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I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN
THIRTY-SECOND GUAM LEGISLATURE
155 Hesler Place, Hagåtña, Guam 96910

November 13, 2013

The Honorable Edward J.B. Calvo
I Maga'lahen Guåhan
Ufisinan I Maga'lahi
***Hagåtña,* Guam 96910**

OFFICE OF THE GOVERNOR
CENTRAL FILES
RECEIVED BY: J. Dela Rosa
TIME: 11:28 AM DATE: 11/15/13

Dear *Maga'lahi* Calvo:

Transmitted herewith are Bill and Substitute Bill Nos. 35-32(COR), 74-32(LS), 75-32(LS), 91-32(COR), 94-32(COR), 98-32(LS), 99-32(LS), 108-32(COR), 112-32(COR), 116-32(COR), 133-32(COR), 134-32(COR), 140-32(COR), 141-32(COR), 143-32(COR), 145-32(LS), 150-32(COR), 153-32(COR), 154-32(COR), 156-32(COR), 157-32(COR), 158-32(COR), 160-32(COR), 161-32(COR), 162-32(LS), 165-32(COR), 170-32(LS), 176-32(COR), 189-32(COR), 193-32(COR), 194-32(COR), 195-32(COR), 196-32(COR), 200-32(COR), 205-32(COR), 210-32(COR), 211-32(COR) and 217-32(LS) which were passed by *I Mina'Trentai Dos Na Liheslaturan Guåhan* on November 12, 2013.

Sincerely,

Tina Rose Muña Barnes
Legislative Secretary

Enclosures (38)

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I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN
2013 (FIRST) Regular Session

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

This is to certify that **Substitute Bill No. 196-32 (COR), "AN ACT TO AMEND §§ 53101(c), 53105 AND 53110 OF CHAPTER 53, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO ENSURING THE REPAIR AND RESTORATION OF GUAM'S PUBLIC ROADWAYS BY CONTRACTORS AND PUBLIC AGENCIES WHO EXCAVATE THESE ROADWAYS",** was on the 12th day of November 2013, 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 15th day of Nov., 2013, at 11:28 o'clock A.M.

Assistant Staff Officer
Maga'lahi's Office

APPROVED:

EDWARD J.B. CALVO
I Maga'lahen Guåhan

Date: _____

Public Law No. _____

I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN
2013 (FIRST) Regular Session

Bill No. 196-32 (COR)
As substituted by the Committee on Public Safety,
Infrastructure and Maritime Transportation;
and amended on the Floor.

Introduced by: T. C. Ada
R. J. Respicio
V. Anthony Ada
FRANK B. AGUON, JR.
B. J.F. Cruz
Chris M. Dueñas
Michael T. Limtiaco
Brant T. McCreadie
Tommy Morrison
T. R. Muña Barnes
Vicente (ben) C. Pangelinan
Dennis G. Rodriguez, Jr.
Michael F. Q. San Nicolas
Aline A. Yamashita, Ph.D.
Judith T. Won Pat, Ed.D.

AN ACT TO *AMEND* §§ 53101(c), 53105 AND 53110 OF CHAPTER 53, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO ENSURING THE REPAIR AND RESTORATION OF GUAM'S PUBLIC ROADWAYS BY CONTRACTORS AND PUBLIC AGENCIES WHO EXCAVATE THESE ROADWAYS.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. §53101(c) of Chapter 53, Title 5, Guam Code Annotated, is hereby *amended* to read as follows:

"(c) *Roadway*, *highway*, *road*, or *street* (hereinafter "roadway") means all or any part of the entire width of right of way, whether or not such entire

area is actually used by the general public for the passage of vehicles and persons."

Section 2. §53105 of Chapter 53, Title 5, Guam Code Annotated, is hereby *amended* to read as follows:

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

(a) All applications for excavation of a roadway *shall* have a schedule of work that sets the timeline of construction or work events, and deadline when the roadway will be restored to its original condition or better. The contractor or public agency *shall* be required to close the opening and restore the roadway *no later than* the date as specified on the permit, or by the DPW Director.

(b) Deposit Fee.

(1) In addition to the permit application fee, and *except* as provided herein, any project by a private contractor or public agency which would require an opening or excavation for any purpose in a 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.

