

I Mina'trentai Sais Na Liheslaturan Guåhan
BILL STATUS

| BILL NO. | SPONSOR | TITLE | DATE INTRODUCED | DATE REFERRED | CMTE REFERRED | PUBLIC HEARING DATE | DATE COMMITTEE REPORT FILED | FISCAL NOTES | NOTES |
|--|--|--|---------------------|--------------------|--|-----------------------|--|--|-------|
| 194-36 (COR) As amended by the Committee on Economic Development, Agriculture, Power and Energy Utilities, and the Arts; and substituted and further amended on the Floor. | Clynton E. Ridgell Christopher M. Dueñas Tina Rose Muña Barnes Amanda L. Shelton Joe S. San Agustin Telo T. Taitague James C. Moylan | AN ACT TO <i>AMEND</i> § 14101 OF CHAPTER 14, DIVISION 4, TITLE 8, GUAM ADMINISTRATIVE RULES AND REGULATIONS, AND TO <i>REPEAL AND REENACT</i> § 14102 OF CHAPTER 14, DIVISION 4, TITLE 8, GUAM ADMINISTRATIVE RULES AND REGULATIONS, RELATIVE TO THE GUAM INVASIVE SPECIES INSPECTION FEE AND ITS ASSESSMENT. | 9/9/21 9:15 a.m. | 9/14/21 | Committee on Economic Development, Agriculture, Power and Energy Utilities, and the Arts | 11/17/21 9:00 a.m. | 1/12/22 8:01 a.m. As amended by the Committee on Economic Development, Agriculture, Power and Energy Utilities, and the Arts | Request: 9/15/21 9/24/21 | |
| | SESSION DATE | TITLE | DATE PASSED | TRANSMITTED | DUE DATE | PUBLIC LAW NO. | LAPSED | NOTES | |
| | 2/18/22 | AN ACT TO <i>AMEND</i> § 14101 AND <i>REPEAL</i> AND <i>REENACT</i> § 14102 OF CHAPTER 14, DIVISION 4, TITLE 8, GUAM ADMINISTRATIVE RULES AND REGULATIONS, RELATIVE TO THE GUAM INVASIVE SPECIES INSPECTION FEE AND ASSESSMENTS. | 2/25/22 | 2/28/22 | 3/11/22 | 36-87 | 3/11/22 | Received: 3/11/2022 Mess and Comm. Doc. No. 36GL-22-1747 | |

LOURDES A. LEON GUERRERO
GOVERNOR



JOSHUA F. TENORIO
LT. GOVERNOR

UFISINAN I MAGA'HÂGAN GUÅHAN
OFFICE OF THE GOVERNOR OF GUAM

March 11, 2022

HONORABLE THERESE M. TERLAJE

Speaker

I Mina'trentai Sais Na Liheslaturan Guåhan

36th Guam Legislature

Guam Congress Building

163 Chalan Santo Papa

Hagåtña, Guam 96910

36GL-22-1747
**OFFICE OF THE SPEAKER
THERESE M. TERLAJE**

-03-11-2022

Time: 5:13pm

Received: *AA*

Re: SUBSTITUTE BILL NO. 194-36 (COR) – AN ACT TO AMEND § 14101 AND REPEAL AND REENACT § 14102 OF CHAPTER 14, DIVISION 4, TITLE 8, GUAM ADMINISTRATIVE RULES AND REGULATIONS, RELATIVE TO THE GUAM INVASIVE SPECIES INSPECTION FEE AND ASSESSMENTS

Hafa Adai Madame Speaker,

Controlling the introduction of invasive species to prevent their deleterious effects on our island's ecology and economy has been an ongoing goal of our administration. Bill No. 194-36 seeks to repeal and reenact Department of Agriculture administrative regulations in furtherance of this goal. I thank our agencies, and acknowledge their collaborative work to revise the Invasive Species Inspection Fee regulations, which seek to increase revenue for the Department of Agriculture's Biosecurity Division. However, I cannot sign this bill due to the concerns I note below.

Under the Organic Act of Guam, as amended, the executive branch is empowered to issue regulations that do not conflict with applicable law. Agencies must promulgate administrative regulations within the contours of applicable law, including the Guam Administrative Adjudication Law. On the other hand, the legislature's power to pass "bills" is separate and distinct from the executive power to issue "regulations." The Organic Act reserves the promulgation of administrative regulations for executive agencies, not the legislative branch, and Bill No. 194-36 appears to run afoul of these entrenched principles.

