53105. Condition for Deposit Fees and/or Bond.**

All applications for excavation of a roadway *shall* have a schedule of work that sets the timeline and maximum time before the road is restored to original condition or better. The contractor *shall* be required to close the

opening and restore the roadway upon expiration of time as specified by the permit or the DPW Chief Engineer.

In addition to the permit application fee, any project by a public or private contractor or public agency which would require an opening or excavation for any purpose in a highway or public roadway *shall* be required to provide a deposit fee of *no less than* Five Hundred Dollars ($500) or *no less than* five percent (5%) of the total cost of the project impacting the roadway, whichever is greater. *No* permit shall be granted to a contractor or public agency *unless* the deposit fee is paid in full. The prerequisite for a deposit fee *shall not* be applicable to government-funded projects that necessitate bond insurance coverage as a stipulation of the project. This requirement for a deposit fee *shall not* preclude the Department's condition for a bond, as may be imposed herein.

The deposit fee highlighted herein *shall* be retained by the Department for one (1) year from the completion of the road repair, and until such time that the Department conducts a site inspection of the road or highway project area in which the opening or excavation had occurred, and can ascertain that the repairs were conducted and completed properly in accordance with applicable Federal Highway Administration and/or Department of Public Works standards. *If* the road or highway area is identified to be insufficiently repaired, then the deposit fee *shall* be assessed as a penalty, exclusive of the requirement for the contractor or public agency to return and ensure that proper repair is conducted. Should the area repaired meet the Department's standards set forth for the repair of the road or highway, the Department *shall* return the deposit fee in full, *however*, the permit application fee *shall not* be returned. Inspection of the road or highway

project area *shall* be performed by DPW within the one (1) year period following completion of the road repair.

All proceeds from the deposit fee established by this Section *shall* be deposited into the Territorial Highway Fund, and interest derived therefrom *shall* remain in the Fund. Sufficient funds *shall* be reserved for the refund of deposits, pursuant to this Section.

Emergency Excavations. An emergency excavation may be made without prior permit or deposit if the reason for the excavation is to prevent loss of life or damage to property that appears to be imminent if the excavation is delayed. In such emergency situations the contractor or public agency responsible *shall* contact the Department on the first working day following the excavation and complete and secure a formal permit. The contractor or public agency responsible *shall* provide justification for the emergency excavation. In the event the Department deems that the excavation was *not* an emergency, the applicant *shall* be penalized Five Hundred Dollars ($500) for failure to properly secure a permit prior to excavating and will still be required to pay the appropriate fees and deposits. *Except* for the prior permit requirement, none of the application fee, deposit, bond, or penalty provisions of this Section shall be waived for emergency situations.

Before granting a permit under any provision of this Chapter, the Department may require the applicant to file with the Department a satisfactory bond, payable to the government of Guam in such amount and term as the Department deems sufficient, conditioned on the proper compliance by the permittee with the provisions of this Chapter. In the event of forfeiture of the bond, the proceeds *shall* go to the affected agency."

Section 3. Effective Date and Public Notification.

The provisions contained in this Act *shall* be effective thirty (30) days following the date of enactment. The Department of Public Works, upon enactment, *shall* provide immediate notification to the general public and the Guam Contractors Association on the implementation and effective date of the provisions contained in this Act.