(2) *No* permit *shall* be granted to a contractor or public agency *unless* the deposit fee is paid in full or a performance bond, provided by a surety company authorized to do business on Guam, guarantees repairs on a single project or multiple projects anticipated to be undertaken over a period of time is provided.

(3) 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; or for other projects for which there is a performance bond, upon such terms and in such amount as

may be required by the Department at its discretion. This requirement for a deposit fee *shall not* preclude the Department's condition for a bond, as may be imposed herein.

(4) Inspection and Repair.

(A) The deposit fee *shall* be retained by the Department for *up to* three (3) months from the completion of the roadway repair, during which time the Department *shall* conduct a site inspection of the roadway project area in which the opening or excavation had occurred to ascertain if the repairs were conducted and completed properly in accordance with applicable Federal Highway Administration and Department of Public Works standards.

(B) If the roadway area is identified to be insufficiently repaired, then the Director *shall* assess a penalty against the deposit fee or performance bond, exclusive of the requirement for the contractor or public agency to return and ensure that proper repair is conducted. On unpaved roadways, "insufficient repair" *shall not* include degradation, including, but *not* limited to, erosion, weathering, and the impacts of traffic, which would otherwise have been expected in the absence of the excavation in question.

(C) If the contractor or public agency fails to make proper repairs within fourteen (14) days of notification of the Department's findings, the Department is authorized to procure road repair services in accordance with 5 GCA Chapter 5, §5213, and 2 GAR Div. 4, §3111. The Department *shall* retain as much of the performance bond or deposit fee as may be

required to compensate the Department for damages arising from permittee's failure to complete satisfactory road repair; and the Department may also bring an action in the Superior Court of Guam against the contractor for direct damages, if any, beyond the amount of the performance bond or deposit fee posted.

(D) Should the area repaired meet the Department's standards set forth for the repair of the roadway, the Department *shall* return the deposit fee in full; however, the permit application fee *shall not* be returned. The party responsible for the roadway repair *shall* provide a one (1) year warranty on the work that was completed. For unpaved roadways, the warranty requirement *shall* be for a period of ninety (90) days.

(5) In lieu of multiple deposit fees by a public agency or contractor to guarantee repair of excavations needed for recurring maintenance, repairs, and upgrades of its buried facilities, the Department may authorize the posting of a performance bond to cover multiple excavations in such amount and under such term as the Department deems sufficient to ensure compliance with this Chapter. In the event of forfeiture of the deposit fee or performance bond, the proceeds *shall* be deposited in the Public Rights-Of-Way Account of the Territorial Highway Fund for the purpose of paying for roadway repairs.

(c) All proceeds from the deposit fee established by this Section *shall* be deposited in the Public Rights-Of-Way Account of 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.

(d) 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, or to perform critical unscheduled repairs to remedy unanticipated interruptions to services. In such emergency situations, the contractor or public agency responsible *shall* contact the Department on the first working day following the commencement of excavation to 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.

(e) 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 Public Rights-Of-Way Account of the Territorial Highway Fund.

(f) Prior to the start of excavation work, the permittee *shall* duly inform the Mayor of the district where the excavation is to be made, and notify the Mayor upon completion of the roadway restoration. In the event of

emergency excavations, as provided for in Subsection (d), the permittee *shall* notify the Mayor on the next working day."

Section 3. §53110 of Chapter 53, Title 5, Guam Code Annotated, is hereby *amended* to read as follows:

"**§ 53110.** Fines Collected from Public Rights-of-Way Violations. All fines generated by this Chapter *shall* be deposited in a special account known as the Public Rights-Of-Way Account of the Territorial Highway Fund, and any interest derived *shall* remain in the Fund. The Director of the Department of Public Works is authorized to use revenues in the Account to purchase equipment and supplies, pay for roadway repairs, and to procure the services of licensed surveyors, as required by the Department to effectively enforce the public's compliance with applicable highway care and maintenance laws."

Section 4. Effective Date. The provisions contained in this Act *shall* become effective upon enactment.

Section 5. Severability. *If* any of the provisions of this law or its application to any person or circumstance is found to be invalid or contrary to law, such invalidity *shall not* affect other provisions or applications of this law which can be given effect without the invalid provisions or application, and to this end the provisions of this law are severable.