The intention of Bill No. 194-36 is well-meaning and consistent with the goals of the affected agency; however, effectuating these important changes should not come at the expense of the distinct powers conferred on our respective branches of government. And while our administration supports the intended amendment to the Guam Administrative Rules and Regulations (GARR), I would be remiss if I did not preserve my criticism of the mechanism utilized in the bill. To be clear, the Legislature has the power to write a bill containing the exact language of the administrative regulation it has attempted to adopt in this bill. However, it cannot do so under the guise of promulgating administrative rules. A duly-passed statute would in turn not be codified in the GARR, but rather in the Guam Code Annotated. Unlike an administrative rule or regulation, a legislative enactment could only be amended by statute, not by an agency through the AAA process

To: Speaker Terlaje
Fr: Governor of Guam
Date: March 11, 2022
Re: Substitute Bill No. 194-36 (COR)

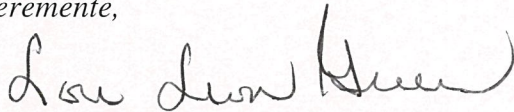
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like other administrative rules and regulations. Once the Legislature has, by law, delegated rule-making authority to an agency, it must abide by that delegation and not interfere with that authority until altered or revoked by law. This bill's attempt to perform an executive function, unfortunately, likely results in an ineffective measure that cannot be ratified by my signature, were I willing to provide it, which I am not.

As noted, the Department of Agriculture is statutorily empowered to make regulations to protect Guam from invasive plants and animals. Regulations regarding Guam's invasive species inspection fees and assessments should be promulgated by the Department of Agriculture, consistent with rulemaking procedures provided under the Guam Administrative Adjudication Law. Accordingly, I direct the Department of Agriculture to begin the statutory rulemaking procedures to perfect the repeal and adoption of the new fee inspection regulations this bill attempted to accomplish. This will ensure the rule will survive possible challenges to its validity and, ultimately, best achieve the agency's mission and policy to protect Guam from the threat of invasive species.

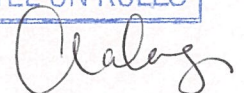
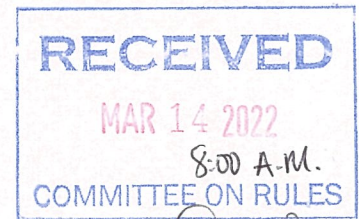
Again, I thank the legislature and the agencies for their collaborative process in preparing an updated invasive species inspection fee. However, for the reasons noted, Bill No. 194-36 will lapse into law without my signature.

Senseremente,



LOURDES A. LEON GUERRERO

Maga'hågan Guåhan
Governor of Guam



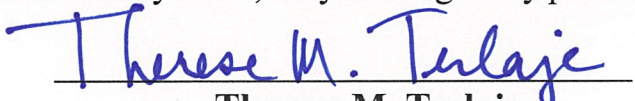
Enclosure: Substitute Bill No. 194-36 (COR) *nka P.L. No. 36-87*

cc via email: *Honorable* Joshua F. Tenorio, *Sigundo Maga'låhen Guåhan*
Compiler of Laws

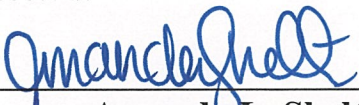
I MINA'TRENTAI SAIS NA LIHESLATURAN GUÅHAN
2022 (SECOND) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'HÅGAN GUÅHAN

This is to certify that **Substitute Bill No. 194-36 (COR), "AN ACT TO AMEND § 14101 AND REPEAL AND REENACT § 14102 OF CHAPTER 14, DIVISION 4, TITLE 8, GUAM ADMINISTRATIVE RULES AND REGULATIONS, RELATIVE TO THE GUAM INVASIVE SPECIES INSPECTION FEE AND ASSESSMENTS,"** was on the 25th day of February 2022, duly and regularly passed.


Therese M. Terlaje
Speaker

Attested:


Amanda L. Shelton
Legislative Secretary

This Act was received by *I Maga'hågan Guåhan* this 25th day of February,
2022, at 4:00 o'clock P.M.


Assistant Staff Officer
Maga'håga's Office
RCVD AT CENTRAL FILE
NOV 1 '22 10:41
Feb 28 4:00 PM 2022

APPROVED:

Lourdes A. Leon Guerrero
I Maga'hågan Guåhan

Date: _____

Public Law No. 36-81

I MINA'TRENTAI SAIS NA LIHESLATURAN GUÅHAN
2021 (FIRST) Regular Session

Bill No. 194-36 (COR)

As amended by the Committee on Economic
Development, Agriculture, Power and Energy Utilities,
and the Arts; and substituted and further amended on the Floor.

Introduced by:

Clynton E. Ridgell
Christopher M. Dueñas
Tina Rose Muña Barnes
Amanda L. Shelton
Joe S. San Agustin
Telo T. Taitague
James C. Moylan
V. Anthony Ada
Frank Blas Jr.
Joanne Brown
Telena Cruz Nelson
Sabina Flores Perez
Jose "Pedo" Terlaje
Therese M. Terlaje
Mary Camacho Torres

**AN ACT TO *AMEND* § 14101 AND *REPEAL* AND
REENACT § 14102 OF CHAPTER 14, DIVISION 4, TITLE
8, GUAM ADMINISTRATIVE RULES AND
REGULATIONS, RELATIVE TO THE GUAM INVASIVE
SPECIES INSPECTION FEE AND ASSESSMENTS.**

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

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds
3 that the Invasive Species Inspection Fee and Fund were established under Public
4 Law 31-43 with the intention of collecting over Two Million Dollars (\$2,000,000)

1 to fund much-needed services of the Department of Agriculture’s Biosecurity
2 Division. Since collection of the fee has begun, however, it has accumulated an
3 average of Six Hundred Thousand Dollars (\$600,000) in revenue. This meant that
4 services intended to help address invasive species on Guam and protect endemic
5 flora and fauna have been severely underfunded.

6 *I Liheslaturan Guåhan* further finds that the fee’s collection process has room
7 for simplification to assist shipping companies and the Department in tracking the
8 costs. Charging flat rates on imported goods instead of charging by weight allows
9 for easier accountability for the fees and allows the Department to collect the
10 revenues necessary for its operations. Furthermore, the current fee has exempted
11 several materials that may be carriers of invasive species and that must also be
12 addressed.

13 Therefore, it is the intent of *I Liheslaturan Guåhan* to update the Invasive
14 Species Inspection Fee in the manner as supported by the Port Authority of Guam
15 Users Group and the Invasive Species Council by charging flat rates on all containers
16 and passenger motor vehicles entering Guam and to additionally assess all materials
17 and goods that may be carriers of invasive species.

18 **Section 2.** § 14101 of Chapter 14, Division 4, Title 8, Guam Administrative
19 Rules and Regulations, is *amended* to read:

20 **“14101. Fee Established.**

21 The Department of Agriculture establishes a fee for the inspection,
22 quarantine, eradication, and management of invasive species brought into
23 Guam. The fee shall be paid by the carrier company, who shall forward the
24 payment to the Department of Agriculture, Biosecurity Division. For purposes
25 of this Chapter, a ‘carrier company’ is defined as a company that arranges the
26 transport of cargo from point of origin to a final destination with shipping
27 companies, and may be a shipping company.”

1 **Section 3.** § 14102 of Chapter 14, Division 4, Title 8, Guam Administrative
2 Rules and Regulations, is *repealed* and *reenacted* to read:

3 **“§ 14102. Fee Assessments.**

4 (a) The following fees shall be assessed and collected on the items
5 described herein on a per voyage basis:

6 (1) Seventy-five cents (\$0.75) on each one thousand (1,000)
7 pounds of bulk sand, quarried product, or cement bulk freight or part
8 thereof;

9 (2) Twenty-six Dollars (\$26.00) per each twenty-foot
10 equivalent unit (TEU);

11 (3) Two Dollars (\$2.00) on each revenue ton, as defined by
12 the Port Authority of Guam tariff, of break bulk or cargo that is not in
13 a container.

14 (b) Coal bulk freight and liquid bulk freight shall be exempt from
15 fees under this Section.

16 (c) All fees collected shall be deposited into the Guam Invasive
17 Species Inspection Fee Fund and expended as mandated in Public Law 31-
18 43.”

19 **Section 4. Monthly Vessel Cargo Report.** The Port Authority of Guam
20 shall provide to the Department of Agriculture Biosecurity Division a monthly
21 vessel cargo report providing each voyage per carrier’s vessel, to include total
22 twenty-foot equivalent units (TEUs), revenue tons of break bulk, and weight (metric
23 tons) of non-containerized sand/gravel/rock. The Vessel Cargo Report shall be
24 provided to the Department of Agriculture Biosecurity Division no later than the
25 twentieth (20th) day of each month for the preceding month’s activity.

26 **Section 5. Effective Date.** This Act shall be effective upon enactment.

1 **Section 6. Severability.** If any provision of this Act or its application to any
2 person or circumstance is found to be invalid or contrary to law, such invalidity shall
3 not affect other provisions or applications of this Act that can be given effect without
4 the invalid provision or application, and to this end the provisions of this Act are
5 severable.